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"I APPROVE!"
- ABE LINCOLN

Winter 2005
The separation that exists between Stanford and the rest of the world seems far greater than six degrees. But our connection to the world is real. This publication is committed to providing an arena for Stanford students to create awareness of human rights issues across the globe based on their personal experience and inspiration.

six degrees
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To our readers:
This winter, we gave Six Degrees a makeover. You may notice that we’ve changed the look and feel of the journal, including a switch to three columns and changes in font and paper. We have also expanded our role on campus. Six Degrees and its partner organization—the Stanford Human Rights Forum—have begun an effort to organize, coordinate, fund, and co-sponsor human rights events at Stanford. We extend many thanks to the hundreds of students, faculty, staff, and community members who attended the events on the Sudan this winter. In partnership with the Muslim Students Awareness Network, Amnesty International, Students Taking Action Now: Darfur (STAND), and the Stanford International Human Rights Law Association, the Darfur awareness campaign has been one of the largest human rights awareness movements at Stanford in recent years. Six Degrees and the Stanford Human Rights Forum will continue to promote human rights symposia on campus. In the spring, please look for similar awareness and advocacy efforts on topics like torture and ethnic cleansing, as well as a conference commemorating the Rwandan Genocide.

This issue of Six Degrees focuses heavily on the United States. Though we have published articles about domestic injustices in the past, we have never printed more than one per issue. It is less common to apply the phrase “human rights” to domestic issues, but the principles of human rights are just as applicable in our own backyard. Looking inward is more difficult, perhaps because of the threat of self-implication, or perhaps because such condemnation carries a greater imperative to act. But human rights violations occur everywhere. In this issue, we hope to highlight some domestic issues that the human rights discourse has overlooked.

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Danny Cullenward  Guantanamo Detainees
Danny Cullenward is a junior in the Earth Systems program and a master’s student in Management Science & Engineering. Danny is most interested in systems thinking and interdisciplinary work, especially integrating science and policy. At Stanford, he has worked on climate modeling, campus organizing, and curriculum development. He also has a long-standing interest in human rights, stemming from his participation in the Guantanamo Bay legal cases. Despite a love for the west coast, he hopes to later assist the emerging progressive movement in his home state of Wisconsin.

Adam Forest  LGBT Rights
Adam Forest is a senior majoring in Philosophy and writing an honors thesis in Ethics in Society. He has spent the last two years living in a fraternity and working at the LGBT Center. He considers gay rights to be this generation’s moral challenge and hopes to go to law school and study civil rights law in order to one day play a part in securing legal equality for sexual minorities.

Cammie Lee  Death Penalty
Cammie is a sophomore majoring in International Relations. She became interested in capital punishment during her “Rhetoric of Human Rights” class with Paul Bator. Cammie traveled to Alabama and Georgia on an Alternative Spring Break trip to speak with lawyers and the relatives of both Death Row inmates and their murdered victims. As a Co-Founder and Director of Stanford Beyond Bars, she leads Stanford’s first service organization that addresses legal justice issues through tutoring jail inmates.

Rush Rehm  West Bank
Dr. Rush Rehm is a professor of Drama and Classics at Stanford University and teaches courses on political drama and Noam Chomsky. He recently visited the West Bank and surrounding areas and plans to write a series of articles about his experiences in the region.

Julie Veroff  Failure of Justice
Julie Veroff is a sophomore from Fresno, CA, majoring in International Relations. This article stems from her high school advocacy for the testing of rape kits, and she is currently investigating the role of violence against women as a weapon of war in the former Yugoslavia. She spent her spring break in Nicaragua with an NGO that focuses on women’s issues. Julie is inspired by the strong women and men in her life and hopes to devote her life to ridding the world of the shame of inaction and indifference.

Letters of 250 words or fewer can be submitted to hrsubmissions@lists.stanford.edu.

Speak Out!
Spotlight On: West Bank
Professor Rehm recounts his travels in Israel and his views on the checkpoints and the new wall that sever Palestinians from their livelihoods and the outside world.

Guantanamo Detainees
Detainees held by the US military in Guantanamo Bay, Cuba occupy a legal niche from which the government claims they cannot contest their detention in civil courts.

Rape: A Failure of Justice
Hundreds of thousands of DNA samples for rape cases sit untouched and untested as women nationwide face a justice system that discriminates against them.

LGBT Rights
For Americans, it’s easier to ridicule human rights abuses abroad than to recognize the violations that take place here at home—we must acknowledge LGBT rights.

Interview: John Prendergast
John Prendergast discusses his extensive experience defending human rights in Sudan and throughout Africa, from both policy-making and advocacy perspectives.

The Death Penalty in America
The US’s criminal justice system is, ironically, rife with injustice; we stand by as the mentally disabled, a disproportionate number of racial minorities, and the potentially innocent are put to death.

cover shot by: Derek Powazek
www.ephemera.org
I arrived in Amman from London (via Frankfurt, the only option) sometime after 2am. Why this strange schedule, I wondered, until the blessings of the night gave the answer: a traffic-free drive into Jordan’s floodlit capital, all the noise, dust, poverty, and chaos temporarily out of sight. Abdullah, the Palestinian who owns the hotel where I would stay, welcomed me into his office. When did he sleep, this wise and graceful man, who speaks (and listens to) so many languages so well? I ask him where he’s from; “Palestine,” he answers with a wry smile. After the creation of Israel in 1948, his parents lost their home near Jaffa (now Haifa), and they fled to Jordan. Refugees and the right of return come up naturally in conversation with almost any Palestinian. According to Israel’s Law of Return and Nationality Law, the government guarantees the right of Jews anywhere in the world to immigrate to Israel as full citizens, if they can establish that they are truly Jewish. They are welcome in a land in which they have never been before. This is not so for Abdullah and millions of other Palestinians who lost that land—a diaspora the world would like to forget.1

I tiredly eyeing his chessboard, I suggest that we play another time. But we can’t stop talking, about Tom Hurndall, Rachel Corrie (yellowed press clippings of their murders are taped to the wall), and the International Solidarity Movement, the peace group with which they had volunteered. ISM is a non-violent solidarity organization that places internationals with Palestinian families in the West Bank and Gaza; they document Israeli government abuses and peacefully attempt to limit them by their presence.2 I tell Abdullah that I’d met Tom’s mother Jocey Hurndall in London the week before. A mild mannered English woman, she spoke of the foundation she was starting to carry on the work of her son, who was killed while trying to help Palestinians in the town of Rafah in occupied Gaza. An Israeli sniper shot him in the head while he was pulling two little kids to safety, away from a car that had just been blown up by an Israeli helicopter. This extrajudicial assassination (an increasingly popular Israeli tactic) was carried out by the Israeli Defense Force (IDF, but known to Palestinians as the army of occupation). US taxpayers like myself paid for that helicopter, part of our government’s massive aid to Israel, some $5 billion.3 Tom was 22; he lay in a coma for eight months before he died in London in January 2004. “They hold the trial [of the sniper] in Jerusalem one day a week,” his mother said, “sometimes without meeting for a month. I want to be there, but I live in London and I don’t have that kind of money. And when I go, they rip through my bags as if I were a terrorist. They know who I am. And that makes me the enemy.” Charged with manslaughter, Tom’s killer, Sgt. Idier Wahid Taysir, later admitted to lying to army investigators when he claimed that Hurndall entered a security zone, carried a weapon, and wore camouflage clothing. In fact, Hurndall was not in a security zone, was unarmed, and wore a bright orange jacket to make himself visible.4

I tell Abdullah that I’d met Rachel Corrie’s parents when they spoke at Stanford earlier that year. Their daughter was killed by a bulldozer driven by an Israeli soldier demolishing houses in Rafah. Again, this equipment was provided by the US via the Caterpillar corporation, whose tractors have been used to destroy over 12,000 Palestinian homes in the occupied...
Rachel was murdered by a soldier driving a Caterpillar model D-9 bulldozer. I describe how calmly the Corries fielded questions from supporters of the Israeli occupation who packed the audience: “How could your daughter defend those terrorists?” “What was she doing there?” “I’m sorry for your loss. But don’t you know those houses have tunnels that go to Egypt, allowing the terrorists in?” It didn’t matter that the Corries showed “after-the-fact” slides of the demolished homes, with trenches dug around by Israeli bulldozers that revealed no tunnels. Rachel was wearing a florescent orange jacket, standing like other ISM volunteers in front of a house she had lived in, whose occupants were her friends. This recent graduate of Evergreen State in Olympia, Washington was run over twice for good measure, forward and backward. Her killer was exonerated by the military: just a soldier doing his job. There was not even a trial.

Both the Corries and Jocey Hurndall emphasized that thousands of Palestinian families had suffered comparable losses, and continue to do so, day in and day out. At Jocey’s suggestion, I called a Palestinian friend of hers, Mohammed, who had recently come from Gaza to study in London. Ten of his friends had been killed that year. He gave a small laugh when we spoke on the phone, a laugh of resignation I was to hear from Abdullah and other Palestinians, delivered with a shake of the head, as if to say “What can you do?”

Tom and Rachel were killed in Gaza, a barren strip of land along the Mediterranean bordering Egypt, to which it once belonged. After Israel seized it in 1967, the Israeli government moved in some 8,000 Israeli settlers. Currently they control 35 percent of Gaza and 65 percent of its fresh water, a terribly scarce resource. Over one million Palestinians crowd into the rest of Gaza, most living in squalid conditions. When I was there, the big debate in Israel (it still rages) involved Sharon’s plan to remove these Jewish settlements, providing the settlers new houses elsewhere and roughly $250,000 per family. Of course, Palestinians whose homes are demolished get nothing. One should recall that both Likud and Labour, the two biggest political parties in Israel, actively promoted these Gaza settlements, subsidizing Jewish families to move there, offering attractive homes, security, even swimming pools and a golf course. “You have to use all that water for something,” Abdullah joked. Like many Palestinians, he thinks that Israel will pull its settlers out of Gaza and then use their “noble sacrifice” as an excuse to keep the much more important (but still illegal) settlements in the West Bank. “Don’t even try to visit Gaza now,” Abdullah warned. “The IDF has closed it to foreigners; they won’t let you in.” I followed his advice and kept to the West Bank, where things were not that much better. Sometimes, not at all better: later, during the short time I spent in Nablus, the Israeli Army killed seven Palestinians, including an 18 year-old girl, shot while looking out her window, not a mile from my hotel.

After a day in Amman, I took off early the next morning for Israel, via the Allenby/Hussein bridge that crosses the Jordan River (Jord’aan means “fast-flowing,” but it’s a slow trickle these days). A young Israeli border official (she looked like a Stanford senior, but in uniform) took my passport, wished me a happy birthday, and then the niceties stopped:

The Palestinian city of Qalqilya in the West Bank sits behind a massive concrete wall. The barrier was constructed by the Israeli government to strengthen security, but it also encircles land occupied by Israel since 1967.
“Where are you going?” “Whom are you meeting?” “Where are you staying?” “In East Jerusalem?” “Why there?” “Where exactly?” “Who recommended that hotel?” “What is his name?” “Phone number?” “Address?” “You don’t know?” “Where did you meet him?” “In Amman?” “What were you doing in Amman?” “Where did you stay?” “You don’t remember?” “Why are you visiting Israel?” “What is your job?” “Wait here.” I don’t scare easily, but I was intimidated by her arrogance and sense of power. I could only imagine how I would have been treated had I been an Arab.

A Palestinian with an American passport (educated in Miami of all places), who teaches economics at Birzeit University outside Ramallah, advised me on the best way to get to Jerusalem. For some reason, we talked of Milton Friedman and monetarism, neither of which we liked, although we agreed on the sanity of his case for legalizing marijuana. This professor had to make the crossing from Jordan into Israel at least four times a year; although he has taught at Birzeit for almost a decade, Israel will only issue him a three-month visa, requiring him to leave the country each time. He was patient, even-tempered, and friendly—like most Palestinians I met—but you could sense his distress at the occupation. It would take him the rest of the day to travel the 50 odd miles from here to Ramallah, with several Israeli checkpoints to stall him. Such a waste of time and energy, I thought, not to mention the bottom-line inequity.

Later in my trip, crossing (or trying to cross) the checkpoints that cut up Palestinian territory like holes in Swiss cheese, I understood better what daily life is like in the West Bank. You wait—usually with a horde of others—on foot; Israelis (their license plates marked clearly) show their papers and drive right through. Everyone else (except, perhaps, UN officials) must leave whatever vehicle they arrived in at one side of the crossing, walk through the armed “mini-border,” and—if allowed in—pick up a cab or bus on the other side. You stand sometimes for hours, the sun blazing, flies everywhere, no shade or toilet, until one of the two armed soldiers at the other end of the concrete path signals for you to come through, one at a time. An M-16 trained at your stomach, you pass through the gated turnstile and continue down the narrow walkway (often caged on both sides) until you reach the soldiers. They look at your papers, ask more questions, and then let you pass or send you back. Their decision is final, and they’re ready to fill you with a round of bullets if you disagree. It’s like trying to get into a prison where the guards don’t want you to go, which is what the West Bank feels like whenever you try to move very far. That’s a daily reality for over three million Palestinians who live under occupation.

Following the good professor’s advice, I took a servis (communal taxi van) from the border to East Jerusalem. My eyes scanned the desert, the Dead Sea, and then caught sight of the ancient city on the hill. It was marred by a giant concrete strip glaring in the sun, running across the hilltop and down the side. I had heard about the Israeli wall, erected to keep West Bank Palestinians out of Israel, but seeing it in the distance was still a shock. A wall? Now? In the twenty-first century? I’d traveled in Eastern Europe in the early 80s and had felt the same disgust at the Berlin Wall. I’d also been to Cyprus, when the “Green Line” of concrete and barbed wire split the island in two. The justifications offered for the Israeli wall are different, but its presence struck me as no less outrageous.

Two days (and several check points) later, I joined a protest at another section of the wall running through the Palestinian town of A Ram, north of Jerusalem. The demonstration included some 30 internationals (French, German, Swedish, English, and Italian students), a couple of Israeli peace groups, but mostly Palestinians, including a swarm of elementary school children. This section of the wall runs right down the middle of the street, separating the homes of many children from their elementary school. Think of a 16-foot high concrete barrier running down the middle of El Camino. That’s the situation facing Palestinians in A-Ram, in East Jerusalem, and throughout the West Bank: students cut off from their classes, workers from their jobs, shop owners from their stores, friends from their friends. On its completion, the wall will separate all the West Bank inhabited by Palestinians from Israel proper, with the ostensible aim of keeping out the undesirables.

However, “security” from terrorists is only part of the wall’s function, for it literally concretizes Israel’s ongoing land grab of Palestinian territory. Its circuit deliberately includes land seized in 1967, which tens of thousands of Jewish settlers have occupied, supported directly by the Israeli government—just as in Gaza. By no accident, these settlements encompass the most fertile agricultural land, the best aquifers, and the highest ground, from which it is easy to control the scraps that have been left to the Palestinians. International observers point out that it’s perfectly legal (although somewhat perverse) to build a wall around your land, provided that the wall is in your country. But to raise a wall around your land and to build it on your neighbors’ land, incorporating it into your own territory, is more than perverse. That is illegal.

Imagine the US reaction if Mexico walled-in half of San Diego for security reasons and made it part of Tijuana, or if Canada did the same in Bellingham or Detroit. But with aid pouring in from Washington (from Democratic and Republican

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According to the Palestinian Red Crescent Society, 625 Palestinian children were killed by the Israeli army and settlers in the occupied West Bank and Gaza Strip between September 29, 2000 and December 31, 2004. Over 100 Israeli children have been killed by Palestinians during the same period.

In the two months of September and October 2004, 369 Palestinians were killed by Israeli actions.
administrations alike), and with a ready veto on the Security Council, Israel doesn’t worry. Since 1949, the US has used that veto over 100 times to keep Israel free of sanctions for its systematic violations of the UN Charter. The international community condemns these and other illegal actions time and again, but the US guarantees that these measures have no real impact. Recall that the Bush administration bypassed the UN to wage a “pre-emptive” war on Iraq, arguing that the UN was ineffective in its imposition of sanctions on nations that violate its Charter. As the case of Israel suggests, the biggest source of that inefficacy is the US itself.

Confronting the monstrosity of the wall at close range, I grabbed a soft rock from the ground and used it to scratch out a message as large as I could write: “THIS WALL IS BAD.” What else could I say? Mohammed’s resigned laugh on the phone in London came back to me. What can you do? Whatever one writes on the wall (or anywhere else, for that matter), it offers little comfort to the school kids and their parents, to the Palestinian farmers who have lost their fields, to the villagers cut off from their wells, to the thousands walled off from their land and livelihood.

At the end of the demonstration, I fell in with an Israeli peace group, and as we walked together I thought of catching a ride back to Jerusalem in their air-conditioned bus. That way I could avoid taking a crowded servis like the one I caught on the way out, with delays at the checkpoints and all the rest. I spoke with one of the Jewish protesters, a dual citizen of both the US and Israel, with a son serving in the Israeli special forces. Although a decent man, as far as I could tell, he was surprisingly supportive of the wall against which he’d just demonstrated. That Palestinian kids were kept from school bothered him, but the wall per se did not. In fact, he refused to call it a wall. Adopting the official language of the Israeli government, it was a “security fence” (a five-meter high, thick-slabbed concrete fence?). As those holding power know very well, controlling language is half the battle, and Orwellian “newspeak” informs Israeli politics, as it does our own. Iraqis who try to topple the US puppet government in Baghdad are “terrorists” or “insurgents,” but American clients who do the same elsewhere in the world are “freedom fighters” or “democratic forces.” So for the Israeli protester, the “security fence” was simply designed to stop terrorist attacks. Israel should pull out of Gaza, he thought (there were only 8,000 settlers), but for the Jewish settlements in the West Bank, the Golan Heights, East Jerusalem...no. I found it dispiriting to realize that even an Israeli peace activist could see no inherent problem in his country’s illegal (and often brutal) occupation, nor did he show any interest in addressing the reasons for resistance to that occupation. Would he have felt otherwise had he been Palestinian?

How different was my meeting the next evening with Mordechai Vanunu, the Israeli engineer released three months earlier after spending 18 years in an Israeli prison, 11 of them in solitary confinement. From 1976 to 1985 Mordechai had worked as a nuclear technician in the control room of Israel’s Nuclear Research Centre in Dimona. Realizing what the research was producing, he spoke with scientists and The Times (London) in 1986, establishing what many had suspected: Israel had a nuclear arsenal. Experts estimate that Israel has manufactured about 200 low to medium yield nuclear bombs, each more deadly than the bombs the US dropped on Hiroshima and Nagasaki in 1945. Confirmation of its nuclear program made the Israeli government look bad in the eyes of the international community, which had committed itself (at least on paper) to the non-proliferation of nuclear weapons.

If you want straight talk about weapons of mass destruction in the Middle East, don’t listen to George Bush and his cohorts (fictitious weapons in Iraq, dubious potential for their development in Iran)—talk to Mordechai Vanunu. After his interview, MOSSAD (the Israeli equivalent of the CIA) lured Mordechai from London to Rome, and there they kidnapped him in September 1986. Brought back to Israel, he was tried in secret and convicted of treason, espionage, and revealing state
secrets. Published only after his abduction, his interview appeared in The Sunday Times (London) in October 1986 with the headline “Revealed: The Secrets of Israel’s Nuclear Arsenal.” On my reading, only a paranoid would find the revelations in that exposé treasonous.

Calling on a black rotary phone in the Arab hotel where I was staying, I couldn’t believe I was talking to this amazing man about whom I’d heard so much. We agreed to meet later at St. George’s Cathedral, the Anglican church and pilgrim center in East Jerusalem that has offered Vanunu asylum. Initially reticent, he slowly unwound and we spent a memorable evening talking together. He was free to travel in Jerusalem but subject to re-arrest at any moment. And he was not free to leave the country, an issue he planned to raise at a judicial hearing scheduled for the next month. Although he felt quite welcome in East Jerusalem among Palestinians, Mordechai found living in Israel extremely difficult and was hoping to pressure the government to allow him to leave. I suggested that an invitation to speak at Stanford might help, encouraging the Israeli authorities to grant him a passport so that he could travel abroad. He thought that was a good idea.

At dinner in a nearby Palestinian restaurant we talked about prison. I’d recently spent a week in jail, the result of a peaceful anti-war demonstration at Lockheed-Martin in Santa Clara in April 2003. I had found the experience pretty dispiriting, and I couldn’t imagine how someone could endure 18 years of confinement. He told me that he fortified himself by exercise, extensive reading (he knew more about US history than most Americans), and a regime of self-discipline that simply refused to allow the lack of freedom to break his spirit. He saw it as a battle against his captors, who wanted him to give up. Like the Palestinians, he wouldn’t, and he hasn’t.

After dinner Mordechai opened his laptop and checked his email: a wireless connection! I confessed my ignorance about such technology, and he responded that those who have been without such devices learn quickly to master them once they have the chance. He still couldn’t believe he was out, that he could go swimming, walk in the neighborhood, talk on the telephone, go to a restaurant. As the sky darkened, a musician began to play the oud and sing those haunting songs of love and longing I remembered from Cairo 30 years ago. After a spell of Arab magic, I said goodnight, leaving Mordechai to listen, read his email, and enjoy his freedom. The next day I would travel to Bethlehem, spend the night, then head for the heart of the West Bank—Ramallah, Nablus, Jenin.

When he returned to Stanford, Professor Rehm helped to arrange an invitation for Mordechai Vanunu to speak on campus in April 2005 and to participate in an Ethics in Society conference on “whistle-blowing.” However, he is still not free to leave Israel, having been re-arrested (and later released) twice for violating a gag-order that prohibits him from talking to the press.

Mexican artists, aided by international activists and local youth, painted these murals on the wall to express opposition to it and to encourage Palestinian solidarity. Some muralists had been active in the Zapatista independence movement.
On September 11, 2001, al Qaeda terrorists attacked the United States using hijacked commercial airliners. In response, Congress authorized the President to “use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks.” The President then directed the army to invade Afghanistan, whose ruling government, the Taliban, he suspected of harboring those responsible for the terrorist attacks.

As a result of the military campaign, the United States took into custody hundreds of individuals under various circumstances. Over the course of a year, the army transferred many of these detainees to Camp X-Ray in Guantanamo Bay, Cuba. The decision to hold prisoners in a military base in Cuba, as opposed to facilities within the United States, occupies a peculiar legal niche. By the terms of the lease agreement, Cuba retains “ultimate sovereignty” over the base’s land, although the United States exercises complete jurisdiction and control. This distinction plays a pivotal role in the US government’s argument that detainees do not have access to the US court system.

Historically, the US government has waived its sovereign immunity, on occasion, to allow for judicial review over executive action. This allows the individual injured by the government the right to seek impartial hearings on his or her situation in civilian courts. However, this right is not available to all persons under all circumstances. Traditionally, when setting the boundaries of jurisdiction, courts have distinguished between aliens and citizens. Courts have also acknowledged, during wartime, different, if any, rights each may claim. Further, the Supreme Court has found both historical and legal precedent for treating friendly and enemy aliens differently, even if they are legal residents within our national borders. Thus, enemy aliens in wartime face the greatest barriers to court access.

Although officials at Guantanamo Bay had promised military tribunals for over a year, only six of the almost 700 prisoners housed in Camp X-Ray had been charged formally by the time the Supreme Court took interest. The rest were held without charge or access to impartial review. However, significant changes in the rights of aliens to bring claims against the United States arose from a consolidated decision in June 2004 that ruled jointly on two cases concerning Guantanamo detainees, Rasul v. Bush, Civil Action No. 02-229, and Al Odah v. United States, Civil Action 02-828. In each instance, the Washington, DC Circuit Court refused jurisdiction, and thus refused the plaintiffs access to court, on the grounds that the plaintiffs are aliens and are held outside the sovereign territory of the United States, and thus they are not entitled to “the privilege of litigation.” The court found the location of the alien plaintiffs the most significant factor in determining jurisdiction, based on Johnson v. Eisentrager, a Supreme Court decision from the WWII era.

On appeal, the Supreme Court overturned the lower court’s decision and held that detainees do have access to judicial review. The Court found that the location of the alien was immaterial.
to his or her claim, so long as the United States exercises executive control, not strictly sovereignty, in that location. In addition, the Court approved the use of an important human rights statute—the Alien Tort Claims Act (ATCA)—to address detainees’ claims. The Court’s decision blocked the executive’s attempt to subvert Congress’s autonomy by denying rights upheld by the English common law tradition through decades of constitutional law, in addition to international treaties ratified by Congress. This marked an important intervention by the judiciary in order to maintain the separation of powers. As well, by allowing the detainees to file suit under the ATCA, the Court took an important step in making international law applicable in US courts; without a law such as the ATCA to provide a cause of action, international treaties are not actionable in US courts on their own. Although future litigation of human rights abuses committed abroad remains a challenge, the Guantanamo cases bring this goal one step closer to reality.

Two separate cases filed by Guantanamo detainees argued for their rights of access to judicial review; petitioners in each case took a different approach. In one, they petitioned for a writ of habeas corpus, claiming their detention was unlawful; in the other, petitioners asked for a review of their status, more information on the charges against them, access to legal counsel, and visits with their families, citing the ATCA and the Administrative Procedure Act, in addition to the writ of habeas corpus. Petitioners in Rasul v. Bush filed their case on February 19, 2002, against the President of the United States and selected staff members. The parties include Shafiq Rasul and Asif Iqbal, both citizens of the United Kingdom, as well as David Hicks, an Australian. The plaintiffs contested the nature of their detention and petitioned for a writ of habeas corpus, or the constitutional right to access the courts. A writ of habeas corpus is a court order that requires authorities to bring the prisoner in person before a judge to determine if the detainee’s detention is lawful. Joining the petitioners were family members who brought the suit on their behalf since detainees were not allowed contact with the outside world; here they applied the right of “next friends” to file suit on behalf of someone who otherwise cannot.

Rasul and Iqbal claimed they were in Pakistan on personal business when Pakistani agents arrested them and transferred them to Egyptian authorities who, in turn, gave custody to the United States military. Hicks alleged he was living in Afghanistan when the Northern Alliance captured him and turned him over to United States forces. At the time of court proceedings, the US government held plaintiffs at facilities in Guantanamo Bay.

The other case, Al Odah v. United States, concerned the detention status of 12 Kuwaiti citizens. Each claimed to have been a volunteer worker in Afghanistan or Pakistan providing humanitarian aid before local villagers seized him for bounty. Petitioners claim local authorities transferred custody to the United States military, which relocated prisoners to Guantanamo Bay between January and March 2002.

Plaintiffs in Al Odah v. United States took a different approach from those in Rasul. Instead of calling for their release from allegedly unlawful confinement, plaintiffs in Al Odah sought access to an impartial review of their status, information of the charges they faced, access to legal counsel, and family visits. Plaintiffs cited the ATCA, the Administrative Procedure Act, and the writ of habeas corpus as causes of action, the legal grounds of their claims. Although their brief focused on obtaining any of the three types of court access, the District court denied the claims based on the ATCA and the Administrative Procedure Act and determined there is no way to challenge the lawfulness of one’s detention, except through the writ of habeas corpus (28 U.S.C. §2241, 2242). In the District court, the Department of Justice (DOJ), representing the US government, argued for increased freedom of the executive branch from checks on its autonomy, which it claimed is necessary to better guarantee national security when terrorist networks operate outside national boundaries. The DOJ moved to dismiss the cases on grounds of subject matter jurisdiction, or the authority of that court to decide on the issue in controversy. The DOJ argued essentially that Federal courts cannot review US activities outside of American

Some legal definitions...

A **writ of habeas corpus** requires those having custody of a prisoner to bring him or her before a judge. Habeas corpus (“you have the body”) protects against unlawful confinement, allowing a detainee to petition the conditions of his or her detention.

An **amicus curiae brief** is submitted by a “friend of the court,” an individual or organization with special expertise that advises the court on a point of law or fact.

An **en banc hearing** is heard by all judges within a jurisdiction, not just a single panel. A panel in the DC Circuit has three judges; there are 12 judges in total.

The **district and circuit courts** form the system for hearing federal civil and criminal cases. There are 94 district courts in the US, which are organized into 12 regional circuits, each with a US court of appeals.

The **Alien Tort Claims Act**, signed by President Washington in 1789, holds, “District courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” Many think ATCA was enacted to combat piracy in international waters, but today it brings human rights violators to court in the US.
borders, which forced the burden of proof onto the plaintiffs. Following this motion, legal proceedings focused thereafter on whether the courts can entertain litigation at all from aliens detained abroad, which requires the courts to assume plaintiffs’ allegations are true. In all cases, plaintiffs assert no participation in terrorism and claim to be innocent victims of circumstance. Thus, the issue in controversy became centered on whether the plaintiffs had a right to be in court in the first place.

The District Court of the District of Columbia heard both cases and issued a decision in July of the same year. Citing Johnson v. Eisentrager 339 US 763 (1950) as a determining precedent, the judge declared the courts have no jurisdiction over aliens held in Guantanamo Bay. The decision dismissed both cases with prejudice, meaning the suit could not be filed again. The plaintiffs appealed to the Circuit Court.

In that case, each side was supported by an amicus curiae brief. The International Centre for the Legal Protection of Human Rights filed on behalf of appellants, and the Washington Legal Foundation, Allied Educational Foundation, and Jewish Institute for National Security Affairs jointly filed on behalf of appellees. The Circuit court affirmed the previous decision in March 2003, and denied the request for an en banc rehearing in June of that year. An en banc hearing is heard by all of the judges in the jurisdiction, not just a single three-judge panel.

The plaintiffs appealed finally to the Supreme Court in September 2003, and they were supported by seven amicus curiae briefs. In June of 2004, the Supreme Court reversed the Circuit Court’s opinion and ruled that detainees do have access to US courts via a writ of habeas corpus, under 28 U.S.C. §2241. In addition, the Court held that detainees could file suit under the ATCA, that the ATCA is a legitimate cause of action.

In petitioning the Supreme Court, appellants contested the DC Circuit’s interpretation of the Eisentrager precedent, which denied the right of aliens committed of war crimes to file suit in a non-military court. The appellants from Rasul and Al Odah cited the distinct differences between the situations of the aliens in the Eisentrager decision and those held in Guantanamo, and they took issue with the Circuit Court’s strict interpretation of sovereignty. Through their brief and the amici they solicited, Rasul and Al Odah plaintiffs sought to convince the Court of the importance of granting judicial review by using historical and institutional arguments.

Johnson v. Eisentrager concerned the right of nonresident enemy aliens convicted of war crimes by a military tribunal to seek a writ of habeas corpus in civil court. The defendants were a group of German spies who had given information on United States troop movement to the Japanese after Germany surrendered (an act considered to be a war crime). The Supreme Court heard their appeal and denied the defendants’ habeas petition on jurisdictional grounds. Although the District Court concluded the “enemy” status of the alien was not important in the denial of jurisdiction, Rasul and Al Odah appellants noted two significant differences of their cases from Eisentrager: First, they contended that the Eisentrager Court considered the fact that defendants had access to military courts (an “enemy” privilege) in denying the habeas request. At the time of their appeal to the Supreme Court, the Guantanamo Bay detainees had not acquired such access. Second, for the purposes of appeal, they are presumed not to be enemy aliens, unlike the German prisoners in Eisentrager.

The plaintiffs also contested the strict language used in the Circuit Court’s definition of sovereignty. Previous courts have acknowledged a broader, de facto notion of sovereignty, wherein the mere actions of the United States in an area prove its control and authority to the point where it has legal jurisdiction. Although the District and Circuit courts did not accept this theory, plaintiffs continued successfully with this line of argumentation in the Supreme Court to prove that US authority at Guantanamo Bay does indeed amount to sovereignty.

The DC Circuit Court, per its interpretation of Johnson v. Eisentrager, made all rights contingent upon the alien’s presence “within any territory over which the United States is sovereign.” However, there is ample criticism of this opinion, including and beyond the remanding Supreme Court decision. There is a rich history in the practice of US constitutional law, and even predating it in English common law, of granting certain rights to aliens. Throughout this history, prisoners of war have always maintained some basic rights; habeas corpus rights have extended beyond the limits of constitutional protection, and one’s right to receive such a writ is not contingent on his or her having constitutional rights. International treaties signed and ratified by the American government, such as the Geneva Convention, further bind the US to respect the well-established rights of aliens and prisoners of war.
An amicus curiae brief submitted to the Supreme Court from retired judges and legal scholars disagrees with the Circuit Court’s findings. They cite a Supreme Court ruling, *Ex parte Milligan*, stating the Constitution is applied “equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances.” That Court also found that the label attached to a prisoner cannot obscure that party’s rights (instead of the current term “enemy combatant,” which has no legal meaning, *Ex parte Milligan* featured a “prisoner of war”); “if he cannot enjoy the immunities attaching to the character of a prisoner of war, how can he be subject to their pains and penalties?”

Furthermore, some believe the right to a writ of habeas corpus extends beyond the boundaries of constitutional rights. The DC Circuit Court pointed out that although constitutional protection is guaranteed to all citizens, aliens do not immediately deserve such protection and must qualify to receive any rights. Even if constitutional rights are not conferred to aliens, a WWII era Supreme Court found that: “From the very beginning of its history this Court has recognized and applied the law of war as including that part of the law of nations which prescribes...the status, rights and duties of enemy individuals.”

In addition, an amicus curiae brief submitted to the Supreme Court from the Commonwealth Lawyers Association puts the writ of habeas corpus within an historical framework:

“[A]s a matter of English law the writ of habeas corpus will not be refused to any person within the jurisdiction of the Crown solely on the ground that he or she is an alien...As a matter of English law jurisdiction for the purposes of the writ of habeas corpus is established when the detained person is placed under the control of the Crown or enters territory under the Crown’s control whether or not the Crown claims sovereignty over that territory.”

This suggests the common law tradition would extend the writ of habeas corpus to the detainees in Guantanamo Bay, even if they lack constitutional rights. In addition to theories that incorporate de facto international law into federal law, there are already ratified treaties that provide similar rights. The United States and Afghanistan are both signatories of the Geneva Convention, which guarantees access to an impartial tribunal:

“Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4 [defining POWs], such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.”

Congress ratified the Geneva Convention, and the executive branch continues to expect its enemies to follow the treaty’s provisions. Any effort that subverts the directives of the Geneva Convention threatens to undermine American POWs and the spirit of international accords in general.

By asking the Court to overturn rights given to aliens by Congress, the executive clearly sought to extend its authority over the orders of the legislative branch. Of course, the courts tend to resist such attempts. In a previous habeas case, US Supreme Court Chief Justice Taney wrote:

“I can see no ground whatsoever for supposing that the president, in any emergency, or in any state of things, can authorize the suspension of the privileges of the writ of habeas corpus.”

Sharing this opinion, Gibbons et al concluded the Court should not accept a “de facto suspension” by the executive branch.

In the ruling on *Rasul*, the Court held that the ATCA “explicitly confers the privilege of suing for an actionable ‘tort...committed in violation of the law of nations or a treaty of the United States’ on aliens alone. The fact that petitioners are being held in military custody is immaterial.” The Supreme Court review affects the future of ATCA cases in two ways: it pushes all Circuit courts toward accepting international human rights cases brought under ATCA claims, and it reinforces the practice of concerned citizens, as “next friends,” bringing suits on behalf of prisoners who cannot do so on their own. There are significant discrepancies amongst the Federal District courts, with the Second and Ninth Circuits accepting ATCA cases, and the DC Circuit firmly rejecting them. In light of these differing opinions, the Court’s affirmation of the ATCA is a positive signal for international human rights law. But even with this new precedent, the DC Circuit will likely remain hostile to ATCA claims. Thus, since the DC Circuit is the court that hears claims made against the US government, future ATCA cases targeting the federal...
government will continue to face many obstacles.

In another, smaller victory for ATCA litigation, the earlier DC District Court case affirmed the right of “next friends” to bring suit. In a separate incident, the Ninth Circuit found that concerned citizens cannot act on behalf of the Guantanamo Bay detainees, because they are not proper “next friends.” Judge Randolph, writing for the DC District Court majority, rejected the reasoning behind the Ninth Circuit’s dismissal of a habeas corpus petition. The Supreme Court agreed with the earlier District Court’s findings in this respect. By asserting that the DC Circuit will accept the longstanding history of “next friends” bringing cases for those who otherwise cannot, the decision opens the court for further advocacy on behalf of dispossessed or detained aliens, although establishing jurisdiction and cause of action—or which courts can hear such cases and on what grounds they can do so—remain significant barriers.

With American businesses operating throughout the world, and with a military engaged actively against an enemy that often defies national classification, the United States cannot escape the responsibilities of a global actor and superpower. We must respect the rights of other nations’ citizens to access our courts when they come under our control.

As the Commonwealth Lawyers Association points out, there is a rich history in English common law in which the rule of law supercedes the authority of executives, reaching as far back as the Magna Carta:

“No Freeman shall be taken, or imprisoned, or be dispossessed of his Freehold, or Liberties, or free Customs, or be outlawed or exiled...but by lawful Judgment of his Peers, or by the Law of the Land.”

To a recent ruling from a Divisional Court of the Queen’s Bench:

“[The Magna Carta] becomes and rightly becomes a sacred text, the nearest approach to an irrepealable ‘fundamental statute’ that England ever had...For in brief it means this, that the king is and shall be below the law.”

The rule of law, as we inherit it from the English system, is and always should be above the actions of the executive branch. Justice Kennedy, in his separate concurring opinion, appears to have taken the separation of powers argument seriously. He interprets the Eisentrager precedent as a limited transfer of authority from the judicial to the executive branch, but finds substantial difference between that case and the Guantanamo cases, namely, that “the prisoners in Eisentrager were proven enemy aliens found and detained outside the United States, and because the existence of jurisdiction would have had a clear harmful effect on the Nation’s military affairs.” By this reasoning the judicial branch retains jurisdiction as allotted by Congress.

One of the conditions under which a person may seek a writ of habeas corpus is if his or her custody is “in violation of the Constitution or laws or treaties of the United States.” By the clear provisions of the Geneva Convention, detainees and prisoners of war are entitled to impartial review of their status. Unfortunately, ratified treaties are not actionable in US courts by themselves, but only in conjunction with a US law. That is exactly why the ATCA is such an important tool for human rights.

Ironically, it may have been the reactionary opinion of the US Department of Justice that led the Supreme Court to endorse the ATCA as a jurisdictional clause. Arguing in Doe v. Unocal, the DOJ attempted to derail plaintiffs’ claims by construing the ATCA as a purely jurisdictional statute, without an enforceable cause of action—i.e., one cannot file suit under the ATCA, it only guides federal courts to entertain suits under the “law of nations” that has been written into US law or is enshrined in treaties signed and ratified by the US. But even that narrow definition of the ATCA could provide jurisdiction over aliens’ claims, with the Geneva Convention or ratified international treaties as causes of action to demand relief.

In a day and age in which the United States prides itself on spreading law and liberty throughout the world, it would be tragic if the United States did not adhere to the very standards it encourages others to adopt. We do not sacrifice security by extending the rule of law. Future courts should follow the Supreme Court’s lead and allow aliens to litigate under the ATCA for their congressionally granted rights.
I am a woman, and a small woman at that. Though at one point in time this might have been a barrier, I have been told throughout my life that I can be whatever I want: a doctor, a lawyer, an astronaut, even a football player. I am blessed to live in a society that seeks to empower women and to inspire young girls to pursue their dreams. However, while I am encouraged to go on archaeological digs and find the cure for AIDS, I cannot walk alone at night. If I want to go for a jog around campus after dark, I must take a friend and always remember to carry a phone and be aware of my surroundings. Don’t wear your hair in a ponytail. Yell “fire!” instead of “rape!” Only drink from a glass you poured yourself. Stomp on the foot, knee to the groin, twist away with the wrist.

A woman in the United States is sexually assaulted or raped every two minutes, but only two percent of women will ever see their rapist spend a day in jail. Compounding the injustice, almost 500,000 rape kits containing valuable DNA evidence collect dust on shelves while five-year statutes of limitation inch closer. For all the rhetoric about empowering females that politicians, the media, and our parents project, violence against women is a pervasive problem that takes a backseat in America to Social Security and the latest Michael Jackson scandal. In a society where the “average rapist rapes between 8 and 16 women before he is ever caught” and the Stanford Daily runs front page headlines such as “Students Apathetic About Sexual Assault,” can we really claim to be a nation that prioritizes the pursuit of justice, especially for women?

The current social and legal issues surrounding rape are extremely intricate. America is plagued by underreporting, limited convictions, and a backlog of rape kits, and the attitude that rape is another one of those “women’s issues” has helped to create an environment in which rapes have not decreased over time, and justice for the victim is a rarity.

The anti-rape movement arose out of the second-wave feminism of the 1960s and 1970s and inspired policy changes, social consciousness, and the watershed Violence Against Women Act of 1994 (VAWA). However, due to a Supreme Court ruling that invalidated the VAWA, insufficient funding for the testing of rape kits, and the inability to overcome ingrained social attitudes toward constitutional law, the legislation developed and instituted over time has failed to result in more frequent prosecution of rapists or satisfactory justice for victims. Though the movement has seen major success in the rise of rape activism and awareness, this is not enough. Our society needs to take substantial action to break out of the patriarchal mindset that defers issues centered on women and fails to provide them with equal social and legal rights. We must stop trying simply to confer upon women the same rights as men; we must focus specifically on the rights demanded by women. Rape is an issue of justice. It is not a personal problem to be dealt with privately—to treat it as such is a violation of human rights.”
Joe Biden, transformed the way in which the government addressed violence against women. It has been called “the most significant accomplishment of the anti-rape movement” and “a success of historic proportions on various political and social fronts... an undeniable victory for feminism... also a civil rights victory.”

The Act took several major steps toward securing justice for victims of rape. First, it instructed the US Sentencing Commission to revise sex crime sentences and offer financial restitution to the victims from offenders. Second, it allowed the Department of Justice to give grants to states and local governments for law enforcement, prosecution, and victim services. Third, it enabled the Department of Transportation to give grants for improvements in parks and public transit systems. The VAWA allowed states to use certain money for rape prevention and education programs under the Public Health Human Services Act. The Act gave the Department of Justice grants for training and educating judges at the state and federal levels and for studying rape on college and university campuses. It also established the Violence Against Women Office through the Department of Justice. Finally, the VAWA allowed for civil suits against rapists for “gender-motivated” rapes. The last provision of the Act was its most controversial, and this was the eventual reason for the law’s demise.

The American Civil Liberties Union, however, did not want violence against women to be included in civil rights legislation because they believed it would never be clear whether a woman had been raped because of her gender or for another reason. The ACLU further argued that the VAWA would clog the courts. During congressional hearings, an ACLU representative opposed providing “a remedy for gender-based attacks by private individuals, and not providing the same remedy for violence committed by private individuals against other victims based on race, ethnicity, religion, or sexual orientation.” This argument challenged Congress’s justification for the law under the equal protection clause of the Fourteenth Amendment, which focuses on state action against individuals.

Biden defended the Act ardently: “Imagine the public outcry if we were to learn today that one quarter of convicted kidnappers or bank robbers were sentenced to probation or that 54% of arrests for these crimes never lead to convictions. We would consider such a system of justice inadequate to protect the nation’s property, yet we tolerate precisely such results when the rape of women is at issue.” In response, Congress designated $1.62 billion to the VAWA, referencing the Commerce Clause and the Fourteenth Amendment:

“Violence against women creates a huge burden on health and judicial systems, and hinders economic stability and growth through lost productivity. Future productivity is also held back as a result of the loss of children’s education when girls suffer violence, or when children of either sex have their lives disrupted by violence... Violence against women hinders women’s participation in development processes, and constrains their ability to respond to rapid social...

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### Sexual Violence in 2003

- There were **223,290** rape and sexual assaults in one year alone.
- Only **39%** of all rape and sexual assaults were reported to law enforcement agencies in 2003, a **16%** drop from the previous year.
- **89%** of rape and sexual assault victims were female and **11%** were male.
- Law enforcement agencies received **93,433** reports of forcible rape offenses, of which **44%** were cleared.
- Within three years following their release from prison, **5.3%** of sex offenders were rearrested for a sex crime.
- Victim compensation programs paid **$11.8 million** for forensic sexual assault exams.
- More than **10%** of male sexual assault victims had cognitive disabilities.

An emergency department found that **12%** of sexual assault cases were identified as suspected drug-facilitated sexual assaults.
political, or economic change.”

Unfortunately, the courts failed to back up the new legislation. In 2000, the United States Supreme Court struck down the Violence Against Women Act, invalidating on a legal technicality perhaps the most important piece of legislation to deal with women’s rights and gender-based violence. The suit brought to the Supreme Court was that of Christy Brzonkala, a Virginia Polytechnic Institute student who claimed that two football players had raped her twice. Though she reported this to the university, the administration “took no action against one of the men and gave the other a deferred suspension that permitted him to keep playing varsity football.”11 NOW’s Legal Defense and Education Fund defended Brzonkala, whose case was the first under the VAWA to reach the nation’s highest judicial authority. On May 15, 2000, the Supreme Court ruled five to four in United States v. Morrison that “the VAWA’s civil rights remedy was unconstitutional…Congress had no authority to provide victims of gender-motivated violence access to federal courts.”12 The court rationalized that regulating intrastate criminal conduct exceeded Congress’s ability to regulate commerce because such conduct should be the concern of the states and the civil rights remedy was aimed at private individuals, not the states. This meant that the Act was not legitimate under the Fourteenth Amendment, which prohibits states from denying any person equal protection under the law. Chief Justice Rehnquist, in his opinion, wrote that to uphold the VAWA “would allow Congress to regulate any crime as long as the nationwide, aggregated impact of that crime has substantial effects on employment, production, transit for consumption…Gender-motivated crimes of violence are not, in any sense of the phrase, economic activity.”13 In this case, “Federalism concerns outweighed gender-equality.”14

The Supreme Court decision undermined the legislative efforts of the anti-rape women’s movement and significantly limited its capacity for political nation-wide impact. In response to the decision, Kathryn J. Rodgers, the executive director of the NOW Defense and Education Fund stated, “United States v. Morrison is a setback for women’s rights and a triumph for those who seek to roll back thirty years of federal civil rights law under guise of states’ rights. The Court has slammed shut the courthouse door, wished women good luck, and sent us back to the states for justice.”15 The Court’s decision strongly suggests that “constitutional adjudication…is an inadequate tool for securing gender equality in reality as well as on paper. Constitutional law may not be the best means toward that end.”16 Without congressional legislation to help prevent violence against women and to better prosecute offenders, advocates were left with few legal avenues on which to seek justice.

“Having women pay the cost of their own rape kit is a disturbing twist of the administration of criminal justice. If the government can pay for the investigations of murder, tax evasion, and shoplifting, surely it can fund the investigation of rape.”

Due to VAWA’s invalidation, states no longer receive funding to test rape kits. This resulted in a major backlog of DNA testing resources, stagnating criminal prosecutions. To ensure compliance, the Act had made state funding contingent on paying for rape kits in public hospitals.17 Without the Violence Against Women Act, however, states could stop paying for evidence collection and many jurisdictions actually began to require the victim to pay the processing costs. A rape kit is vital in the prosecution of criminals because it contains important DNA evidence such as skin, hair, and semen, which are collected at a hospital after a rape occurs in a procedure that can be very invasive for the victim.18 The cost to collect and process the DNA and then to submit it to state and federal databases is approximately $500 to $1,000 per kit.19 According to Howard Safir, the former Police Commissioner of New York City, approximately 300,000 to 500,000 rape kits remain untested nationwide. “Not testing a woman’s rape kit,” Safir asserts, “is like telling her ‘You are not worth $500.’”20 Because police departments no longer receive state funding, they simply cannot afford to test all of the kits. To put this in perspective: “For the price of one B-1 Bomber, we could [test] all of the rape kits and convicted offenders.”21 Currently, there is a 90
percent probability that a rape victim’s kit will never be tested. Furthermore, although required by law, one million convicted offenders have not had their DNA analyzed and entered into the national database. These tests, which cost only $50 per sample, greatly hinder a victim’s ability to prosecute. In 2002, “20/20” on ABC News investigated 50 “cold cases” from the Baltimore Police Department by paying half the cost of DNA testing. Thirty-nine of these kits were tested and entered in criminal databases. As a result, five major crimes were solved, including the rapes of a 15-year-old and a 17-year-old, both of which had been unprosecuted for four years. In addition, one man who had been identified incorrectly by a rape victim in court was exonerated because of the DNA test. This underscores the point that testing rape kits is not just a gender issue. It is a matter of accurately assessing justice and culpability and it is appalling that people around the country wait for justice to be served and have no idea that the evidence for their cases sits around untouched, untested.

Not only does the backlog of rape kits prevent rapists from being punished for their crimes and keep victims from achieving peace of mind, but having women pay the cost of processing their own rape kit is a disturbing twist of the administration of criminal justice. “Is there any other assault in which survivors are required to pay the cost of investigating the crimes against them?” When someone is killed, do police departments ask families to fork over the MasterCard if they want action taken? If the government can pay for the investigations of murder, tax evasion, and shoplifting, surely it can fund the investigation of rape. The government’s clear gender bias in justice administration sends a message of autonomy the state grants the victim may be grounded in concern for her privacy, but consider the societal reaction if it were suddenly declared that murderers, robbers, terrorists, and child molesters would only be prosecuted if the victim decided to take it upon herself to bring forward the case. Under California law, “Nobody who has been sexually assaulted can be forced to testify.” But it is absolutely unacceptable for rapists to go unprosecuted. This is not a gender issue; this is about the effectiveness of our judicial system and the need to honor human rights at all levels.

As a female, and as a human being, I don’t want to live in fear, always looking over my shoulder. The strides made by the feminist lobby have transformed our society, but they have not done enough. We need a society in which women are honestly valued as equal members of the global community and as individuals with intrinsic rights that deserve to be recognized and honored. We must eliminate gender discrimination and promote the respect of all if we are to have any hope of reducing violence against women. Do not let the government, Stanford, or yourself shrug off the crimes committed against women. Test the vital evidence in rape kits, establish a clear path to justice, prosecute rapists, and stand up for women’s rights as human rights.

Advancing Justice Through DNA Technology Act of 2003 provides $1 billion over five years to eliminate the backlog; the Debbie Smith Act of 2003 allocates funding for DNA testing, database updates, and education; the DNA Sexual Assault Justice Act, written by VAWA’s sponsor Biden, establishes grant programs for education and DNA collection; the Rape Kits and DNA Evidence Backlog Elimination Act gives funding for rape kits; and the DNA Database Completion Act of 2003 gives $100 million a year for the next five years to the cause. Unfortunately, none of these acts has been implemented, so the rape kit crisis remains unmitigated.

To consider the issue locally, Stanford University offers a one-hour self-defense class during New Student Orientation and the Women’s Community Center provides fliers defining sexual assault and avenues for medical treatment. Interestingly, none of them explains explicitly how to prosecute a potential criminal at Stanford, but I do know that, according to the Stanford University Sexual Assault Policy, I must travel 18 miles to Santa Clara Valley Medical Emergency Department for a rape kit, despite the fact that Stanford boasts one of the premier hospitals in the world. Sadly, despite the active promotion of awareness about sexual assault through V-Week, “The Real World: Stanford,” and educational activities offered through Vaden Health Center, women on the Stanford campus remain without a clear path to pursue justice for acts committed against them.

The human rights implication of this becomes clear when one considers that, according to the Stanford Daily, in California, “Legal process is not necessarily required and is up to the choice of the victim.” The autonomy the state grants the victim may be grounded in concern for her privacy, but consider the societal reaction if it were suddenly declared that murderers, robbers, terrorists, and child molesters would only be prosecuted if the victim decided to take it upon herself to bring forward the case. Under California law, “Nobody who has been sexually assaulted can be forced to testify.” But it is absolutely unacceptable for rapists to go unprosecuted. This is not a gender issue; this is about the effectiveness of our judicial system and the need to honor human rights at all levels.

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The March for Women’s Lives took place in Washington, DC on April 25, 2004. Participants voiced opposition to the government’s attacks on women’s rights, including denying access to justice for rape victims.
Here, in brief, are the human rights issues examined in this issue of *Six Degrees*. It is our aim to select articles that cover a large part of the globe. Please turn to the topics’ respective page numbers to learn more.

**Death Penalty**
Many proponents of the death penalty hold that the practice is necessary to deter crime. However, some studies show that capital punishment has a “brutalization effect” on society. The US criminal justice system is unjust; biases are ubiquitous against race, age, and mental disability. Since penal institutions display such injustice, it is time for the US to place a moratorium on the death penalty.  

**LGBT Rights**
Unlike genocide and land mines, many Americans hesitate to identify gay rights with human rights. However, such abuses occur often—and often in silence—within our own borders. The oppression is real: openly gay youth in the US are four times more likely to commit suicide than straight youth. We must ensure that the discourse on human rights embraces the discourse on gay rights.

**Rape**
A woman in the US is sexually assaulted every two minutes, but only one in 50 will see her rapist spend a day in jail. Nationwide, 300,000 to 500,000 rape kits containing invaluable DNA evidence on rape cases lie on shelves, untested. These kits could bring rapists to justice and exonerate wrongly convicted offenders. The failure to seek justice is an instance of gender discrimination and a violation of women’s rights.
Guantanamo Detainees
The US government claims that detainees in Guantanamo Bay, Cuba do not have a right to trial in American courts because, though Guantanamo is within US jurisdiction, it is under Cuban sovereignty. However, the Supreme Court ruled in June 2004 that detainees do have a right to contest their detention in court. The Court also permitted future human rights litigation under the Alien Tort Claims Act.

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West Bank
Birzeit University lost 111 of its class days two years ago due to the Israeli occupation, and 76 of its students are imprisoned in Israeli jails, 11 of them without charge. This is one example of the effect of the Israeli occupation on the Palestinian people. Professor Rush Rehm, who visited East Jerusalem and the West Bank last year, reflects on the occupation and the concrete wall slicing through Palestinian communities.

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Interview: John Prendergast
John Prendergast is the Special Advisor to the President of the International Crisis Group. He sat down with Six Degrees to discuss the genocide in Darfur, the protracted conflict in the Democratic Republic of the Congo, and what can and should be done to help end human rights abuses in Africa and worldwide. Through even the simplest acts of advocacy, he says, we have the power to stop genocide.

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This is not an article about genocide. It is not an article about child soldiers, land mines, or forced migration—but it is about human rights. And more, the abuses examined here do not have the comfortable benefit of taking place across an ocean; we cannot point to them from a distance with enlightened, reproving fingers, citing our better judgment. The issue is here at home.

The concept of human rights is at once powerful and imprecise. Nearly everyone can identify genocide and child prostitution as barefaced human rights abuses. The force behind the concept of human rights rests in this ability to recognize immediately the most heinous crimes as violations—few will debate the finer points of stoning or slavery. But the boundaries of human rights are unclear. This imprecision around the periphery of this powerful concept leaves room for contention. Among the contentious topics on the periphery of human rights discourse in this country is the issue of gay marriage and LGBT rights.

Viewing gay rights issues as human rights issues is a moral must. That gay rights remain beyond the scope of human rights discourse in this country is symptomatic of a patently un-American, fundamentalist ethos. But the periphery is not where gay rights belong. Our failure to recognize gay rights as human rights—and civil rights—is nothing short of a failure of American character. As we scowl across our borders at the human rights abuses of Africa, Asia, Europe, and South America, we should match our words and deeds by granting the LGBT community the equal rights they deserve and have so long been denied.

Growing up, I was a bit of a homophobe, but this was hardly a distinguishing character trait. On the Front Range in rural Colorado—where I spent the first 18 years of my life—it was rare to find someone who protested the status quo on behalf of the LGBT community. Most, I think it’s fair to say, failed to realize that such a thing as a gay community even existed. Gays were thought of as individual deviants—secretive, lewd, uncomfortable. I can remember my dad threatening to pull me out of elementary school if he ever caught wind that one of my teachers was gay. It was not a welcoming environment.

In October of 1998, I was 15. Early in the month, Aaron McKinney and Russell A. Henderson walked into a gay bar in Laramie, Wyoming with the intention of picking up an unsuspecting patron. They found a man named Matthew Shepard. Posing as gay men themselves, the two left the bar with Matthew, drove to a field in southern Wyoming, and beat him into a coma. They then draped Matthew over a fence by the side of the highway, took
his shoes and wallet, and left him to die in the freezing midnight air. The next day, two passing motorcyclists spotted what looked like a scarecrow strung up on the fence along the highway; slowing for a better look, they found Matthew, 18 hours after his assailants had left him for dead. Shepard was immediately airlifted to Poudre Valley Hospital in Fort Collins, Colorado, my hometown.

Shepard’s injuries were too severe for the doctors to operate, and he remained comatose for several days. That weekend was Colorado State University’s homecoming in Fort Collins. Only a couple of miles from the hospital, the parade was rolling down College Avenue; I remember one fraternity’s float had a scarecrow strung up on a fence, made to look like Matthew, holding a sign that read, “I’m gay.”

Incidentally, that moment in time was especially contentious on the subject of gay rights in Fort Collins. In 1992, the State of Colorado passed Amendment 2 by a narrow margin, repealing laws that had recently passed in Boulder and Denver intended to protect gays from various forms of discrimination. The legal challenge to Colorado’s Amendment 2 was the historic Romer v. Evans case, in which the US Supreme Court ultimately struck down Amendment 2 in a vote of six-to-three, leaving in place the protections from discrimination that had been passed in a few of the more liberal cities around the state. That was in 1996. Two years later, Fort Collins was attempting to pass its own anti-discrimination legislation in the form of Ordinance 22, which would have added sexual orientation to the city’s non-discrimination law covering employment, housing, and public accommodations.1 As it stood previously, it was legal to fire someone from their job, evict them from their home, or deny them service at a place of business on the basis of sexual orientation. Matthew Shepard died in our town hospital on October 12, 1998. By that time his story had incited a national media frenzy; to this day he remains perhaps the most well known gay hate-crime victim in the country.

Two weeks later, on Election Day, Fort Collins voted by a margin of two-to-one to defeat Ordinance 22 and deny equal protection from discrimination to gays in our town.2

The fact is that Fort Collins is no anomaly; most of the country harbors similarly potent homophobic sentiments. Only 14 states in this country offer any type of protection against discrimination based on sexual orientation.3 In all other states, it is legal for employers to fire an LGBT employee, for landlords to evict gay tenants, and for businesses to refuse to serve LGBT customers.4 In all states save Vermont and Massachusetts, same-sex couples are denied more than 1,000 federal benefits and protections of marriage.5 Individuals in same-sex relationships often lack visitation rights if their partner is hospitalized, and LGBT employees are not allowed to take care of seriously ill partners or the parents of a partner under the provisions of the federal Family Medical Leave Act.6 Furthermore, same-sex couples do not receive Social Security benefits upon the death of a life partner, and US citizens with same-sex partners are prohibited from petitioning for their partners to immigrate.7

Until June of 2003, 13 states criminalized same-sex intercourse in the form of state sodomy laws.8 These laws, which had been used often as justification for moral condemnation in general, were challenged and upheld in the 1986 Bowers v. Hardwick Supreme Court case. At the time the Justices refused to overturn Georgia’s state sodomy laws on the grounds that doing so would “announce [a] fundamental right to engage in homosexual sodomy,” which the Court decided it was “quite unwilling to do.”9 Chief Justice Burger, concurring with the Court’s opinion, famously wrote, “[To] hold that the act of homosexual sodomy is somehow protected as a fundamental right would leave in place the protections from discrimination that had been passed in a few of the more liberal cities around the state.” That was in 1996. Two years later, Fort Collins was attempting to pass its own anti-discrimination legislation in the form of Ordinance 22, which would have added sexual orientation to the city’s non-discrimination law covering employment, housing, and public accommodations.1 As it stood previously, it was legal to fire someone from their job, evict them from their home, or deny them service at a place of business on the basis of sexual orientation. Matthew Shepard died in our town hospital on October 12, 1998. By that time his story had incited a national media frenzy; to this day he remains perhaps the most well known gay hate-crime victim in the country.

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be to cast aside a millennia of moral teaching.” Seventeen years later the Court would reverse Bowers and render unconstitutional the sodomy laws of 13 states in Lawrence v. Texas. That lucky decision was a turning point in the fight for legal equity, and the LGBT community met it with jubilation.

“Human rights activists who question the relationship between gay rights and human rights must think more carefully about what agenda fuels their activism. There is no principled justification for pushing gay rights beyond the purview of human rights, save religious objection.”

The social impact of unequal legislation—and the attitudes of those who support it—is of no small import. Though perhaps a simple point, it is interesting to note that the LGBT community is non-reproducing. This cashes out in a significant way for LGBT individuals; unlike other minorities, which develop an identity largely from and among their parents and family members, gay individuals must often develop an identity in a more solitary, isolated manner (often in secret). This fact alone makes LGBT individuals—especially adolescents—more vulnerable to negative social pressure. And it should take little convincing to make the point that there exists in this country a wellspring of negative social sentiment toward gays and lesbians. The Gay, Lesbian and Straight Education Network (GLSEN) recently conducted a wide-sweeping survey of hundreds of LGBT students in 32 states, finding that 60 percent of LGBT students report being verbally harassed, half of whom stated harassment occurred on a daily basis. Forty-seven percent reported being sexually harassed, 28 percent physically harassed, and 14 percent physically assaulted. It should come as no shock, then, that gay youths in this country have at least four times the likelihood of attempting suicide than straight youth. This statistic does not, of course, include the number of gay youth who never found the courage to come out before completing a suicide attempt.

It is perhaps a universal human proclivity of each present generation to view theirs as the furthermore in a long line of social progress. But this is not always the case, and certainly not for the status of LGBT rights and relations in this country. It would be a bit comforting to think that the march for gay equality is on the fast-track with discrimination against gays and lesbians into the United States Constitution reached fruition as closely as it has with the Bush administration’s Federal Marriage Amendment.

The take-home point here is that the state of the nation regarding the push for LGBT equality is unclear. Though
to perpetuate intolerance toward the LGBT community; nor has it been to highlight the movements that lend us little room for optimism. The point here is rather to solidify the boundaries of human rights around the issue of gay rights in order to protect it from political muddying. This is, of course, no easy task, but make no mistake: human rights activists who question the relationship between gay rights and human rights must think more carefully about what agenda fuels their activism. There is no principled justification for pushing gay rights beyond the purview of human rights, save religious objection. And that kind of objection belongs at the pulpit, not in the land of politics.

The 1948 Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in the wake of the worst systematic human rights violations the modern world had ever seen, begins with:

Article 1: All human beings are born free and equal in dignity and rights.

Soon after it draws out the consequence of this inalienable, fundamental right to equality:

Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. Though not exclusively American, these are markedly American ideals. The notion of equality is infused in our history, from the Declaration of Independence to our still-beating hope for the American Dream. But our history is also riddled with failures to meet this ideal.

Too often in our nation’s past we’ve heard politicians, judges, and religious leaders speak of equality for all and mean, instead, equality for all but African-Americans, for all but women, for all but gays and lesbians. If the concept of human rights is worth anything, it must speak of equality without qualifications, without apologies. This was exactly the aim of the UDHR when it was written half a century ago. Contemporary American equality, however, has yet to approach the UDHR ideal. The legal discrimination the LGBT community suffers is ubiquitous; the social oppression queer individuals face on a daily basis is documented and real. The denial of legal equality to the LGBT community in the United States is a human rights violation and nothing less.

The importance of framing the issue as such is clear. To fail to see gay rights as human rights is to fall prey to neo-conservative America’s masquerade of religious ideology as common sense law. Recognizing gay rights as human rights pulls the curtain on this masquerade, revealing arguments against equality as contrary to human dignity, not an issue of “special rights,” as is the costume of choice.

Harvey Milk was the first openly gay supervisor of San Francisco. In 1978, he successfully led a campaign against the Briggs Initiative, a referendum that would have prevented openly gay teachers from teaching in California schools. The initiative failed by more than one million votes. Weeks later, Milk was gunned down in his San Francisco City Hall office by Dan White, another city supervisor who represented the only district that voted in favor of the Initiative. Standing in Harvey Milk Square in San Francisco, I am snapping cell phone pictures of a rally immediately following the California Supreme Court invalidation of the same-sex marriage licenses granted by Mayor Newsom earlier this year. It’s mid-August. Couples are dressed in double wedding gowns or tuxedos, many pushing strollers or pulling dogs on leashes. Some are toting signs reading, “Our Love is Still Valid.” The mood is one of resolution. Despite their disappointment, everyone is smiling. Couples are holding hands, ring fingers still adorned with newly purchased wedding bands. Walking alone amidst the crowd, I can’t help but smile, too. In San Francisco, it’s easy to feel like change is on the way. “And fine,” I think to myself, “this isn’t about genocide, but it’s about equal dignity, through and through. And this is my home; where better to fight for human rights than here.”

Photographs courtesy of Derek Powazek
Six Degrees: What is your background? How did you get involved in work on Africa and in the defense of human rights?

John Prendergast: In 1983, I started to see these advertisements for the Ethiopian famine as it was unfolding. I was quite gripped, intellectually, by how the world could possibly allow, in this late date in the twentieth century, a crisis of that magnitude to unfold where literally one million people died of starvation. I was very young and naïve, and quite enthusiastic about the potential for US engagement in the world and the important role of the United States.

I believed that if the US was more directly engaged in what was happening that we could have stopped it, ended it, or turned it around. I went to Africa a few times, worked in a number of different positions, and tried to learn more and more about what was happening on the ground from the perspective of a relief development worker, but it was when I finally worked in Somalia that the light bulb turned on.

The original questions I asked about Ethiopia began to be answered. In fact, these things weren’t natural disasters, they were deeply manmade and man-directed. The US’s role, rather than being helpful and ameliorating human suffering in the context of these massive emergencies, was actually corrosive, almost predatory, in the context of the Cold War. So, I just simply felt compelled at that point, despite having an increasingly interesting career in development and relief—I just wanted to go back to the US and utilize my one comparative advantage, which was my US citizenship, to try to change my government’s policies, which were basically using Africa as a pawn in the geo-strategic chessboard in the context of the Cold War. So, for the next decade or so, I worked in the US and spent half my time in Africa, the other half in Washington, working in a variety of different agencies and organizations trying to learn as much as I could about US policy and making this policy so I could prepare myself to one day implement it.

My first break came in the second term of the Clinton administration when they asked me to be director of African affairs in the US Security Council. This was beyond my wildest dreams, and quite frankly, I didn’t think that at that age I was fully prepared for it, but it was an opportunity I couldn’t pass up. So it sort of changed my timetable; I had thought that I needed another 10 years of preparation before I’d be prepared to undertake the grave responsibility of actually making policy in Africa. But the
You've worked on human rights in Africa from a variety of different and often competing arenas, such as National Security Council, like you said, and the State department, and numerous NGOs. Can you talk a little bit about the differences and similarities of these experiences and how they relate to the field of human rights? In what capacities have you had the most success?

Well, there is something to be said for a career and a life which dips in and out of government and moves between the government and the private sector. I found that in the non-governmental sector you can be an advocate, you can speak honestly and forcefully, and much more freely than you can in the government. You have to bite your tongue until it bleeds when you work inside the government because quite frankly you often lose your debates and you have to carry on the party lines. That's basically the rules, and if you don't like it, you quit. You fight your battles internally; you don't fight them with press releases and all that, unless you're working for an insidious administration, but then what are you doing there in the first place? So I think that I've been able to do different things in different venues.

On the one hand I've been able to work for groups like Human Rights Watch and UNICEF being an advocate for specific changes in human rights policy. And then working now for the International Crisis Group, which is much broader. Having almost the free range to demand change and try to create change in policy through popular public mobilization. That is quite a far cry from the role you assume when you're inside the administration. You become an internal advocate for human rights. You can work, certainly, strategically with nongovernmental partners. You can sort of craft inside-outside strategies for policy change in which you're the inside actor, and the outside is pushing and cajoling. But your role, principally,

opportunity was there, and I took it.

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would be to push forward an agenda of human rights directly with leaders, in my case, in Africa and rebel movements and others who have an influence or an effect on human rights.

You try to craft policies directly that would impact the calculations of those that are abusing human rights to try to get them to reduce it, and I found myself frequently at odds with my former allies in the human rights world, because the demands, the exigencies, the calculations are different when you’re inside the administration. That’s why, I think, going in and out throughout your career is very positive. There is an interesting aftermath of being in an administration for four or five years—when you’re totally immersed and living and breathing this thing—you become very defensive, you get tunnel vision, you become immersed in the agenda of the administration and sort of vested in a bit of a defensive posture to support the vision of your particular administration. I think getting a chance to step back from that, reflect, learn from your mistakes is important; the four years after my five years in government were very valuable because I learned a lot of lessons about those years in government upon reflecting on them. Of course, the bitterness began when the four years have now become eight [hearty laugh] and may well be 12. But, generally speaking, I think that having that capacity to go in and out of government makes you a more effective advocate. There are things you can do inside the administration to promote human rights that people hurling rocks at the windows from the outside can’t do. And there are things you can do outside by hurling those rocks and generating popular indignation that you simply can’t do inside. So I think there’s a great, crucial role to be played in both arenas.

**SD:** We’ve heard the numbers, we’ve heard about policies, we’ve heard what’s going on in Darfur, but you’ve actually had the opportunity to go to the region a number of times; could you maybe tell the Stanford community just a little bit about what these experiences in Darfur were like on a personal level?

**JP:** I think that really going to these places and sitting with people who have experienced the things that we read and hear about, and listening to their stories, and watching them recount the kind of almost surreal indignities and human depredations…it certainly has a life changing impact. I simply am unable to function normally in the aftermath of these visits for some time, because the demand to act in defense of what these people are fleeing from is so overwhelming.

I think that it affects people in different ways. The funny thing and the reason why I think Don Cheadle and I have become allies and a common advocate is that he had the same reaction. Going in there, hearing people’s stories…he can continue to do his work, the acting and stuff like that, but it’s too important, it changes your life. You can either turn away from it because it’s too much for you to handle, or you can embrace it and say okay, what small thing can I do, what small role can I play to stop it, to stop this incredible travesty?

I think it roots you, binds you to an agenda that steers your life choices. I can’t think of anything, quite frankly, any offer I could possibly get, of any kind of career, and believe me I’ve gotten all kinds of incredible offers, that could divert me from a path of working to try to end these kinds of atrocities from occurring. It’s an anchoring and galvanizing experience.

I spend half my time every year in refugee camps and war zones, and the other half roaming around the US and Europe trying to deal with policies that either don’t confront them or actually facilitate their continuation. So, I don’t think the experiences could be any more profound, in terms of the impact that they have on my life’s choices.

**SD:** Now we’d like to turn to the Democratic Republic of the Congo, a country that’s often been overlooked. In December of last year your organization

### Conflict in the Democratic Republic

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
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<tr>
<td><strong>1998</strong></td>
<td>Rwanda- and Uganda-backed rebels rise up against President Kabila and advance on Kinshasa. Zimbabwe, Namibia, and Angola send troops to repel them. The rebels seize much of the east of the DRC.</td>
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<td><strong>1999</strong></td>
<td>July: Rwanda, Uganda, Zimbabwe, Namibia, Angola, and the DRC sign a ceasefire accord in Lusaka. In August, the warring rebel groups also sign the accord. The United Nations Security Council sends 5,500 troops to monitor the ceasefire, but the rebels and government forces continue to fight. There is also fighting between the rebels backed by Rwanda and Uganda, respectively.</td>
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<td><strong>2000</strong></td>
<td>January: President Laurent Kabila is assassinated by his bodyguard. Kabila’s unelected son succeeds him.</td>
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<td><strong>2001</strong></td>
<td>May: A UN panel says the plunder of gold, diamonds, timber, and coltan (used in cell phone manufacture) is providing an incentive for the warring groups to prolong the war.</td>
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The conflict has claimed an estimated three million lives.
reported that the DRC was on the verge of sliding back into civil war. Last week peacekeepers were killed, and recently UN peacekeepers killed about 50 militiamen in the region. Can you comment on the situation in the Congo?

JP: I find the parallels between Sudan and the Congo to be very striking. In both western Sudan and eastern Congo, there’s a total absence of civilian protection in both places. The total lack of accountability for those that are perpetrating the action that led to the lack of protection have, in both places, led to a slow, steady deterioration in the situations there. We see this continuous, steadily increasing mortality and morbidity accumulated rate that you know, at this point, together; Sudan and the Congo, account for six million deaths. That, in effect, is a modern day holocaust, derived of the same kind of predatory and insidious motivation that produced the Holocaust during WWII.

I think that because international response in both places has been so weak and ineffectual and lacked any kind of backbone—and, again, the parallels are striking—that the perpetrators are emboldened to continue to act given the total state of impunity in both places. I think that if we pressed forward with agendas that more highly valued and prioritized civilian protection, which means that in the case of eastern Congo, MONUC would do what it’s doing now, what it’s done for the first time in the last week, which is to very aggressively go after and confront and militarily defeat these predators…what the African Union hasn’t done yet in Darfur in order to protect civilians, until we get that straight, we’re going to see a continual erosion of the capacity to survive in both places for civilian populations.

In addition to the protection element, until we get the accountability point right, until there starts to be a cost to those that are perpetrating these crimes against humanity, they’re going to continue. So you need to have that dual-track policy of accountability and protection, and we need to move on both of those tracks at the same time in Congo and Sudan, and if we do that—which is no easy feat by the way: these are expensive, politically challenging, and complex interventions that are multifaceted and that have economic and diplomatic and political and military components—so until we deal with both of these tracks, I think that we’re going to see another six million, potentially, dead in the coming decade.

SD: Can you speak a little bit about the US policy towards Africa in general? When you worked for the Clinton administration, what were the general attitudes of senior officials towards Africa and towards human rights? How do you get Africa and human rights on the agenda with senior officials?

JP: I think that generally speaking, there is a consensus now, at the senior levels of the Republican and Democratic parties that at least lip service will be given to the importance of Africa to the United States. And in some cases there will actually be some elements of implementation as long as it won’t be too expensive or as long as there isn’t any political cost to us diplomatically in the world, and so therefore you get occasionally blips of fairly robust activity around specific objectives, like we’ve seen with the increased assistance to HIV/AIDS action, prevention, and treatment in the last few years in the Bush administration. We saw this activity as well for the promotion of trade investment between the US and Africa during the Clinton administration.

But generally speaking, I think that the lip service is hardly ever matched even remotely by action. I think we get very grandiose pronouncements by everybody on what they want to do with Africa and the partnerships they want to forge with Africa and then when you look at the bottom line in terms of what they’re actually doing, it’s frequently much less substantial than what the rhetoric would imply.

I don’t view Africa as partisan, and there aren’t partisan issues within Africa.
Both Republicans and Democrats, and the civil society actors, have really tried to keep this bipartisan effort together because of the fear that if we don’t, Africa will be pushed even further down the totem pole. And it’s hard to be pushed down any further when the immediate aftermath of that trip led everyone to sort of pull back and say maybe this optimism about economic exchange and about the renaissance of Africa was premature. So, I think people were rattled. Senior officials were rattled by the extent to which the good intentions of the trip, which was the longest trip Clinton took outside of the United States during his presidency, and the plans that were developed in the aftermath of that trip were largely abandoned, or let’s put it this way...were minimized and undermined by the level of conflict that erupted during the latter half of 1998 and onward.

So, I don’t know...between these guys [Clinton and Bush], I think there are great similarities because there is a lot of continuity in policy, ultimately. And they’re united in both being rhetorically well ahead of their actions on the ground. That’ll win me a lot of votes from my former colleagues, [including] the Stanford grads. Including, by the way, my closest ally in the previous administration...Susan Rice, who was a Stanford graduate and was Assistant Secretary—quite a warrior for justice. There was a great ambition on the part of all of us. Susan Rice and Gayle Smith, particularly, in that administration, and I think that so much of what was hoped for and intended to be implemented...went up in flames in the latter half of 1998, when all those conflicts erupted and people’s optimism about doing something really significant in Africa was deeply affected. And I don’t know what would have happened if the Ethiopia-Eritrean war, and the Congo war, and the rest of them hadn’t erupted.

You’re last. So, I think that...it’s almost fear driven because the repercussions would be grave if issues related to Africa became partisan. So, whereas you don’t get the kind of bitter partisan sniping and division, you also don’t get...real substantial robust action on anything—it’s rare if you do. Sudan has the chance of that because it has these domestic constituencies which are unprecedented in scope and in scale and diversity. I think that will eventually influence the Bush administration to take a more assertive role than they normally do in Africa. So, that is going to be an exception coming soon to a theater near you.

But the Clinton administration, I think had a great intention, which was to really deepen, in the aftermath of Clinton’s 1998 trip, to really deepen, what he coined, and Mbeki coined together...a partnership between Africa and the US. But I think that the wars that erupted in the aftermath of that trip—between Ethiopia and Eritrea, and the reinvasion of the Congo by the Rwandans, and the Angolan and Sierra Leone conflicts—all spiking in good intentions of the trip, which was the longest trip Clinton took outside of the United States during his presidency, and the plans that were developed in the aftermath of that trip were largely abandoned, or let’s put it this way...were minimized and undermined by the level of conflict that erupted during the latter half of 1998 and onward.

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SD: What, in your view, have been the most positive developments in Africa regarding peace and human rights?

JP: I think that what we have is a developing core of empirical evidence that what works in conflict resolution in Africa is the partnering at a senior level between Africa-led mediation and external, extra-African building of leverage in support of the African-led process. You have it in cases of Burundi,
Sierra Leone, Liberia, southern Sudan, Somalia, maybe we’ll get it in northern Uganda, and Congo to an extent. You have examples of African-led mediation where the international community at some point stepped up and helped support the process of moving across the finish line. All of them are different cases, of course, but generally that on an issue, in Africa particularly. So I think that...is the failing—is that we remain unable and unwilling to more meaningfully confront the perpetrators of human rights abuses while they’re occurring and with that message sent it’s no wonder to me that the killers keep killing and looting and stripping assets in Sudan and Congo and many other places throughout the continent.

**SD:** Do you have any advice for Stanford students who want to get involved in defending human rights? What can we do from the relative isolation of the Stanford campus?

**JP:** Well, I think that joining the Stanford groups that are focused on these things and joining the various student groups that are doing work on Darfur mean joining these groups and advocating from within that they pursue more activist agendas in defense of human rights globally. It is of critical importance to learn how to work in organizations like that to prepare themselves for the future. And I think that the reason that brought me here to the campus this week is the compelling case of Sudan today. And that case that I have been trying to make is that we have a chance to stop genocide in Sudan now, and that will only happen if the US government steps up and deepens and strengthens its policies with respect to Darfur. And this administration will only change its policies and become a more robust advocate in defense of the victims there if the Congress pushes it to do so. And the Congress will only push it to do so if its constituents are making their voices heard in an even more robust manner than presently exists. So, what I’m saying is that there is a direct chain of cause and effect between writing letters and organizing the writing of letters at this moment in time to elected officials and the stopping of genocide. And that’s a pretty remarkable opportunity to take on and a pretty grave responsibility that, if we fail to meet it, will certainly weigh upon our collective conscience for decades to come.

**SD:** Do you have one piece of advice for all the aspiring human rights activists at Stanford?

**JP:** Understand that human rights advocacy is a long term investment and endeavor and that you can’t get burnt out or too frustrated in the short run when things don’t change as rapidly as we would like them to. We also have to...de-emphasize our own egos in this fight. We have to work with other people and cooperate with other organizations and learn how to work as teams. And, ultimately, you do all that you can during your lifetime and prepare to pass the baton on to the next person. Because there are so many people that want what we want, which is a better world, a world that respects and promotes human rights.

I think that the most important thing is to understand that you are a part of a larger human rights movement, a movement that involves people from all over the world, and that collectively...we can make pretty significant differences in how people are treated around the world. We can make...a very direct impact on whether or not genocide is allowed to continue in Sudan.”
O
n February 17, 2004, Cameron Willingham was executed in Texas for killing his daughters in 1991, two days before Christmas. He was the seventh convicted killer to be executed in Texas last year alone, and the third in seven days. As his last words, he shouted profanities at his ex-wife, hoping that she would “rot in hell.” A day later, a jury found Alan Gell, who was originally convicted of robbery and murder, not guilty on all counts. He had spent four years on Death Row because the state prosecutors withheld valuable evidence, including an audiotape of their star witness saying that she had made up a story about the murder.

These two examples show the wide spectrum of convicts on Death Row. Some are truly (and proudly) guilty of horrific crimes, while others are wrongfully convicted, left to face imminent murder by the state due to the failures of due process. While the overwhelming majority of those convicted are guilty, 113 Americans have already been exonerated from Death Row, with an unknown number of executed innocents on America’s conscience. This presents pressing questions and casts doubts on the purpose and accuracy of the death penalty in this country.

Former Attorney General John Ashcroft has agreed, “The death penalty should be imposed only upon satisfaction of the full rigors of due process.” But when there are rampant inconsistencies and questions of errors, the system is obviously flawed and far from ensuring the perpetual triumph of justice. Although the Supreme Court has handed down rulings that have reformed the adjudication and execution of the death sentence, there is still much to be desired. In a life-and-death situation, the US has to face up to these faults and remedy the implementation of the death sentence. But first and foremost, it must place an immediate moratorium on executions.

Much support for capital punishment rests on its presumed value as a deterrent: the death penalty encourages potential murderers to avoid engaging in criminal homicide. In 1997, Governor George Pataki wrote, “I supported the death penalty because of my firm conviction that it would act as a significant deterrent,” adding, “I know, as do most New Yorkers, that by restoring the death penalty, we have saved lives.” During the 2000 presidential debates, George W. Bush was asked whether he believed that the death penalty deters crime. “I do,” he answered. “It’s the only reason to be for it.”

Despite such fervent proclamations for the death penalty as a deterrent by prominent political figures, the statistics present a different story. In fact, there is no compelling evidence that the death penalty serves as any more of a deterrent than life imprisonment without parole. For example, in the last two decades, states with the death penalty continue to have higher murder rates than those without the death penalty. According to the FBI’s Preliminary Uniform Crime Report for 2002, in the South (where 82 percent of all executions have taken place since 1976) the murder rate increased by 2.1 percent, while the murder rate decreased by almost five percent in the Northeast (which accounts for less than one percent of all executions). In addition, the US murder rate greatly exceeds those of European nations without the death penalty. The British Home Office released data revealing that the US has a murder rate three times higher than that of the European Union and many of its non-death penalty European allies. These data challenge the argument that the death penalty deters murder.

A possible explanation for the discrepancy between theory and reality is that homicides frequently occur in states of extreme passion and rage, without the perpetrator’s deliberating the consequences of his action. In addition, in cases of premeditated murder, the killer often believes that he can get away with the crime, and he makes his decision irrespective of the possible penalties involved.

With these in mind, and given that the President believes the only purpose of the death penalty is to serve as a deterrent, the executive would have good reason to impose right away a moratorium on the death penalty.

Like the executive branch, the Supreme Court has also offered a justification for the death penalty, calling it “an expression of society’s outrage at particularly offensive conduct.” “An eye for an eye, a tooth for a tooth,” says the Bible—a murderer must receive the ultimate punishment for the ultimate crime. Indeed, a murderer should be punished, but just because he or she has killed someone does not legitimize a federally sanctioned murder. We do not rape rapists, rob robbers, or sentence the killer and his or her whole family to death for killing the neighbor’s relatives. While human nature demands revenge, the purpose of the rule of law is precisely to rise above this instinct in the name of justice—a principle blind to emotion. As former Attorney General Janet Reno stated, “I think the only justification for the death penalty is vengeance. If I had
found that somebody had murdered my mother. I would tear that person apart. But I don’t think that a civilized society can engage in vengeance.”

“The greatest fallacy in justifying capital punishment is the oft-heard mantra that ‘the victims deserve it.’” John Ashcroft believes that closure for victims’ relatives is something attained magically upon the demise of the murderer; he declared that the execution of Timothy McVeigh would “close this chapter in their lives.” However, the notion that the victims’ families need the government to kill the murderer before they can gain closure is flawed and quite untrue. Sentencing a murderer to death subjects the victims’ families to years of appeals and litigation with devastating effects. A family member of an Oklahoma City bombing victim put it best when she snapped at a reporter, “The only ‘closure’ I’m ever going to have is when they close the lid on my coffin.”

In fact, some criminologists have reported that the death penalty has a brutalization effect on society and actually incites murder. The rationale behind this is that federally sanctioned executions desensitize the public to the immorality of killing, increasing the propensity of some people to murder. The death penalty inherently vindicates vengeance in response to past wrongdoings and induces potential murderers to identify with the government; if the administration can kill its enemies, why can’t they? One study found that stranger-homicide incidents have increased by 12 incidents annually since the 1990 reintroduction of executions in Oklahoma. The researchers hypothesized that the return to capital punishment weakened the social disapproval of the use of lethal force to settle disputes. Hence, instead of deterring crime and alleviating grief, the death penalty has been shown to have an aggravating effect that provokes more homicides and more grief.

Still, the Court maintains that the fact that so many elected legislatures have historically enacted capital punishment statutes indicates society’s endorsement of the death penalty. In 1958, the Supreme Court ruled in Trop v. Dulles that the Eighth Amendment should be interpreted based on an “evolving standard of decency,” allowing the Court to uphold the death penalty in 1976 on the grounds that 35 states had it. Consequently, capital punishment now falls within America’s “evolving standard of decency.” But does the fact that capital punishment is enshrined law in so many places mean that it should be in the law, that it cannot be challenged? To say so employs circular logic. That the death penalty is the law is the precise cause of complaint.

If we were to consider current public opinion polls, the figures would indicate a considerable fall in public support for the death penalty. According to a recent Gallup Poll in October 2003, support for capital punishment dropped to 64 percent, its lowest level since 1978; this dropped to only 49 percent when the alternative was offered of life imprisonment without parole. The increasing calls for death penalty reform in recent years are also indicative of a growing public aversion to capital punishment. In fact, Maryland and Illinois recently imposed moratoria on the death penalty.

Unequivocally, the most glaring failure of the capital punishment system is the conviction and execution of innocent defendants. As Justice William J. Brennan, Jr. put it, “Perhaps the bleakest fact of all is that the death penalty is imposed not only in a freakish and discriminatory manner, but also in some cases upon defendants who are actually innocent.” Since 1973, 113 people in 25 states have been exonerated from Death Row—one in eight of those sentenced to death. As technology improves, and the backlog of DNA tests are analyzed, the rate of exonerations has increased—one person alone were exonerated in 2003. These innocent civilians spent an average of nine years incarcerated before their release, which was not due to an effective judicial appeals process, but thanks to lawyers with a sense of civic duty working pro bono, as well as to human rights and anti-death penalty activists. However, as alarming as these numbers sound, the exonerated were just the lucky ones.

According to an Amnesty International report, there were more than 400 known cases of wrongful conviction for capital offenses in the US between 1900 and 1991. Most of the convictions were upheld on appeal, and evidence that proved defendants’ innocence only emerged years after the sentencing. But at least 23 individuals in the twentieth century were executed before exonerating evidence surfaced. Americans are not blind to such injustices either. Many do believe innocent people have been executed: a May 2003 Gallup Poll found that 73 percent of Americans believe that an innocent person has been executed within the past five years. Only 22 percent believe no wrongful execution has occurred.

Moreover, the execution of innocents is a glaring violation of the Eighth Amendment and its protection of American citizens against “cruel and unusual
punishment.” How can we tolerate knowingly a system of “justice” that is unconstitutional? Few mistakes made by government officials can equal the horror of executing an innocent person. However, knowingly doing so is definitely unforgivable. In a democratic country where the government is created by the people and for the people, this is a flagrant affront to the citizens’ role as the ultimate source of authority. With such overwhelming public knowledge of the violation of the most fundamental human right—the right to life itself—combined with the acknowledgement of such wrongful deaths by the officials within the judicial system, it is imperative that reforms are carried out as soon as possible, before any more innocent lives are sacrificed.

Another glaring failure of death penalty administration is racial injustice within the system. As Justice Harry Blackmun admitted, “Even under the most sophisticated death penalty statutes, race continues to play a major role in determining who shall live and who shall die.”

In the 1977 Supreme Court case Batson v. Kentucky, the unprecedented ruling prohibited prosecutors from using race as a factor in eliminating potential jurors from the jury pool. While this was a landmark decision, it did not eliminate in practice the appointment of racially imbalanced juries. Less than a decade later the highest court in the land admitted that racism can play a part in the jury deliberation process when it ruled in a 1986 Virginia case that potential jurors could be asked questions about their racial attitudes, noting, “There is a unique opportunity for racial prejudice to operate but remain undetected.” Building on this, one year later a Philadelphia Assistant District Attorney produced a training video, instructing prosecutors to keep black people off high-level criminal cases, stating that “young black women are very bad,” and that “blacks from low-income areas are less likely to convict.” “The only way you’re going to do your best,” he advised, “is to get jurors that are as unfair and more likely to convict than anybody else in that room.”

This is a prime example of how a racial bias has permeated the capital punishment process—96 percent of death penalty reviews demonstrate both race-of-defendant and race-of-victim discrimination. Not only do blacks have a greater risk of facing the death penalty, but they also face a bias as victims in which their lives are worth less than those of white victims.

A North Carolina study found that the odds of receiving a death sentence increased by 3.5 times among those defendants whose victims were white. Indeed, more than 80 percent of Death Row defendants nationally have been executed for killing whites, even though only 50 percent of murder victims are white. These statistics parallel the pattern at the federal level. In September 2000, Justice Department data revealed that four in five of the defendants in federal capital punishment cases are minorities. President Clinton recognized this “disturbing racial composition” of defendants in federal death penalty cases. This may not come as a surprise when one considers the racial imbalance in the judicial system: 98 percent of the chief district attorneys in the 38 death penalty states are white, and only one percent are black. In addition, Amnesty International found that all-white juries convicted 20 percent of executed black defendants. In short, white prosecutors in both the state and federal judicial systems make life-and-death decisions that reflect a higher value placed on white lives.

With these statistically documented racial disparities pervading the judicial process, a federal moratorium on the death penalty is crucial to address the blatant prejudices inherent in the application of capital punishment. The international community has spoken out against these injustices, calling the administration of the death penalty “arbitrary, and racially discriminatory” with no guarantee of “a fair hearing for capital offenders.” It is time for the US to pay attention to these cries and act according to the ratified International Convention on the Elimination of all Forms of Racial Discrimination. It is sad but telling that “race is more likely to affect death sentencing than smoking affects the likelihood of dying from heart disease. The latter evidence has produced enormous changes in law and societal practice.”

It is crucial that the former evidence provokes the same in the institution of capital punishment in the US.

Racism is not the only prejudice that pervades America’s institution of the death penalty. In 1997, the office of the United Nations High Commissioner for Human Rights criticized the US for executing people with mental retardation “in contravention of relevant internationals standards.” After years of outcry from the international community, and following the execution of 40 mentally retarded convicts, the US Supreme Court finally ruled in 2002 that the execution of the mentally retarded is unconstitutional as “cruel and unusual punishment.”

However, despite this, inconsistencies in the judicial process prevail. The Arkansas execution of Charles Singleton, a paranoid schizophrenic murderer, in January 2004 is clear evidence of this.

According to an Amnesty International report, there were more than 400 known cases of wrongful conviction for capital offenses in the US between 1900 and 1991. [...] Americans are not blind to such injustices either.”
Singleton was convicted of stabbing a woman to death when he was 19. Although he satisfied the criteria to be legally executed—he understood that he was being put to death and why—he was only made competent artificially by prison-prescribed anti-psychotic drugs.32

Until March 1, 2005, there were also 19 American states that permitted the execution of juvenile offenders. The March 1 ruling by the Supreme Court, however, held that imposing the death penalty on convicted killers under the age of 18 counts as “unconstitutionally ‘cruel and unusual punishment.’”33 The US remains the only country that has not ratified the United Nations Convention on the Rights of the Child, which explicitly stipulates, “Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.”34 The US has executed 22 defendants for crimes committed as juveniles since 1976. Prior to the Court’s ruling, the US was among only a handful of countries in the world that legalize the execution of juvenile offenders—the US joined the Democratic Republic of the Congo, Iran, and Pakistan on this list.

Much of the world does not just draw the line with juvenile executions; in the eyes of many, capital punishment is altogether reprehensible. While the international community has adopted various treaties providing for the abolition of the death penalty, the US has consistently refused to sign and ratify them. As early as 1982, the Council of Europe adopted Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms,35 providing for the abolition of the death penalty in peacetime. In 1989, the UN General Assembly adopted the Second Optional Protocol to the International Covenant on Civil and Political Rights,36 and a year later the Protocol to the American Convention on Human Rights was adopted by the General Assembly of the Organization of American States.37 Both protocols provide for the total abolition of the death penalty, while allowing for the retention of capital punishment in wartime. Following these, the Council of Europe’s Committee of Ministers adopted the first legally binding international treaty to eliminate the death penalty without exceptions.38

The use of the death penalty has even been banned in the international system of courts. In 1993, the International War Crimes Tribunal stated that the death penalty is not an option, even for the most heinous crimes known to civilization, including genocide. Similarly, the Rome Statute of the International Criminal Court that was ratified in 2002 precludes the meting out of the death penalty.

Increasing attention has been directed to the US as it fails to live up to its stated commitment to the same tenets of freedom and democratic ideals that have led other countries to question seriously the death penalty. In 1999, the UN High Commissioner for Human Rights appealed to the US government to “reaffirm the customary international law ban on the use of the death penalty.”39 In February last year, the Council of Europe, of which the US is an observer, called for an international rejection of the death penalty—an “arbitrary, discriminatory and irreversible” measure.40

The majority of the free world has abolished the death penalty, leaving the US as the only western country that stubbornly retains a system of justice that is fraught with injustice. The March 1, 2005 ruling by the Supreme Court signals a step in the right direction; former President Jimmy Carter noted, “With this ruling, the United States acknowledges the national trend against juvenile capital punishment and joins the community of nations, which uniformly renounces this practice.”41 But we have yet to realize justice.

The implementation of the death penalty in this country is riddled with errors. As Michael Osofsky attests, “Issues of arbitrariness due to inconsistencies, race, and socio-economic status, questions of errors and innocence, the lack of a deterrent effect, and the lengthy appeals process are examples of how the death penalty is grossly flawed in practice.”42 In order to rectify these lethal mistakes, an immediate moratorium on executions needs to be instituted to allow a commission to review the system of capital punishment. In addition, the American government and the 38 states that insist on retaining the death sentence must heed to the commission’s findings and adequately reform the environment in which the death sentence is implemented. The hope is that the commission will discover such irreconcilable incompatibilities between capital punishment and the promise of due process of law that the country will be compelled to eradicate this form of federally sanctioned murder. Ultimately, the central question asks “whether a system of justice can be constructed that reaches only the rare, right cases, without also occasionally condemning the innocent or the undeserving.”43 As it stands in this country, the answer is a resounding “No.”

**1958**

*Trop v. Dulles* rules for an “evolving standard of decency” in its interpretation of the 8th Amendment.

**1986**

*Batson v. Kentucky* and *Turner v. Murray* rule against asking potential jurors about their racial attitudes.

**1995**

Timothy McVeigh kills 168 people in the Oklahoma City area.

**2005**

*Roper v. Simmons* rules against executions of minors.

**June 2002**

*Atkins v. Virginia* rules against executions of the mentally retarded.

**October 2002**

Lee Boyd Malvo and John Allen Muhammad kill 10 people in the Washington, DC area.
sudan awareness campaign

We thank the hundreds of students, faculty, staff, and community members who attended the Darfur awareness events this winter. Thanks go especially to the Muslim Student Awareness Network for bringing John Prendergast, and to Amnesty International, Students Taking Action Now: Darfur (STAND), the Roosevelt Institute, and the Stanford International Human Rights Law Association for co-sponsoring events. We encourage everyone to continue this effort by getting involved with STAND, which is currently leading the campus effort.

The film screening of “The New Killing Fields” featured speakers Philip Cox (director) and Silvestro Bakheit (Executive Director of the Pageri Organization in San Francisco). More than 250 people attended the event.

upcoming events

Look for events on torture and commemorating the Rwandan Genocide this spring quarter.

get involved

Email: six-degrees-advocacy@lists.stanford.edu to learn how to get involved or get support planning events of your own.

Fast For Armenia

Go to our website at www.fastforarmenia.org to donate online.

or

Send a check payable to AESA with “FFA” in the memo line to:
AESA - FFA
417 W. Arden Ave #112C
Glendale, CA 91203

Join the Stanford University Armenian Students Association, the Coalition for Justice in the Middle East, the Stanford Human Rights Forum, and ASAs around the world in the Second Annual Fast for Armenia.

On April 24, we will donate the money we would have spent on food to supporting the education that will give Armenia’s children a brighter tomorrow.

Visit our website to learn about the projects we support and how you can help, too. Join the thousands who will fast on the 24th for the children of Armenia.

 works cited

Fatal Occupations

1 For a fuller account, see the Amnesty International Report at http://web.amnesty.org/library/index/ENGMDE02002004.
3 In the last three years, the Israeli government has denied entry to over 100 ISM volunteers and has deported another 62; see www.palsolidarity.org.
4 This sum includes direct aid, grants, and loan guarantees. On the adverse effects of U.S. policy towards Israel on the real security of people living in the Middle East (including Palestinians and Israelis), see Noam Chomsky, The Fateful Triangle: The United States, Israel, and the Palestinians, new ed. (London 1999).
6 Rachel was murdered on March 16, 2003, by a soldier driving a Caterpillar D-9 bulldozer. Caterpillar’s involvement in the destruction of Palestinian property prompted Jean Ziegler, the United Nations High Commissioner on Human Rights and Special Rapporteur on the right to food, to write a letter to Caterpillar’s CEO (June 16, 2004) protesting the corporation’s complicity with Israel’s violation of human rights.
7 This part of Israel’s wall encircles a large Jewish settlement in East Jerusalem, annexed in 1967, and now full of large apartment complexes that house thousands of Israelis. For an exceptionally clear account of Jewish settlements and the policy behind them, see Nicholas Guyatt, The Absence of Peace: Understanding the Israeli-Palestinian Conflict (New York and London, 1998; rpt. 2001), esp. pp. 8-14, 52-63, 112-14, and 124-38.
8 See the excellent report “Israel’s ‘Security’ Wall: Bad Fences Make Bad Neighbors,” prepared by the Negotiations Affairs Department of the Palestinian Liberation Organization, in December 2003 (www.nad-plo.org). The maps tell the story.
9 For more hopeful signs of an Israeli awakening, see The Other Israeli: Voices of Dissent and Refusal, edd. R. Carey and J. Shainin (New York 2002).

Guantanamo Detainees

3 Id. p.9.
4 Agreement Between the United States and Cuba for the Lease of Lands for Coaling and Naval Stations, Feb. 16-23, 1903, U.S.-Cuba, art. III, T.S. 418.
5 See the Administrative Procedure Act, 5 U.S.C. § 701-706.
6 Johnson v. Eisentrager 339 U.S. 763 (1950); citizens are almost without exception granted access to the courts, while aliens are given limited access depending on status.
7 Johnson v. Eisentrager, supra 2, p8.
11 Johnson v. Eisentrager, supra 2.
13 Id. p12-13.
14 28 U.S.C. §1350; “The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”
16, 17, 18, 19 Id.
22 Id.
24 Id.
25 Id. p4.
27 Id.
37 In the Circuit Court, Rasul and Al Odah were joined by another case, Habib v. Bush (No. 02-5284). This case was omitted because it seeks the same relief under the same causes of action.
38 See Brief amici curiae of The International Centre for the Legal Protection of Human Rights (INTERIGHTS), and Brief amici curiae of Washington Legal Foundation et al (WLF), both pertaining to Civil Action No. 02-299 and Civil Action No. 02-828.
39 Supreme Court Docket, No. 03-343, September 5, 2003, p1.
40 See, in the matter of Al Odah v. United States, Supreme Court Docket, supra 26, p1; Brief amici curiae of John J. Gibbons, et al; Brief amici curiae of Diego C. Asencio, et al; Brief amicus curiae of Commonwealth Lawyers Association; Brief amicus curiae of Former American Prisoners of War; Brief amicus curiae of Human Rights Institute of the International Bar Association; Brief amicus curiae of Fred Korematsu; Brief amicus curiae of Retired Military Offices.
42 Id. p16-17.
works cited

Guantanamo Detainees, continued

44 Phone conversation with Kristine Huskey, Al Odah attorney, 24 Nov 2003.
46 Id p2; providing assistance to an enemy country or its troops after formal hostilities have ended qualifies an individual as a war criminal.
47 Id p1.
48 Phone conversation with Kristine Huskey, supra 48.
49 Id.
51 Phone conversation with Kristine Huskey, supra 49.
52 Johnson v. Eisentrager, supra 2, p.778.
54 Ex parte Milligan, 71 U.S. (4 Wall.) 2, 120-21 (1866). Milligan’s belief that his activities were not criminal or that he was not acting in concert with the enemy was sufficient to grant an order of habeas corpus.
57 Ex parte Quirin, 317 U.S. 1, 19 (1942).
58 Brief amici curiae of the Commonwealth Lawyers Association, supra 44, p7-8.
60 Office of the White House Press Secretary, Fact Sheet: Status of Detainees at Guantanamo (Feb. 7 2002) found online at: <http://www.whitehouse.gov/news/releases/2003/03/20030323-1.html>.
61 Ex parte Merryman, 17 F. Cas. 144, 148 (Ct. Ct. Md. 1861) (Taney, C.J.)
63 Rasul v. Bush (U.S. 2004), supra (3)(b), p1
65 Coalition of Clergy, Lawyers & Law Professors v. Bush, 310 F.3d 1153, 1165 (9th Cir. 2002).
68 The Circuit cites Whitmore v. Arkansas, 495 U.S. 149, 162 (1990) and 28 U.S.C. § 2242 (passed by Congress in 1948), which allows petitions to be brought “by the person for whose relief it is intended or someone acting on his behalf.”
73 U.S. Department of Justice brief available online at <http://earthsrights.org/atca/dobrief.pdf>.

Rape: A Failure of Justice

2 The Oprah Winfrey Show. “The Facts About Rape.”
6 Bevacqua, 171-172
7 “How Have Recent Social Movements Shaped Civil Right Legislation for Women?” 3
8 Bevacqua, 171.
9 “How Have Recent Social Movements Shaped Civil Right Legislation for Women?” 3
10 Bevacqua, 171.
11 “How Have Recent Social Movements Shaped Civil Right Legislation for Women?” 4
13 “How Have Recent Social Movements Shaped Civil Right Legislation for Women?” 5
15 “How Have Recent Social Movements Shaped Civil Right Legislation for Women?” 5
17 Bevacqua, 172
20 The Oprah Winfrey Show. “The Rape Kit Controversy.” 1
LGBT Rights

2 NLGTF “1998 Election Results.”
4 ACLU. “Get Busy. Get Equal.”
6 HRC. “Answers to Questions About Marriage Equality.”
7 HRC. “Answers to Questions About Marriage Equality.”
8 HRC. “Answers to Questions About Marriage Equality.”
14 Chauncey, George et al. 515.
15 Chauncey, George et al. 515.

Death Penalty

16 DPIC. “Facts About the Death Penalty.”
17 DPIC. “Facts About the Death Penalty.”
19 McAtlin, “The Death Penalty: Pros and Cons.”
23 Dieter, “The Death Penalty in Black and White.”
works cited

Death Penalty, continued

27 Dieter, “The Death Penalty in Black and White.”
35 European Convention on Human Rights
41 Stout, “Supreme Court Bars Death Penalty for Juvenile Killers.”
42 Interview with Michael Osofsky.
43 Turow, Ultimate Punishment. 114.
“the liberties of our country, the freedom of our civil Constitution, are worth defending at all hazards; and it is our duty to defend them against all attacks...it will bring an everlasting mark of infamy on the present generation, enlightened as it is, if we should suffer them to be wrested from us by violence without a struggle, or to be cheated out of them by the artifices of false and designing men."

-Samuel Adams

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