

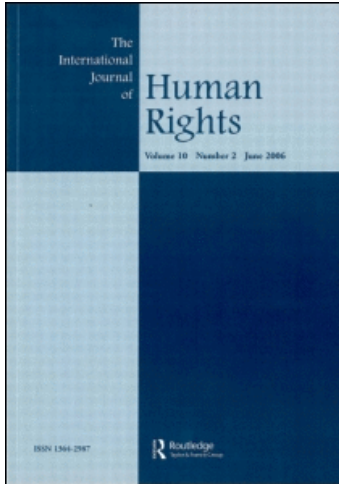
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What's so extraordinary about rendition?

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The election of Barack Obama was believed to herald a profound change in direction for US foreign policy, following eight years of pre-emption, neo-conservatism and extraordinary rendition under George W. Bush. However, this has not occurred to the degree that many expected. Instead the Obama White House continues to refer to the controversial policy of rendition as 'appropriate'.¹ This article will consider the rendition programme and its evolution to discern the degree to which the Bush administration was continuing policies inherited from President Clinton. This article will reveal the extent to which rendition was developed under the Clinton administration and the degree to which it evolved into extraordinary rendition in the years prior to the George W. Bush presidency. The article will reveal the extent to which the Clinton White House was waging a war on al Qaeda, using rendition to destroy the organisation, 'brick by brick'.² The article will finally consider the extent to which Obama has repudiated the Bush Doctrine and chartered a new course for US foreign policy.

Keywords: rendition; extraordinary rendition; George W. Bush; Bill Clinton; US foreign policy; interrogation; human rights; Barack Obama

Introduction

Occasionally an expression enters the public consciousness that had previously been in the exclusive domain of the security services, the military or the inner circles of power. The latest example of this is 'rendition', whose entry into the lexicon has been aided by the release of a series of films, including *Rendition*, that have sought to be taken seriously, despite the casting of Hollywood starlets in leading roles.³ Despite, or perhaps because of such offerings, public awareness has not resulted in greater understanding. The internet may provide access to copious amounts of material, the like of which would have been unimaginable until very recently, but this has not resulted in an increased appreciation for the machinations of governmental systems. Instead it has led to a lack of comprehension, in some circles, regarding the true nature of policy and its implementation. Such a position can be identified in the public reaction to the policy of rendition, which was utilised under Clinton, continued and expanded under Bush and which has not been ruled out by President Obama. This work considers the policy and the outcry that surrounded its revelation. The paper challenges the belief that the policy was radically altered to an extraordinary status under George W. Bush, finding instead that the elements that made it extraordinary were in place and being implemented prior to 2001.⁴ It challenges the

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idea of a new paradigm under Bush and finds instead the utilisation of an evolving policy under radically altered international circumstances. Furthermore, it finds that the policy has not ended with Obama's election, but has been scaled back to a level at which it was believed to have been initiated prior to the Bush presidency.⁵

Defining rendition

Before considering the reaction to the rendition policies as practiced by the United States in the late twentieth and early twenty-first centuries, it is important to recognise that this is not a new concept and that its implementation and justification have fluctuated over the years. 'Since the 1800s, the United States has rendered criminal suspects from overseas to be tried in the United States and the US Supreme Court twice endorsed criminal prosecutions after such "renditions to justice".⁶ Aspects of rendition can be discerned in the imprisonment of Emperor Napoleon on St Helena in 1815,⁷ the removal of Adolf Eichmann from Argentina for trial in Israel in 1960,⁸ and the transfer of Carlos the Jackal from Sudan to France in 1994.⁹ Notwithstanding its previous incarnations, rendition in the modern era was initially implemented to combat the challenge the United States faced in 'apprehending suspects in foreign countries with which it had no bilateral extradition treaty, in which an extradition treaty was suspended due to a break in diplomatic relations, or in which there was virtually no law enforcement'.¹⁰ In 2005, the secretary of state Condoleezza Rice acknowledged, 'for decades, the United States and other countries have used renditions to transport terrorist suspects from the country where they were captured to their home country or to other countries where they can be questioned, held, or brought to justice'.¹¹ President Reagan authorised a rendition operation to apprehend Fawaz Yunis for his role in the deaths of three Americans aboard a hijacked Jordanian aircraft in 1985.¹² He also authorised a similar mission to apprehend the suspects believed to have been responsible for the 1983 bombing of the US marine barracks in Beirut.¹³

The legal justification for rendition, and the 'extension of American law enforcement powers to foreign states' was sanctioned in two opinions drafted by assistant attorney general William Barr in 1989 for President George H.W. Bush.¹⁴ In the early 1990s 13 suspected terrorists were accordingly brought to stand trial in the United States for planned or completed acts of terrorism. By the mid 1990s such operations 'were becoming routine', as initiated by the United States Counter-terrorism Security Group, headed by Richard A. Clarke.¹⁵ In 2005, Secretary Rice would quote the director of Central Intelligence George Tenet's statement that the United States had engaged in 'the rendition of many dozens of terrorists prior to September 11, 2001'.¹⁶ Government officials openly acknowledged what was then referred to as the 'Rendition to Justice' programme that delivered suspects to US jurisdiction and afforded them legal representation and due process.¹⁷ Rendition, at this stage, therefore, amounted to an enhanced form of extradition; a policy that would bring suspects to the United States to stand trial in an American court with full legal protection. The legality of this practice was clarified by the Supreme Court in the 1992 case of *United States v. Alvarez-Machain*, which sanctioned the practise, irrespective of its questionable legality under international law.¹⁸

The widely held belief is that this approach to rendition remained in place until being radically transformed after 11 September 2001 into a new policy of extraordinary rendition, which contravened the Convention Against Torture and which entailed transferring suspects to third-party countries to be unlawfully interrogated. This concept of rendition was defined by the former director of Central Intelligence, Michael V. Hayden, somewhat blandly as 'taking a person to some other country',¹⁹ although left unsaid was for what

purpose. Others have challenged this stance, viewing it instead as an attempt to outsource activities that would be legally questionable in the United States. Haden's definition would no doubt amount to what Amnesty International referred to as 'benign characterization (designed to) conceal the truth about a system that puts the victim beyond the protection of the law, and sets the perpetrator above it'.²⁰ Amnesty defined rendition as, 'the transfer of individuals from one country to another, by means that bypass all judicial and administrative due process'.²¹ Along with the abuses at Abu Ghraib, reports of waterboarding and enhanced interrogation at CIA Black Sites, this policy of extraordinary rendition contributed to an impression of a White House fighting a war with methods that were at odds with America's highest ideals. These policies became indicative, to some, of an administration whose right to power was questionable, that saw the events of 11 September as an 'opportunity',²² and which was, like the fictional Colonel Kurtz, 'out there, operating without any decent restraint, totally beyond the pale of any acceptable human conduct'.²³

However, what Benjamin Wittes has referred to as the Law of September 10²⁴ and the lack of public appreciation of foreign policy is vital to any serious consideration of the practice.²⁵ Long before it was revealed to the general public, the Clinton administration was engaged in policies that would amount to extraordinary rendition. Indeed, a war on terrorism was being waged by the United States prior to the election of George W. Bush, using methods that appeared to contradict the values the administration claimed to be defending.²⁶ Years before 11 September 2001, the Clinton administration transported suspects to third-party countries where they were interrogated, tortured and executed. With Bush's election the scope of the operation widened and the legal restraints were loosened, but interviews with high-ranking members of the Clinton administration reveal a White House at war with Osama bin Laden, which hoped to witness his demise in real time and which sought to use rendition to destroy al Qaeda 'brick by brick'.²⁷

The road to rendition

At home as well as abroad, the Clinton administration was fighting a war that would go unnoticed by many until it exploded above the streets of New York in 2001. At the 1995 G-7 Summit the administration persuaded global leaders to work together to combat terrorism, a move reinforced in December 1995 as eight nations pledged to adopt counter-terrorism treaties by the year 2000 'to work together in preventing the use by terrorists of nuclear, biological and chemical weapons'. Domestically, the administration sought to introduce legislation that would allow police departments 'to use the unique capability of our military where chemical or biological weapons are involved here at home, just as we can now do in the face of nuclear threats'.²⁸ Whilst the administration planned to prevent the use of force against the United States, the 1996 National Security Strategy accepted that such an eventuality must be planned for. Accordingly it initiated a policy of National Security Emergency Preparedness, to 'ensure the survivability of our institutions and national infrastructure, protect lives and property and preserve our way of life'.²⁹ This did not constitute the creation of new governmental departments but was the first step in the direction of the Homeland Security Department established in the wake of September 2001. Accordingly, the Clinton administration would continue to allocate resources to ensure 'comprehensive, all-hazard emergency preparedness planning by all federal departments and agencies continues to be a crucial national security requirement'.³⁰ The full force of the federal government would be utilised, initially within the limits of US law, to wage a war that few were even aware of.

In the aftermath of 11 September 2001 the response to terrorism would obtain a new urgency, but in the years prior to the attack the Clinton administration was not lax in its

efforts. The initial practice of covertly bringing suspects to the United States to stand trial differs from the policy that emerged after 9/11, but it was the harbinger of things to come and would still appear to have constituted a violation of international law. During the initial rendition policy, between 1993 and 1996, 'more terrorists (were) arrested and extradited to the United States than during the totality of the previous three administrations'.³¹ Covert operations were also initiated to render terrorists to nations with less stringent human rights policies than the United States. In 1996, the administration expanded the process by persuading allies to apprehend suspects and render them to a third country without legal process. In Albania, US intelligence officers guided authorities to five members of the Egyptian Islamic Jihad, who were flown to Egypt and executed after a military trial. CIA director George Tenet acknowledged that in this second phase of the Clinton rendition policy, which bears a striking resemblance to what would be referred to as extraordinary rendition under President George W. Bush, more than 50 al Qaeda terrorists had been dealt with in this manner.³² An examination of policy and procedures at this time, therefore, reveals the origins not only of extraordinary rendition, but also of the grouping of nations into a collective that would become the 'axis of evil' and the emergence of Osama bin Laden as Public Enemy Number One. President Bush would refer to detainees as 'enemy combatants', but the Clinton administration was quietly rendering suspects in a policy that would greatly expand in the aftermath of 9/11.

Long before this practice became public knowledge, the policy had firm backing in the White House from Samuel Berger, Clinton's second-term national security advisor, who referred to it as 'a new art form'.³³ Before Berger took over at the National Security Council (NSC), the process was formalised in Presidential Decision Directive 39 (PDD-39), dated 21 June 1995, prepared not in response to an international outrage, but in the aftermath of the domestic terrorist incident in Oklahoma City. PDD-39 was designed to complement NSD-77, prepared for the previous Bush administration, which remains classified. Not all were convinced, however, with questions raised on practical and legal grounds. Clearly the concept of rendition raises a series of important questions pertaining to the rights of individuals under international law. This was recognised and addressed by the White House when Richard Clarke first proposed the policy in 1993. White House counsel, Lloyd Cutler, advised the president that the plan violated international law and urged Clinton to veto the plan. The vice-president Al Gore adopted a more pragmatic view: 'Of course it's a violation of international law, that's why it's a covert action. The guy was a terrorist. Go grab his ass'.³⁴ Such an assertion would appear to refute allegations made in the aftermath of 9/11 that the Clinton administration were reluctant to engage in a robust assault upon perpetrators of political violence.

Despite such vocal support from within the highest levels of the civilian government, the Clinton administration faced bureaucratic challenges from the Pentagon and the CIA, which claimed a lack of resources to enact the programme. In a series of incidents that reveal insubordination and an effort to mislead on a grand and systematic scale, members of the military and the CIA briefed reporters and members of Congress that the administration had prevented them from apprehending war criminals and terrorists. As chairman of the Counterterrorism Security Group, Richard A. Clarke, revealed, 'the White House wanted action. The senior military did not and made it almost impossible for the president to overcome their objections. President Clinton approved every snatch that he was asked to review'.³⁵ Clinton's inability to overcome such objections stand in stark contrast to the success George W. Bush had in utilising the United States' armed forces in support of his wider political goals. Indeed the military's intransigence, based on operational as opposed to legal grounds, was a major impediment in the ability of the

United States to address the gathering storm of international terrorism and is a much-misunderstood aspect of the wider security failings that led to the events of 9/11.

Vital to an understanding of the initial rendition initiative is recognition that the programme began as a practice intended to facilitate the judicial process. It was not initiated to gain data, but rather 'to dismantle these terrorist cells overseas. We wanted to get suspects off the streets and grab their papers. The interrogation part wasn't important'.³⁶ However, its evolution to a programme deliberately designed to evade domestic legal prohibitions against torture began when the Clinton administration, frustrated at the lack of domestic legal options, realised the need 'to come up with a third party'.³⁷ The outsourcing of torture, as America's critics saw it, began. The distinctions can be seen in two cases. In February 1995, Ramzi Youssef, was arrested by Pakistani intelligence and turned over to the US authorities for trial in New York,³⁸ where he was later jailed for life for his involvement in the 1993 World Trade Center bombing.³⁹ Clearly this was an example of rendition as expedited extradition. Later that year, Talaat Fouad Qassem, a key leader and spokesman of al-Gamaa al-Islamiya, an Egyptian armed Islamist group, was picked up by Croatian police in Zagreb. American officials questioned him aboard a ship in the Adriatic before he was turned over to the Egyptian authorities⁴⁰ that had sentenced him to death in absentia for his role in the assassination of President Sadat.⁴¹ This can perhaps be identified as the moment at which rendition was escalated to a programme that could result in the death of the suspect involved. It also highlights the role played by Egypt in the emerging and evolving policy.

Records indicate 14 cases of rendition during the Clinton presidency, of which 12 involved transit to Egypt,⁴² where the suspects faced interrogation and torture. The tales that have emerged from Mubarak's prisons make awkward reading for those who seek to suggest that the programme only evolved to become extraordinary rendition once Clinton left the White House. Indeed, it would appear that there was a reciprocal, mutually beneficial relationship in place: 'It served American purposes to get these people arrested, and Egyptian purposes to get these people back, where they could be interrogated'.⁴³ The fact that every suspect rendered to Egypt had previously been convicted in absentia and that CIA attorneys cleared all operations⁴⁴ did not prevent the suspects from being tortured and executed upon their arrival in Cairo.⁴⁵

The Clinton administration recognised that although threats from former national adversaries were receding, the danger from sub-national groups was increasing. Long before 11 September 2001 the administration noted that whilst advances in technology made life easier for Americans, it also meant 'challenges to the security of our citizens, our borders and our democratic institutions...is greater today because of access to modern technology'.⁴⁶ The 1993 attack on the World Trade Center and the 1995 bombing of the federal building in Oklahoma City forced the administration to concede that 'the threat...from the organised forces of terrorism, international crime and drug trafficking is greater as the technological revolution...empowers these destructive forces with novel means to challenge our security'.⁴⁷ Such warnings developed greater poignancy after September 2001, but it is clear the Clinton administration viewed terrorism as a serious threat and acted accordingly, using the powers at his disposal, including various forms of rendition. As president, Clinton could have done more and has admitted as much. However, 'it is difficult to locate another American President who was able to rouse a happy, populace to sacrifice their lives in the service of an abstraction'.⁴⁸ Before 11 September there was no public support for losing American lives to suppress terrorism. Bill Clinton could not change these elements and neither could George W. Bush. It took a disaster of epic proportions to shock America into the reality of the twenty-first century.

From rendition to extraordinary rendition

The Clinton policy of rendition was implemented at a time when few Americans were paying attention to foreign policy. The nation was at peace, the Cold War had ended and the stock market was buoyant. The United States and the President remained popular both at home and overseas, something not even his impeachment hearings could alter. The policy was conducted by a Democratic president with the tacit agreement of America's allies, against known perpetrators of political violence. The lack of interest in foreign affairs and international terrorism would change forever on 11 September 2001 and what began as a targeted policy, 'aimed at a small, discrete set of suspects – people against whom there were outstanding foreign arrest warrants',⁴⁹ would be enhanced and expanded upon, becoming public knowledge to the detriment of all concerned.

Despite the previous development of rendition as enacted by the Clinton White House to a point where it resembled what became known as extraordinary rendition, the new policy only became official on 17 September 2001, when President George W. Bush authorised the CIA to kill, capture, or detain members of al Qaeda anywhere in the world. This presidential finding released the agency from its previous requirement to seek a case-by-case approval for rendition practices.⁵⁰ Before 9/11, rendition had developed from a means of bringing suspects to the United States to stand trial, to a means of delivering suspects to a third country for trial so as to be judged for previous crimes and in a number of cases, executed. Under Bush, rendition was expanded to dispatch 'individuals to countries not for the purpose of trial, but rather to gather intelligence about future wrongdoing through unlawful detentions and coercive interrogation'.⁵¹ It was this policy that Condoleezza Rice referred to when she insisted, 'rendition is a vital tool in combating transnational terrorism', adding that the United States had utilised such a policy 'for decades'.⁵² Interestingly, however, the tool that Secretary Rice referred to did not credit a reference in either of the National Security Strategy Reports issued by the Bush White House.

White House counsel, Alberto Gonzales, referred to this shift in emphasis as the New Paradigm, but was this really the case? Cofer Black, then in charge of counter-terrorism at the CIA reiterated the point in a statement to the House and Senate Intelligence Committees on 26 September 2002. He declared, 'all you need to know is that there was a "before 9/11" and there was an "after 9/11". After 9/11, the gloves came off'.⁵³ It was indicative of the national mood that such a statement could be accepted at face value, for whilst there was certainly an alteration to the policy that the Clinton team could not have countenanced (rendering suspects solely for interrogation), extraordinary rendition had been practiced prior to 9/11 and had led to the execution of suspects. The degree to which distinctions were drawn and parallels made with the previous democratic administration for purely political reasons cannot be underestimated. Vice-president Cheney stated that the government needed to 'work through...the dark side',⁵⁴ whilst the director of Central Intelligence, George Tenet, told Congress, 'It might be better sometimes for...suspects to remain in the hands of foreign authorities, who might be able to use more aggressive interrogation techniques'.⁵⁵ Such statements compounded the sense of a fundamental change in emphasis, irrespective of evidence to the contrary. The statements also enhanced the Bush White House's reputation for toughness in contrast with the Clinton administration, in a move designed to appeal to the Republican base but which ironically would also help inoculate Clinton from the international fallout that would greet the public disclosure of this policy.

The repeated statements of the vice-president and the director of central intelligence served to undermine the repeated declarations of the president that when the United States rendered individuals to other countries it received assurances that, 'they won't be

tortured... this country does not believe in torture'.⁵⁶ Secretary Rice stated categorically that the United States would 'comply with its treaty obligations, including those under the Convention Against Torture... the United States does not permit, tolerate, or condone torture under any circumstances'.⁵⁷ Such statements, however, appear to be disingenuous when one considers the countries that received the rendered individuals, including Egypt, Jordan and Morocco. Egypt's prime minister noted in 2005 that the United States had transferred some 60–70 detainees to Egypt alone, and a former CIA agent with experience in the region believes that hundreds of detainees have been sent by the United States to prisons in the Middle East. Nonetheless, the Bush administration continued to insist that it never knowingly sent anyone to a place where they would be tortured.⁵⁸ Perhaps the truth can be ascertained in a statement from a federal court of appeals judge, who noted that US officials involved in rendition have not generally tortured the detainees themselves; instead, 'they outsourced it'.⁵⁹ In the aftermath of the attacks on 11 September 2001, it is believed that the US government rendered more than 100 suspected terrorists to countries that routinely torture prisoners.⁶⁰ The Bush administration defended the policy, stating it had 'stopped terrorist attacks and saved innocent lives'.⁶¹ Proving an action caused an event not to happen is problematic, but it is also true that no subsequent attacks have succeeded. Is this a result of rendition and its associated policies? Its supporters would suggest that it is, though others disagree.

Perspectives on rendition

Where the question of rendition becomes intriguing is in the interpretation of its consequences. What Bush and Cheney did was different less in kind than in degree – creating an expanded programme of rendition and secret prisons, as well as aggressively pursuing 'targeted killings' of 'high-value targets'.⁶² For those who see this policy darkly, 'torture thus became a primary goal, not merely a collateral consequence, of rendition to third countries. In this respect, the post-9/11 extraordinary rendition system is qualitatively different from the rendition programme that preceded it'.⁶³ This conclusion, however, appears to be disingenuous, conceding that rendition existed prior to 9/11 and overlooking its illegality, whilst lambasting the policy as practiced under President Bush.

Both George H.W. Bush and Bill Clinton authorised 'kidnapping and forcible abductions where the normal extradition process was unavailable to bring fugitives to a country where they would stand trial for the crimes of which they were accused'.⁶⁴ This was not criticised at the time, and even retrospectively, the policy is excused in relation to what would come to pass. Yet these renditions were seemingly just as illegal under international law as what would come to be known as extraordinary rendition, despite the assertions of Secretary Rice that, 'renditions are permissible under international law and are consistent with the responsibilities of those governments to protect their citizens'.⁶⁵ However, a double standard has been applied in which the earlier exercise is justified on the basis that 'they were used to bring suspected terrorists to justice either in the United States or in other countries'.⁶⁶ The policy that emerged under George W. Bush, however, has been damned with some equating it with 'the Nazi operation called *Nacht und Nebel* or "Night and Fog"', although admitting that 'presumably it pales in comparison to the systematic atrocities perpetrated by the Third Reich'.⁶⁷ Despite this disingenuous attempt at clarification, the damage has been done and the overriding impression is one that links the policies of the George W. Bush administration with the Nazis.

Clearly rendition and extraordinary rendition predated the presidency of George W. Bush. In the aftermath of the 9/11 attacks, the scope of the operation altered, but not

the institution itself. It is inaccurate to portray this as an effective policy under President Clinton and as a shock to sensibilities under Bush. Under both regimes, the forces of the United States took suspects from one country to another where they were subject to abuse and in some cases, execution. That the scope of the operation changed and shifted from obtaining suspects for prosecution, to transferring them for interrogation,⁶⁸ is not in dispute. However, attempts to distinguish between the policies that were initiated by the two administrations are misleading at best.

President Bush once remarked that his apparent strut was known as walking in Texas, and in this observation lies a great deal of his problems as president; less what he said and did and more the manner in which he and his administration acted. President Bush's swagger and general demeanour were out of kilter with European sensibilities that were more akin to eastern seaboard understatement. This clash of cultures exacerbated the existing concerns over policies and the methods by which they were implemented. The 'flaunting of executive power, ignoring Congress, scorn for anyone who waved the banner of civil liberties', did much to undermine support for the administration, as the 'arrogance and heedlessness of Bush and Cheney – especially Cheney, who almost seemed to take a grim satisfaction in his Darth Vader-esque image'.⁶⁹ Had the administration taken a different approach to the policy, the reaction may well have remained muted. Alas, the administration appeared incapable of altering its stance, even when to do so would have served its long-term interests.

Hypocrisy at work?

The rancour surrounding the evolution of the rendition policy is compounded by the hypocritical reaction of foreign governments. Without willing, or coerced allies, rendition would have been considerably harder for the United States to initiate. Prior to the public disquiet that emerged concerning the policy, many of these governments were complicit in the operations, causing Amnesty International to report, 'Europe's governments have repeatedly denied their complicity in the US programme of rendition. As more evidence of this programme has come to light, however, it has become clear that many European governments have adopted a "see no evil, hear no evil" approach when it comes to rendition flights using their territory, and that some states have been actively involved in individual cases'.⁷⁰ Once the rendition programme was made public, a host of European governments were 'extremely critical of the process and mostly denied hosting secret prisons and transit points in their countries'.⁷¹ This situation was noted by Richard Aldrich, who arrived at a succinct conclusion: 'European politicians, faced with the classic dilemmas of conducting counter-terrorism in a liberal society, have dealt with this by playing to public opinion with their criticisms of American covert activity; meanwhile they have approved discreet co-operation with the very same programmes'.⁷²

European public criticism, coupled with private co-operation, contributed to the House of Representatives' Subcommittee on International Organizations, Human Rights, and Oversight and the Subcommittee on Europe of the Committee on Foreign Affairs to hold hearings into the impact of renditions on future transatlantic cooperation in the spring of 2007.⁷³ The hypocritical actions of select European governments was noted by Amnesty International in its statement to these congressional hearings: 'Agents of a few European countries have participated in the apprehension of people destined for rendition or in the interrogation of such detainees once they have been transferred to countries where torture is known to be routine. The rendition programme has also highlighted the fact that foreign intelligence agencies operate covertly in Europe outside the rule of law and

without accountability.⁷⁴ This approach has manifested itself in at least four nations. In July 2006 the Italian government arrested two of its high-level intelligence officials and indicted 26 Americans, including CIA officers, for the abduction and rendition of an Egyptian cleric, Abu Omar, from Milan to Egypt, where he was detained and reportedly tortured.⁷⁵ Italian intelligence officers claimed that they knew nothing about the case, but evidence later emerged that they had been working with the officials of the United States in the operation.⁷⁶ Condoleezza Rice's legal adviser at the State Department, John Bellinger, advised journalists that 'these continuing investigations can harm intelligence cooperation, that's simply a fact of life'.⁷⁷

In June 2006, German officials admitted they were told in May 2004 about the CIA's December 2003 abduction of a German citizen, Khalid El-Masri, in Macedonia and his rendition to Afghanistan.⁷⁸ In late January 2007, German prosecutors issued arrest warrants for 13 CIA agents involved in the case.⁷⁹ In 2002, the French Direction Générale de la Sécurité Extérieure and the CIA established a covert operations centre in Paris called 'Alliance Base' to conduct renditions in Europe. 'During 2003, while President Chirac was lambasting George Bush over the issue of Iraq, France had quietly agreed to deploy 200 French Special Forces to work with the Americans in southern Afghanistan.'⁸⁰ In the UK, prime minister Tony Blair faced Commons' questions about British involvement in the operation equipped with a briefing document prepared by the Foreign Office. It concluded that rendition, 'is almost certainly illegal', and if Britain cooperated with an illegal act of this kind, 'such an act would also be illegal'.⁸¹ Finally, the United Nations Human Rights Committee determined that Sweden was guilty of collaboration with the CIA rendition policy due to its involvement in the case of Mohammed al-Zari and Ahmed Agiza and their forced transit to Egypt in December 2001. Clearly, the international hypocrisy in relation to rendition extended to Scandinavia as well as to Europe.

Secretary Rice made a thinly veiled attack on European governments as she prepared to visit the continent in 2005: 'It is up to those governments and their citizens to decide if they wish to work with us to prevent terrorist attacks against their own country or other countries...' adding that 'Debate in and among democracies is natural and healthy. I hope that that debate also includes a healthy regard for the responsibilities of governments to protect their citizens.'⁸² DCI Michael Hayden noted the hypocrisy in 2007 when he addressed European diplomats at the German Embassy in Washington, DC. He observed that European political leaders had been quick to attack the policy and the administration, yet remained content to 'privately enjoy the enhanced security provided by joint intelligence operations'.⁸³ The frustration of the United States at the hypocrisy displayed by its allies in Europe received scant sympathy from Amnesty, who urged, 'rather than criticize European bodies for investigating alleged human rights abuses, the United States should fulfill its own responsibility to conduct investigations and cooperate with others in order to ensure transparency and accountability for policies that violate its laws and treaty obligations...it is the illegal behavior of US agents overseas and policies that directly contravene international law that have interfered with US relations with its allies'.⁸⁴ Yet as 2007 faded into history, expectations were raised of a new dawn in international affairs and a new direction for US foreign policy.

Rendition under Obama

In this media-driven age it is increasingly postulated that new administrations usher in new policies and signify a break from the past. Accordingly, it was anticipated that all policies of rendition, extraordinary or otherwise, would be terminated at noon on 20 January 2009.

The election of Barack Hussein Obama as the first non-white president of the United States was presented as a cathartic exercise that would enable the previous eight years to be dismissed as an aberration. Surely Obama would purge the nation of the policies that had so affronted the world for the past eight years? Covered in Nobel garlands and the seeming adulation of the globe, Obama's presidency has been portrayed as a return to traditional principles upon which the republic was founded: liberty, justice and freedom. This, however, would constitute a misreading of the policy that has developed over the past 15 years.

Whilst the overriding sentiments of anti-Americanism have clearly subsided, this has had little to do with a change in policy. Obama may well be the world's president of choice, but he has yet to expressly repudiate former vice-president Dick Cheney's view of the world, causing Kenneth Roth, the executive director of Human Rights Watch, to denounce the Obama administration for adopting policies that 'mimic the Bush administration's abusive approach'.⁸⁵ President Obama may have signed Executive Order 13491 banning enhanced interrogation techniques, but his CIA director reaffirmed the rendition policy.⁸⁶ This was deemed to be 'extremely disappointing', by the American Civil Liberties Union,⁸⁷ whose attorney, Ben Wizner, lamented that Obama 'has chosen to continue the Bush administration practice of dodging judicial scrutiny of extraordinary rendition and torture. This was an opportunity for the new administration to act on its condemnation of torture and rendition, but instead it has chosen to stay the course'.⁸⁸

The high rhetoric of Obama's campaign, his inaugural address and executive orders indicated a new direction for US foreign policy, but while this initially appeared to be the case, 'there are a growing number of reasons to suspect that Obama will not be quite as liberal on these matters as his rhetoric might have suggested, his supporters might have hoped, or Dick Cheney might have feared'.⁸⁹ Speaking at the American Enterprise Institute, Cheney accused the new administration of making 'the American people less safe' by banning CIA interrogations of terrorism suspects that had been sanctioned by the Bush administration. Ruling out such interrogations, Cheney charged, 'is unwise in the extreme', and amounted to 'recklessness cloaked in righteousness'.⁹⁰ However, all indications are that the Obama administration will seek a compromise solution that will protect civil liberties whilst refusing to rule out options, including rendition. This will clearly upset liberals, for whom Obama 'was elected partly to cleanse the temple of the Cheney stain, and in his campaign speeches he promised to reverse Cheney's efforts to seize power for the White House in the war on terror'.⁹¹

The reality, however, has not been one of radical change, but rather of degrees. There have been more Predator drone attacks in Afghanistan during the first years of Obama's presidency than under George W. Bush; US troops remain in Iraq and Afghanistan and the detention centre at Guantanamo Bay remains open. This is not all the president's fault and is in part due to the structural difficulties involved in implementing foreign policy initiatives in the United States; the president sought to close the facility at Guantanamo Bay only to be prevented from doing so by elements in Congress. Likewise, it was domestic pressure from Congress and New York politicians that blocked administration efforts to utilise the federal courts and de-emphasise the military commissions for trials of terrorists. Jeffrey Smith, a former CIA general counsel who was consulted by the new administration on these issues, declared that the policy on rendition 'is not a seismic shift in policy. Rather, it is that the United States will send individuals to other states, and, if those states have a questionable record on human rights, then we will not only seek assurances as we have in the past, but that we will be more rigorous on following up on those assurances'.⁹² In the language of the Obama campaign, this is 'change you can

believe in', just not the sort that many of his supporters expected. Indeed, it is merely a reversion to what was previously practised in the first term of the Clinton administration.

It would be wrong to imagine that Obama's White House is guided by an extreme liberal ideology. Many are from the tough political machine of Chicago politics, whilst others returned to the White House having served as New Democrats under President Clinton. One such individual is Leon Panetta, the former chief of staff and current director of Central Intelligence. When asked about rendition at his confirmation hearing, he noted that suspects would no longer be kidnapped, sent overseas and tortured. However, 'renditions where we return an individual to the jurisdiction of another country, and then they exercise their right to try that individual and to prosecute him under their laws – I think that is an appropriate use of rendition'.⁹³ The model that Panetta describes is a return to a public stance on rendition that is akin to the model exercised by the Clinton White House, were it began, 'in a more carefully monitored form', before being 'transformed into what John Radsan, former CIA lawyer, called "an abomination"'.⁹⁴ Panetta has stressed that the administration will take precautions to insure that rendered suspects are treated humanely; 'Our people have to make very sure that people won't be mistreated',⁹⁵ while renditions in which the United States sends suspects to foreign countries for detention and interrogation will be restricted.⁹⁶ Of course, the Bush administration professed to be taking similar precautions.

These policies raise serious questions concerning the American sense of mission and exceptionalism. It is hard to ascertain how rendition does anything but undermine such aspirations, as Congressman Bill Delahunt, chairman of the Subcommittee on International Organizations, Human Rights and Oversight, made clear: 'These extraordinary renditions are utterly inconsistent with our broader foreign policy goals of promoting democracy and the rule of law, the very foundations of civil society. These practices... have undermined our very commitment to fundamental American values. These values are what define us as a people, as a nation. When we undermine them, we undermine everything we stand for, everything we are.'⁹⁷

President Obama entered the Oval Office with great hopes and aspirations and with the expectation of world opinion. With so few major alterations from the Bush strategy, regardless of stated intent, it is unsurprising that a sense of disappointment now permeates analysis of the administration's activities. This is not necessarily Obama's fault, for as president, there is only so much that he can do. The structural checks and balances have been implemented to prevent the closure of Guantanamo Bay and the use of the federal court system in Manhattan. This has been partly responsible for the continuity of policy between the two administrations. However, his campaign for the presidency set expectations so high that disappointment appears to be inevitable. The Obama administration's National Security Strategy Report of May 2010 declared, 'If we compromise our values in pursuit of security, we will undermine both.'⁹⁸ However, compromise is essential in politics, and Obama has been forced to compromise with supporters and opponents, which only exacerbates the sense of disappointment amongst Democrats. As Obama begins his quest for a second term, he must better define his national security strategy to avoid Republican accusations that he is undermining American security and fears from Democrats that he is undermining the very values that America claims to be fighting to protect.

Conclusion

Following the events of 11 September 2001, a series of policies and programmes emerged to wage a war against the perpetrators of terrorism and other forms of political violence.

The pre-existing policy of rendition, utilised by Reagan, approved by Bush Sr, and developed by Clinton to include the rendering of suspects to nations where they faced torture and execution, was utilised to further the ambitions of the White House in a new international environment. Rendition, for so long an extra-judicial process was now extraordinary for its notoriety and implementation when utilised in conjunction with a variety of other policies, including enhanced interrogation techniques.

The United States had utilised a rendition policy in the decades that preceded the presidency of George W. Bush and its continuation has not been ruled out under his successor. Elements of what became known as extraordinary rendition began under the Clinton administration. What changed under George W. Bush was the scope of the operation, not the institution itself. What altered was the public and media response to the policy, as previously unreported operations came into the public domain. This caused allies across the European continent to express their apparent revulsion with a policy that they had been long complicit in. To many, the policy not only caused offence, but also was then used as a vehicle to further justify an anti-Bush mentality. This was referred to as anti-Americanism, though a more appropriate term may be 'anti-administrationism'. Intriguingly, the Bush administration's efforts to highlight their tough stance in contrast to Clinton's perceived vacillation actually exacerbated the situation, making Bush appear worse and partially absolving Clinton, despite the similarities in their policies.

In an article entitled 'Rendition: The Beast and the Man', Colonel Kevin M. Ciepley of Tufts University asked, 'is rendition a practice reluctantly allowed by the philosophy of Machiavelli but inalterably opposed by the idealism of Kennan, or a contemporary practice necessitated by circumstances that transcend traditional ethical theories?'.⁹⁹ It may be too much to ascribe George W. Bush with the guile of Machiavelli, but clearly the policy of rendition raises vital questions about the lengths nations need to go to in order to defeat potential perpetrators of extreme political violence.

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Notes

1. Eli Lake, 'Small Change', *New Republic* 240, no. 3 (4 March 2009): 11–12.
2. CIA Director George Tenet, quoted in Barton Gellman, 'Broad Effort Launched after Attacks', *Washington Post*, December 19, 2001, A1.
3. Peter Rainer, 'Rendition True to Tired-thriller Form', *Christian Science Monitor* 99, no. 227 (2007): 11–14.
4. It is important to note that this paper focuses on rendition and extraordinary rendition and not on the enhanced interrogation techniques as approved by President George W. Bush. It is important to distinguish between the two elements that would form two distinct tools in the American

- arsenal devised to win a war on terrorism. The author wishes to state unequivocally that at no time did President Clinton or his predecessors approve of waterboarding or other such advanced interrogation techniques as approved by President George W. Bush in March 2002. See George W. Bush, *Decision Points* (London: Virgin Books, 2010), 169.
5. Despite the attention paid to a series of executive orders signed by President Obama during his first days in office, they do not make reference to rendition, but rather to the prevention of unlawful detention or interrogation by the CIA, specifically, Executive Order 13491, dated 22 January 2009.
 6. See *United States v. Alvarez-Machain*, 504 US 655 (1992), referenced in Aziz Z. Huq, 'Extraordinary Rendition and the Wages of Hypocrisy', *World Policy Journal*, (Spring 2006), 25–35.
 7. Norman MacKenzie, 'An Extraordinary Rendition', *History Today* 60, no. 5 (2010): 38–40.
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 9. The European Commission of Human Rights rejected Carlos' claim that his rendition from Sudan was unlawful.
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 11. Condoleezza Rice, 'Remarks Upon Her Departure for Europe' (Andrews Air Force Base, 5 December 2005).
 12. Richard A. Clarke, *Against All Enemies* (London: Free Press, 2004), 143.
 13. John K. Cooley, 'Ending CIA Rendition of Terror Suspects', *Christian Science Monitor* 98, no. 158 (2006): 9; Benjamin Wittes, *Law and the Long War: The Future of Justice in the Age of Terror* (New York: Penguin Press, 2008).
 14. Downing, 'The Domestic and International Legal Implications of the Abduction of Criminals from Foreign Soil', 575.
 15. Clarke, *Against All Enemies*, 143.
 16. Condoleezza Rice, quoting George Tenet during 'Remarks Upon Her Departure for Europe'.
 17. James Park Taylor, 'Dancing With the Scavenger's Daughter', *Montana Law Review* 30 (2005): 10, 35–6.
 18. See Jules Lobel, 'Extraordinary Rendition and the Constitution: The Case of Maher Arar', *The Review of Litigation* 28, no. 2 (2008): 479–500.
 19. DCI Gen. Michael V. Hayden, interview with Charlie Rose, October 24, 2007, quoted in Elaine Pasquini, 'Activists Protest Torture Flights, Demand Jeppesen Stop Facilitating C.I.A. Renditions', *Washington Report on Middle East Affairs* 27, no. 3 (2008): 50–1.
 20. Statement submitted for the record by Amnesty International USA, 'Extraordinary Rendition in US Counter-terrorism Policy: The Impact on Transatlantic Relations', Joint Hearing Before the Subcommittee on International Organizations, Human Rights, and Oversight and the Subcommittee on Europe Of the Committee on Foreign Affairs', House of Representatives, One Hundred Tenth Congress First Session, April 17, 2007, Serial No. 110–28.
 21. Ibid.
 22. President George W. Bush, quoted in Bob Woodward, *Bush at War* (New York: Simon and Schuster, 2002), 32.
 23. *Apocalypse Now Redux*, original screenplay by John Milius and Francis Ford Coppola, <http://www.dailyscript.com/scripts/apocalypsenowredux.html> (accessed 1 September 2010).
 24. Benjamin Wittes, *Law and the Long War: The Future of Justice in the Age of Terror* (New York: Penguin Press, 2008).
 25. See Ethan A. Nadelmann, 'The Evolution of United States Involvement in the International Rendition of Fugitive Criminals', *New York University Journal of International Law & Politics* 813, no. 25 (1993), 813–886.
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 27. CIA Director George Tenet, quoted in Gellman, 'Broad Effort Launched after Attacks'.
 28. 'A National Security Strategy of Engagement and Enlargement', 1996, <http://www.fas.org/spp/military/docops/national/1996stra.htm> (accessed October 13, 2010).
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32. George Tenet, quoted in Gellman, 'Broad Effort Launched after Attacks'.
33. Stephen Grey, *Ghost Plane: The Untold Story of the CIA's Torture Programme* (Melbourne: Scribe Publications, 2007).
34. See Sale, *Clinton's Secret Wars*, 291; and Clarke, *Against All Enemies*, 144.
35. Clarke, *Against All Enemies*, 145.
36. Peter Bergen, 'The Body Snatchers', *Mother Jones* 33, no. 2 (2008): 58–61.
37. Jane Mayer, 'Outsourcing Torture', *New Yorker*, February 14, 2005.
38. Steve Coll, *Ghost Wars: The Secret History of the CIA, Afghanistan and Bin Laden, from the Soviet Invasion to September 10, 2001* (London: Penguin, 2004), 272–5.
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40. Anthony Shadid, 'America Prepares the War on Terror', *Boston Globe*, October 7, 2001, A1.
41. Mayer, 'Outsourcing Torture'.
42. Bergen, 'The Body Snatchers', 58–61.
43. Mayer, 'Outsourcing Torture'.
44. Ibid.
45. Actions that would place the United States in contravention of the 1987 United Nations' Convention Against Torture.
46. 'A National Security Strategy of Engagement and Enlargement'.
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51. Quoted in Lobel, 'Extraordinary Rendition and the Constitution: The Case of Maher Arar'.
52. Rice, 'Remarks Upon Her Departure for Europe'.
53. Mayer, 'Outsourcing Torture'.
54. Ibid.
55. John Barry, Michael Hirsch and Michael Isikoff, 'The Roots of Torture', *Newsweek*, May 24, 2004, 16. Quoted in Huq, 'Extraordinary Rendition and the Wages of Hypocrisy'.
56. President Bush, quoted in Bergen, 'The Body Snatchers', 58–61.
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61. Condoleezza Rice, quoted in Lobel, 'Extraordinary Rendition and the Constitution: The Case of Maher Arar', 479–500.
62. Stuart Taylor and Evan Thomas, 'Obama's Cheney Dilemma', *Newsweek* 153, no. 3 (January 19, 2009): 20–6.
63. Huq, 'Extraordinary Rendition and the Wages of Hypocrisy', 26.
64. Lobel, 'Extraordinary Rendition and the Constitution: The Case of Maher Arar'.
65. Rice, 'Remarks Upon Her Departure for Europe'.
66. Statement of Michael F. Scheuer, Former Chief, Bin Laden Unit, Central Intelligence Agency, Extraordinary Rendition in US Counter-terrorism Policy: The Impact on Transatlantic Relations Joint Hearing Before the Subcommittee on International Organizations, Human Rights, and Oversight and the Subcommittee on Europe Of the Committee on Foreign Affairs, House of Representatives, One Hundred Tenth Congress First Session, April 17, 2007, Serial No. 110-28.
67. A directive issued by Hitler on 7 December 1941 established the Nacht und Nebel programme. Pursuant to this policy, individuals were taken from the occupied territories, where they were accused of resistance activities against German occupying forces, and were then spirited away for secret trial by special courts in Germany.
68. Even though the stated purpose of PDD-39 was trial of terrorist suspects (among other things) in the United States, cases of rendition to third countries have been documented during the pre-9/

- 11 period. See Nadya Sadat, 'Ghost Prisoners and Black Sites: Extraordinary Rendition Under International Law'.
69. Taylor and Thomas, 'Obama's Cheney Dilemma', 21.
70. Statement submitted for the record by Amnesty International USA, 'Extraordinary Rendition in US Counter-terrorism Policy'.
71. Cooley, 'Ending CIA Rendition of Terror Suspects', 9.
72. Richard J. Aldrich, 'US-European Intelligence Co-operation on Counter-Terrorism: Low Politics and Compulsion', *The British Journal of Politics and International Relations* 11 (2009): 122–39.
73. 'Extraordinary Rendition in US Counter-terrorism Policy: The Impact on Transatlantic Relations', Joint Hearing before the Subcommittee on International Organizations, Human Rights and Oversight and the Subcommittee on Europe of the Committee on Foreign Affairs, House of Representatives, One Hundred Tenth Congress First Session, April 17, 2007, Serial No. 110–28.
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86. See Leon Panetta's responses when asked about rendition at his confirmation hearing, in Eli Lake, 'Small Change', *New Republic* 240, no. 3 (4 March 2009): 11–12.
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88. Elaine Pasquini, 'Obama Administration Chose to "Stay the Course" on State Secrets, Rendition', *Washington Report on Middle East Affairs* 28, no. 4 (2009): 50–1.
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91. Taylor and Thomas, 'Obama's Cheney Dilemma', 20.
92. Lake, 'Small Change', 12.
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