

Fighting for human rights: Obama's big agenda

THE INHERITANCE

The eight-year presidency of George W. Bush was marked by a systematic recourse to unilateralism, coupled with an asymmetrical free trade policy. He leaves an open front in Afghanistan, a lack of commitment with regard to the challenge posed by climate change, a chaotic situation in Iraq, a situation in Israeli-Palestinian relations that can at best be described as a deteriorating status quo, a planetary economic instability, and a deterioration of human rights brought about by the adoption of anti-terrorism legislation affecting civil rights, the building of a wall separating Mexico from the United States, and the justification and legalization of torture. All of this has contributed to the influence of the United States being questioned throughout the world, including by its closest allies. Two landmark international pronouncements, issued during the Bush presidency—the Avena decision, rendered by the International Court of Justice, and the advisory opinion on the rights of undocumented migrants delivered by the Inter-American Court of Human Rights—further highlight the shortcomings of the official American view of human rights. This topic will therefore be at the forefront of both

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domestic and foreign policy as President Obama tries to repair America's image on the international stage.

The issue that has caused the highest level of controversy internationally—and in which Canada has a vested interest because of the Khadr file—has undoubtedly been the policy regarding the so-called war on terror. Three topics stem from this: Guantanamo, torture, and civil rights.

IMMEDIATE CONSEQUENCES OF CLOSING GUANTANAMO

Although the decision has already been made by Obama to shut down the prison at Guantanamo, the ensuing dilemma has both a legal and a practical aspect. The first has to do with the possible alternatives to the highly criticized system of military commissions prosecuting the detainees. Some favour the idea of carrying out the judicial processes in a

regular federal court; others would prefer the creation of a special “terrorism or national security court”—a cross between a military tribunal and a federal court, designed to handle highly sensitive intelligence material. However, in that jurisdiction, subjects could not receive the full range of criminal protections because allowing a detainee to invoke the violation of his right to a speedy trial, the fact that he was never read his Miranda rights, or that his confession was obtained through the use of coercive methods would clearly jeopardize the prospect of a conviction. The constitutionality of such a hybrid jurisdiction would undoubtedly be challenged.

The practical side of the Guantanamo predicament has to do with the question of relocation of the suspects to be put on trial: they probably could not be kept either with regular criminal or military detainees, and so the decision that the Obama administration takes on where to hold them in custody will almost certainly spark controversy. But the plot thickens: more than 100—out of the 250 detainees—will probably never be tried because there is little or no evidence linking them to terrorism. Some of those individuals are, in some way, as opposed to their own government as they are to the American government and are often considered a liability in their respective countries, some of which have already stated that they will refuse to take them back. More problematic still, human rights advocates warn that the citizens of China, Libya, Russia, and Tunisia, for example, face possible ill-treatment by their national authorities if they are sent back. Housing them in the United States or granting them asylum would prove to be a highly sensitive issue.

The methods used to obtain evidence and confessions in the war on terror, especially the practice known as “water-

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boarding”—aimed at reproducing the sensations associated with the fear of drowning—as well as other “enhanced” interrogation techniques, have drawn strong condemnation even among America’s closest allies, who are unwilling to rely on the assurance by US authorities that those practices have ceased. Even if Obama decides to clearly outlaw the use of torture by the CIA, he will have to take a stand on these practices being carried out by his allies, and address the conundrum posed by the secret prisons still believed to be operating at least in Jordan, Syria, and Morocco.

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OTHER BIG DECISIONS LIE AHEAD

The backbone of Obama’s electoral program with regard to addressing the great global challenges has been multilateralism. Implementing this shift in policy will be key to tackling other sensitive topics, such as the withdrawal from Iraq and its implications for hundreds of thousands of refugees, or the situation in Darfur. Obama is committed to signing the UN Convention on the Rights of Persons with Disabilities; and a decision to do the same, for example, in the case of the Convention on the Rights of the Child could be seen as a further sign of openness to multilateralism. A position favouring access in poor countries to generic versions of US-patented drugs in the fight against serious illnesses would send a similar message.

On a more local level, immigration will have to be a priority for the new administration, as Obama has announced he will work toward the betterment of the policy in place, including the commitment to keeping families together, which should be reflected in the much anticipated thawing of relations with Cuba. This

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will also involve a close relationship with Mexican authorities. It is complicated by the fact that the new president favoured the bill creating the border wall aimed at stopping the flow of illegal immigrants coming into the United States.

Obama will also have to consider the restructuring of the US asylum system, deemed to be unfair and inadequate to process the myriad of applications. On the subject of access to health care—a very basic human right—Obama has promised to deliver a new system that will enable the more than 50 million people that remain uncovered—14 million of them of Latin American descent—to be insured. The president will also have to look into the rise in the number of hate crimes, as well as the racial disparities that characterize the justice system. It is, however, unlikely that Obama will budge on the issue of the elimination

of the death penalty in the case of federal crimes.

FROM “YES WE CAN” TO “YES WE DID”: THE CHALLENGE

The election of Obama has to be interpreted as a relevant shift, but it doesn’t constitute a revolution: those who have foreseen radical, profound, and decisive mutations have not grasped the American reality and its policy limitations. The social, cultural, and political marks left by a decade or more of conservatism constitute a legacy that is hard to overturn in the short run, especially considering the grim financial situation the new president inherits. Patience and audacity will be essential ingredients to the realization of the change the people who voted for him yearn for. Time will tell how efficient and suitable the new implemented policies turn out to be. 🍀