

# Angels & demons



The practice of human rights takes us to difficult places. In this piece, **Chetan Bhatt** delves into what looks like an obscure lawsuit – and brings to the surface the complex case of Anwar al-Awlaki. It is a case, he argues, with no easy ethical conclusions.

In August 2010, the venerable New York-based Center for Constitutional Rights (CCR), an organisation whose origins lie in post-war legal struggles for civil rights in America, filed a legal challenge against the US government. The case was a joint action undertaken with the American Civil Liberties Union (ACLU). A glance at some of the legal documents suggests the lawsuit relates to an obscure, if puzzling, issue about the legality and constitutionality of first obtaining a licence from the US government in order to be able to file a certain kind of lawsuit. In fact, it is the first stage of what is likely to be a lengthy legal challenge to a directive by the Obama administration that authorised the targeted killing of a US citizen without any trial or representation. The CCR lawsuits are against President Obama, the head of the CIA, the defence secretary, the US Department of the Treasury and the Office of Foreign Assets Control.

The directive, as reported in some American newspapers in April this year, orders the CIA to undertake an extrajudicial assassination of a named US citizen regardless of where he is, irrespective of whether he is in a battlefield or nowhere near one, and in a manner that is alien to anything resembling 'due process'. While the US has previously ordered the targeted killing of non-US citizens – for example, by drone strikes within the sovereign territories of Pakistan, Afghanistan and elsewhere – this is nevertheless an extraordinary directive. The idea that the current US administration has a 'hit list' would be an outrage to the sensibilities of the mainstream human rights community. Defenders of human rights would argue that the suspected individual should be charged and tried fairly before a recognised court and, if found to have committed the crimes he is accused of, sentenced and punished accordingly, short of the application of the death penalty. If these same sentiments appeal to you, then the mainstream human rights community would place you on the side of the angels.

Who is the American that the Obama administration desire to kill? He is Anwar al-Awlaki, a US-born militant ideologue and activist directly associated with Al Qaeda in the Arabian Peninsula. He holds dual US/Yemeni citizenship. It is alleged that al-Awlaki communicated with the Fort Hood killer, US Army Major Nidal Malik Hasan, as well as Umar Abdulmutallab, the so-called 'underpants bomber' and there are several other such alleged associations. He is believed to be hiding somewhere in Yemen.

## Incitement to murder?

Al-Awlaki has called for the killing of civilians anywhere in the world. Indeed, he has his own 'hit list' of individuals (all civilians) that have offended him, and he has urged his followers to assassinate them. This list includes cartoonists, an American blogger, Salman Rushdie (whose presence on such lists is ubiquitous). These are all people who write and draw for a living. He has urged these killings in the magazine of al-Qaeda in the Arabian Peninsula. The same magazine offers a comprehensive, skilfully designed guide on how a disaffected teen might go about assembling a powerful, shrapnel-laced pipe bomb 'in your mom's kitchen' so as to 'take out' at least ten of 'them'.

Al-Awlaki's various writings inciting murder contain no ambiguity. His exhortations are not related to the conditions of war, occupation or 'self-defence'. Instead, al-Awlaki explains to his followers that physical fighting – including killing civilians anywhere – is an incontrovertible obligation upon the individual true believer in order to eradicate unbelief from the world. This is a battle, al-Awlaki says, that must continue until the end of time. By this, he means right up to the point in the future when we bear (perhaps somewhat startled) witness to the appearance of the demonic Gog and Magog on the planet's surface. This poses the question, would

you unhesitatingly, without any qualifications or moral qualms, actively defend the full human rights and civil liberties of someone who said you and many others like you should be killed because you do not share his vision of apocalypse? Are you still gliding blissfully with the human rights angels?

Now, thus far we appear to be in moral territory that is conducive to normative resolution. You might agree that, no, al-Awlaki should not be killed by the US government but instead be apprehended, charged and brought to public trial and, yes, his views are utterly abhorrent to your moral sense regarding human worth, dignity or indeed justice or peace. But, we have already moved beyond any easy remedial formula. In intellectual terms, we have entered an interdisciplinary field in which political sociology, international relations, philosophy and law can all be brought down to bear critically on this case.

How are CCR and ACLU going to take up the case? Who is the plaintiff? How is al-Awlaki going to be represented by CCR to the American (or 'global') public? What are the likely social relations that begin to develop between progressive human rights organisations and individuals like al-Awlaki? How do 'co-religionists', who are opposed to everything al-Awlaki represents, feel about what they see as a political association between liberals and those who would call for killing them as apostates? How indeed might al-Awlaki be apprehended in a region where there is no effective sovereign body that has the legitimacy, authority, will or competence to arrest him? What might this tell us about emergent forms of regional sovereignty today and the form of the state they assemble? Al-Awlaki's ideology is fully derivative, containing little that is new. And yet it speaks with a 'western' voice that connects with a young audience. What is the broader aesthetic and cultural universe it exploits that generates such an appeal?

The plaintiff is al-Awlaki's father and Anwar al-Awlaki is therefore represented through his family. Al-Awlaki père does not accept the many unkind things being said about his son by the likes of Fox News or the *Wall Street Journal*. He says that his son is a good man, 'all-American'. Moreover, CCR and ACLU cannot take on a client and then publicly vilify him (they would not be very effective lawyers if they did). CCR has elected to refer to al-Awlaki as a 'Muslim cleric'. They say nothing about pipe bombs, incitement to kill civilians or Gog and Magog.

Let us take this further though. Why choose to represent, even if indirectly, al-Awlaki? CCR, in its campaigns against the death penalty, does indeed represent individuals who have committed the most heinous of crimes, including against women and children. Why should this case be any different? Indeed, al-Awlaki has not been publicly charged with a specific crime, nor has he been found guilty in any court for charges related to terrorism.

However, in choosing to take on this case, has the CCR chosen to become 'al-Qaeda's legal team'? They would argue absolutely not, that the case is about progressive American values, 'about ourselves and who we want to be as a people'. The key issue, they say, is about the rule of law, not whether al-Awlaki is innocent or guilty. What, then, about those on the US 'hitlist' who are not US citizens? Surely, the

international rule of law applies in their situations. Is this case important to CCR simply because al-Awlaki is an American citizen and because of the vision of American values CCR wishes to promote? Why not instead campaign against President Obama's directive or develop a cunning, creative legal process that forcefully challenges the directive on unassailable ethical (and constitutional) grounds, but which also maintains unambiguous hostility to the political ideology of al-Awlaki, while also fully disclosing that ideology to the human rights community so that CCR's supporters are not misled into believing that al-Awlaki is a humble religious preacher?

### Changing perspectives

As the international human rights lawyer, Karima Bennouna, has argued, a number of ethical possibilities were available to CCR and ACLU, but they made a decision to pursue one that associates the progressive human rights movement with among the least progressive of political ideologies. It should not be a surprise that these arguments have come from those who have fought for the rights of women against the kinds of religious authoritarianism and violence promoted by al-Awlaki and his associates. As is often the case, the vision of human rights changes when seen from the perspective of women's human rights. However, defending human rights is not a popularity contest, and it is indeed troubling when an organisation deliberately evades controversial cases that might diminish the gleam of its pristine halo. But where should one draw the line in such situations? That great American human rights lawyer, Rhonda Copelon, now tragically no longer with us, when approached by religious absolutist militia to represent them, refused. Instead, she simply, but powerfully, chose to represent human rights victims of those same militia.

I chose a deliberately provocative example to highlight some issues about the academic field of human rights. Human rights campaigns rightly focus on innocent victims of the grossest violations and abuses – and there are far too many such victims today. These violations exist largely for no other reason than that their targets exist within the human community. The moral and ethical commitments here are glaring.

But the practice of human rights regularly takes us to difficult places where there is neither the possibility of intellectual abstention nor the availability of an ethically concluded position. If human rights constitute a vast academic field of study, a genuinely interdisciplinary one when it is at its best, it is necessarily an intellectual assortment. If the ethical universe available to us is never limited by the positions

that confront us, then this can also make the study of human rights intellectually liberating. Similarly, what often appear to be the messy, imperfect, struggles for an unfinished, sometimes undecidable, venture of human rights can also be seen as giving a glimpse of new visions about the futures of human rights. If your mind's eye were to travel to a forlorn place of the absolutely dispossessed where human rights arrived suddenly in a package that included food, tents, water, soldiers, artillery and cluster bombs, what, from that vantage point, would human rights look like to you?

It is issues and challenges such as this which make it such an important time to be at the Centre for the Study of Human Rights at LSE. The Centre has just moved to new premises in Tower Two, and a new development plan is under way. In a challenging period for human rights, LSE is in a very strong position to influence much of the international debate about human rights, as well as shape the future direction of intellectual, research and policy agendas in a wider setting. The Centre is home to wonderful colleagues and has an expansive scholarly and research agenda – one that benefits from a strong interdisciplinary ethos. This includes the remarkable work of Margot Salomon on global poverty and human rights, Claire Moon on atrocity, suffering and transitional justice, and Alasdair Cochrane on the philosophy and boundaries of human rights. It also includes the amazing work undertaken by members of the Centre's Advisory Group, including Stan Cohen, Christine Chinkin, Chaloka Beyani, Francesca Klug, and the former director Conor Gearty who established the influence and foundations of the Centre. A recent Parliamentary Human Rights Group report by Advisory Board member Lord Frank Judd and others on human rights in Chechnya starkly illustrates some of the human rights tragedies there, as well as the formidable challenges to peace and justice.

If you are interested to know more about the work of the Centre and its varied activities and events – or would like to become involved in some way – please do feel free to get in touch with me. ■



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Anwar al-Awlaki