Human Rights Update 2012

Reproductive Healthcare Access for All
Workers’ Rights
Civil Liberties Under Threat

Approved by the 220th General Assembly (2012)
Presbyterian Church (U.S.A.)

Developed by
The Advisory Committee on Social Witness Policy (ACSWP)
of the General Assembly Mission Council
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Human Rights Update (Item 14-04)

The 212th General Assembly (2012) approved the following:

RECOMMENDATIONS

The 220th General Assembly (2012) brings to the attention of the church significant trends and developments in human rights, particularly in the areas of women’s reproductive health care, workers’ rights and domestic civil liberties by:

1. Directing the Stated Clerk to post on-line this “Human Rights Update 2012,” include it in the General Assembly social witness policy CD, and encourage its study and use in advocacy on matters of Christian ethical concern and General Assembly action;

2. Requesting that “Human Rights Day,” December 10, be included in the program calendar, liturgical resources, web-postings, and public witness activities of appropriate General Assembly Mission Council offices;

3. Requesting that the Advisory Committee on Social Witness Policy continue to monitor and report on international and domestic trends to help Presbyterians and others understand the context for discipleship and challenges to the Gospel vision of human dignity, which includes human rights, responsibilities, and liberties for all; and

4. Encouraging members, sessions, and other councils of the church to pray for all victims of human rights violations, and for those who persecute them, while also finding ways to act on behalf of those victims.

5. Directing the Advisory Committee on Social Witness Policy to include forced abortions, gender and disability selection based abortions, and infanticide within its next Human Rights Update study

Rationale

Introduction

In this twenty-third Human Rights Update we focus on three areas of domestic concern: access to reproductive health care, the rights of workers, and challenges to civil liberties first guaranteed in the Bill of Rights. In each area, the General Assembly has stated its concerns in the past. Some of that social witness policy is quoted in each case, showing ways that new developments call for continued study and advocacy. It may be that commissioners will want to lift up concerns within these reports for additional action, beyond the suggestions for personal witness that follow each description of current challenges. In these areas and many others, we honor those individuals called to work on safeguarding the rights of others, and defending their own rights, knowing that “the price of liberty is eternal vigilance.” It is also the case, whether the
Human Rights Update surveys developments in other nations or in our own, that attacks on human rights in any area diminish us all.

The three focal topics of this update are not today’s only pressing human rights issues. This General Assembly is also receiving a resolution on “Movements for Democratic Change in the Arab World” that makes recommendations for how the United States should respond. Past Human Rights Updates have expressed concerns for the many abuses committed by dictatorships in the Arab world, and for restrictions on the rights of Christians and other religious minorities. To mark Human Rights Day 2011, the Presbyterian Church (U.S.A.)’s internet justice journal, Unbound, published a set of short articles on Indigenous Land Rights edited by Carol Robb, professor of Christian Ethics at San Francisco Theological Seminary. Other human rights witness is part of the regular work of the Office of Public Witness in Washington, D.C., and the Presbyterian Ministry at the United Nations, as well as part of the commitments to fairness and conscience of thousands of Presbyterians throughout the U.S. legal system.

The 219th General Assembly (2010) focused on human trafficking, torture (the most fundamental violation of human rights), and detention policies, primarily those governing immigrants and asylum seekers in the United States. That General Assembly also authorized the formation of a new network of Presbyterian advocates for restorative justice in the criminal justice system. Given the millions of U.S. citizens arrested at some point in their lives, and the millions who are convicted and imprisoned (at the highest rate in the world), the need for Christian wisdom and witness seems evident. The Advocacy Committee on Racial Ethnic Concerns has lifted up the great differential in incarceration rates between Caucasian Americans and persons of color.

What difference does human rights concern make? We believe it has helped shape international relations, particularly since the 1948 Universal Declaration of Human Rights, strongly supported by the churches at that time. Individuals are freed when international attention focuses on their cases, but government policy is also a focus for human rights. Last assembly’s report on torture noted the substantial difference in outlook between “mainline” and “conservative evangelical” Christians on the permissibility of torture. In some measure, that difference in outlook reflects church teaching and attitudes toward punishment and human rights. Christian witness, in groups such as “No2Torture,” then contributed to the widespread recognition of moral boundaries that helped limit government practices of “enhanced interrogation” such as water-boarding, rendition to third countries for torture, and imprisonment without due process.

David Cole, professor of Law at Georgetown University, in reviewing how developments since 9/11/01 influenced the rule of law in the United States, argues strongly for the role of public opinion and witness in shaping government behavior:

One of the most important lessons of the past decade may be that the rule of law, seemingly so vulnerable in the attacks’ aftermath, proved far more resilient than many would have predicted. … The American constitutional system ordinarily relies on courts and checks and balances to impose legal restrictions on government officials. But in this period, with one significant exception, restraint of the government was brought about neither by judicial enforcement of constitutional law nor by legislative checks on executive power, but by civil society’s demands for adherence to the basic principles of human rights. Ten years and
one administration later, the threats, both to our security and to our liberty, are far from over. But the experience of the last ten years shows the importance of maintaining public pressure for fidelity to our core principles as we enter the second decade of the “war on terror.”

The biblical witness is the foundation of our understanding on how we are called to love our neighbors as we love ourselves. From the early understanding of God’s image on human beings, through the Fall and the great work of redemption in Christ, God calls us to walk in the ways of justice and righteousness. Past Human Rights Updates have contained study guides examining Bible passages in depth. The prophet Ezekiel, for example, wrestles with differences in the perceived judgments of God over the course of history in chapter twenty. Yet the call to resist idolatry and human sacrifice in all its forms is clear, as is our basic direction: “I the Lord am your God; walk in my statutes, and be careful to observe my ordinances, and hallow my Sabbaths that they may be a sign between me and you, that you may know that I the Lord am your God” (Ezekiel 20: 19-20).

I. Human Rights: Women’s Reproductive Health Care

A. The Human Rights of Women

Throughout human history, women’s health, the well-being of their families, including existing children and aging parents, and society’s need for their productive labor have required what today we call “family planning.” In ancient cultures, women used a variety of herbs that had contraceptive effects, as well as herbs and procedures known to bring on menses. While these practices were never as effective or safe on the individual level as the contraceptive drugs and procedures developed in modern times, they were effective enough to impact population levels.

Determining whether to have children, when and how often, may seem to be an especially personal matter. However, women’s control over their reproductive lives has also been a political issue in many cultures. In 1948, responding to the atrocities of WWII, the U.N. adopted The Universal Declaration on Human Rights, which states that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” (Preamble). Thirty years later, in 1979, the U.N. determined that on-going and extensive discrimination against women continued, “violating the principles of equality of rights and respect for human dignity” set forth in 1948. Therefore, it adopted the Convention on the Elimination of All Forms of Discrimination Against Women. Among the convention’s enumerated rights is the right of women “to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights” (Article 16.1.e).

B. In the United States

In the history of the U.S., women’s need to responsibly control reproductive capacities has been an essential part of the struggle for social and economic equality with men. For example, the ability of middle- and upper-income white women to reduce their birth rate significantly, from more than seven children in 1800 to 3.5 children by the end of that century, was part of their struggle to gain education and employment and to safeguard their health. Yet, this reduction
of white birth rates gave rise to both racist and nativist fears. As a result, in the last half of the 1800s, laws were passed forbidding the use, advertisement, or provision of contraception. Performing an abortion at any stage became a felony in many states. Thus, contraception and access to abortion became illegal. At the same time, however, state health departments forcibly sterilized poor women of color and immigrant women in an attempt to keep America “American,” as President Coolidge put it.6

Laws denying women access to contraception and abortion remained in effect throughout the first half of the 20th century. However, in the midst of women’s changing roles and organization for equality after WWII, and with the development of better contraceptives, public attitudes toward contraception and abortion began to change. Laws prohibiting the distribution of contraception were overturned in the 1960s. In 1966, the federal government began to subsidize voluntary family planning services for low-income families. In response to the horrendous conditions under which illegal abortions were performed, almost fourteen hundred clergy organized to refer women to physicians for safe, albeit illegal, abortions.7 In 1973, the U.S. Supreme Court overturned many federal and state restrictions on abortion, making it legal once more.

As we write this report in February 2012, a number of legislative proposals at both the federal and state levels would again restrict women’s access to contraception, abortion, and a broader range of reproductive health services for low-income families.

- Use of religious liberty arguments to exempt Roman Catholic institutions and other employers from providing, or allowing insurers to provide, contraceptive coverage or information to employees and students of all religious perspectives: This controversy arose in early 2012 in response to the federal mandate that contraception be included in all health insurance coverage. While the law exempts those institutions performing specifically religious functions, Roman Catholic bishops maintained that the law violated their religious beliefs by requiring Catholic institutions (such as universities, social service agencies, and health providers) to cooperate in acts they consider immoral, e.g., contraception. Subsequently, Senator Rubio introduced the Religious Freedom Restoration Act of 2012 (S2043) which would allow any employer, based on their personal religious beliefs, to refuse to provide contraceptive coverage or coverage for related education and counseling.

If such an absolute concept of religious freedom is upheld, millions of women would be denied insurance coverage of contraception through their employment. Women would be burdened by having to purchase contraception directly or by purchasing an individual insurance plan. Depending on the type and effectiveness of the method, birth control can range from $10 to $100 monthly. This would place a severe economic burden on many families and especially on low-wage women. Moreover, the religious freedom of women whose religious traditions or personal beliefs support the use of contraception as a moral and necessary healthcare choice (98 percent of American women) would be compromised. The concept of religious freedom articulated by the Roman Catholic bishops stands in stark contrast to that in the Reformed Tradition which preserves the “[right] of private judgment, in all matters that respect religion” as a right that must be “equal and common to all others” (F-3.0101b).8
Loss of access to reproductive health care due to the merger of public or private hospitals with Roman Catholic hospitals: Nationwide, larger and financially stronger Catholic hospitals are merging with smaller hospitals to achieve greater efficiencies. However, when such mergers occur, reproductive health services deemed immoral by the Roman Catholic Church become unavailable in that merged hospital and may become unavailable to an entire community if it has only one hospital. Such services include contraception (including emergency contraception for rape victims), abortion, sterilization, and in vitro fertilization. Doctors express concern about their freedom to treat women with various serious conditions such as an ectopic pregnancy or miscarriage. In a recent example, a Catholic nun was excommunicated for allowing the abortion of a five-week-old fetus. The woman’s doctors believed the abortion to be necessary due to the woman’s severely fragile health and the strong likelihood that she would not survive the pregnancy. She was too weak to be transported to a non-Catholic hospital.9, 10

- **Attempts to eliminate funding of reproductive health care services for low-income families**: Media attention has highlighted attempts to deny federal or state funding specifically to Planned Parenthood—half of whose patients are Medicaid patients and more than 90 percent of whose services are related to contraception, testing and treatment of sexually transmitted diseases, pregnancy tests and prenatal care, cancer screening and prevention, adoption referrals, and primary care. Federal law already prohibits the use of federal funds to finance the 3 percent of services related to abortion.

Less attention has fallen on the bills before the U.S. House of Representatives (such as H.R. 408 and 1099) that would simply eliminate Title X, which funds family planning clinics for low-income and uninsured people, providing such services as contraception, cancer screening, screening and treatment for sexually transmitted diseases, pregnancy tests and prenatal care, screening and treatment for sexually transmitted diseases, including HIV, pregnancy diagnosis and prenatal care. While most women use contraceptive pills over other forms of contraception, almost half of those using the pill use it also to regulate menstruation and to reduce pain. 11 The targeting of Title X and Planned Parenthood places in jeopardy a wide range of reproductive health care services for low-income women and men.

- **Personhood Initiatives**. Mississippi made the news in November 2011, when its citizens defeated a ballot initiative that would define a fertilized egg as a human person with legal rights. Voters expressed concern that the definition would not only criminalize abortion, but end the use of those contraceptives that block the fertilized egg from implanting in the lining of the uterus, such as the “morning-after” pill. It would endanger in vitro fertilization, which implants fertilized eggs in the womb (often unsuccessfully) and freezes, stores, and disposes of unused fertilized eggs. Physicians expressed concerns about its impact on their ability to treat difficult pregnancies, such as ectopic pregnancies. Sponsors of the initiative say that they intend to introduce the ballot measure in several other states in 2012: California, Florida, Montana, Ohio, Nevada, Oregon, and others. 12

- **Expanding the restrictions on the use of federal funds for abortions and physician education**. The Hyde amendment already restricts federal funds from paying for abortions. Several bills before the U.S. House of Representatives, such as H.R. 3, would expand this restriction to deny any federal funding to organizations and companies that provide or pay for
abortions with non-federal funds. For example, it would deny tax credits to companies that offer health plans that cover abortions. It would block anyone with insurance that covers abortions from receiving federal subsidies or medical cost tax deductions, even if the abortion portion is paid separately with personal funds. Women who use tax-free Medical Savings Accounts would have to pay taxes on the costs of abortions. The Foxx amendment to H.R. 1216 would ban federal funds from being used to train physicians in abortion care. At the state level, thirteen states have passed legislation banning both private and public health insurance plans that would participate in state health exchanges from covering abortion services unless necessary to save a woman’s life.

C. Beyond the United States

The difficulties in accessing reproductive health care encountered by women in the United States are magnified on the global stage for women of many other nations, particularly those women living in poverty. Universal access to reproductive health remains an elusive goal even though codified in the 2007 modification of the 2000 United Nations (UN) Millennium Development Goals (MDG).

Reproductive health was initially defined at the International Conference on Population and Development, held in Cairo in 1994. Its definition is fundamentally an expansion of the World Health Organization’s (WHO) definition of health:

Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.13

The current World Health Organization (WHO) goal for reproductive health is

… the attainment by all peoples of the highest possible level of sexual and reproductive health … [in] a world where all women’s and men’s rights to enjoy sexual and reproductive health are promoted and protected, and all women and men, including adolescents and those who are underserved or marginalized, have access to sexual and reproductive health information and services.14

There are five components to the WHO strategy to achieve global reproductive health. They include:15

- improving maternal care before, during, and after delivery, and newborn care;
- providing high-quality services for family planning, including infertility services;
- eliminating unsafe abortion;
- combating sexually transmitted infections, including HIV, reproductive tract infections, cervical cancer, and other sexual and reproductive health morbidities;
• promoting sexual health.

The WHO notes that addressing access to reproductive health “also contributes significantly to reducing poverty and hunger (MDG 1), promoting gender equality and empowerment of women (MDG 3) and combating HIV and other diseases (MDG 6)” all of which play a key role in access to reproductive health.16

Despite modest improvements in some narrow areas, achieving greater progress toward universal access to reproductive health remains a matter of urgency. In 2010 the report on global progress toward the MDG 5B made the following data based conclusions:17

• More women are receiving antenatal care;
• Most maternal deaths could have been avoided;
• Giving birth is especially risky in regions where most women deliver without skilled care;
• The proportion of women attended at least once during pregnancy by skilled health personnel is strongly correlated with socioeconomic status;
• Only one in three rural women in developing regions receive the recommended care during pregnancy;
• Progress has stalled in reducing the number of teenage pregnancies, and poverty and lack of education perpetuate high adolescent birth rates;
• Increasing access to contraception could reduce maternal death by 27 percent and reduce the number of unintended pregnancies from 75 million to 22 million;
• Almost no improvement has been made in increasing contraceptive prevalence among poor or uneducated women.

The Geneva Policy Dialogue Series on Reproductive Health, an international discussion forum on reproductive health, puts it succinctly:

Women with unmet need account for 82% of the 75 million unintended pregnancies that occur in the developing world. We know that every year more than half a million women die unnecessarily during childbirth or from pregnancy complications. The lives of these women and of their children could be saved by access to comprehensive reproductive health care, empowering women and their partners to plan sustainable families that will strengthen their communities and support the economic growth and security of their countries.18

There is a direct positive correlation between the density of health workers (physicians, nurses, and midwives) and maternal, child, and infant survival. The population density of health care professionals required to ensure skilled attendance at births (at a minimum desired level of coverage) is 2.5 per 1,000 people19 in order to reduce maternal and infant morbidity and
mortality. At least fifty-seven nations fall below this benchmark (compared with 11.93 physicians, nurses, and midwives per 1,000 people in the U.S.). The U.S. is, in part, responsible for this global health workforce shortage by its failure to pursue a policy of health workforce self-sufficiency, leading to active recruitment of migrant health workers (nurses, specifically) to sustain the U.S. health-care system. The U.S. has not implemented the *WHO Global Code of Practice on the International Recruitment of Health Personnel*. The Milbank Memorial Fund report *Health Worker Shortages and Global Justice* recommends that

The United States should use bilateral and multilateral agreements to embody its specific commitments to solving the global health worker shortage. The agreements could cover health workforce self-sufficiency for the United States and partner countries; financial and technical support for health workforce capacity building; managing and monitoring health worker migration between countries; … and facilitating remittance transfers and the diaspora in the United States to assist with the development of the health systems in migrant workers’ home countries.21

Faith-based organizations (FBOs) have played a significant and important role in providing maternal and neonatal health care globally, particularly in African countries. The 2007 USAID report *Faith-Based Models [FBM] for Improving Maternal and Newborn Health [MNH]* notes that:

In the developing world, however, faith-based health care facilities provide a significant percentage of health care services. In Sub-Saharan Africa, for example, faith-based facilities provide up to 70% of the region’s health care services … In other parts of the world, FBOs manage 10–30% of national health sectors. It is estimated that more than 90% of these FBO facility- and community-based programs offer MNH services.22

In a review of FBOs providing maternal and neonatal services in Africa, Widmer and colleagues concluded that the maternal-infant services provided by FBOs were similar to services offered by government agencies, but that the quality of the care was better and care recipient satisfaction higher.23 The UN Population Fund (UNFPA) noted the provision of intangible services:

In addition to providing care, support and medicines, faith-based organizations often also provide less tangible assistance, such as information, encouragement, compassion and hope. Too often the strengths (efficacy, commitment, knowledge, networks and influence) and experiences of FBOs are overlooked by development planners.24

There has been, is, and will continue to be a significant and critical role for all faith-based organizations in moving our own nation and the world toward universal access to reproductive health.

D. *How Our Faith Responds*

The PC(USA) has repeatedly affirmed the equality of women and men both within the church itself and within society. In 1971, the UPCUSA described the meaning of this equality:

The church must challenge and change anything which interferes with a person’s full development and wholeness. It must reject attempts to force persons into stereotypes which destroy personhood and deny human freedom and creativity. The church should not program lifestyles for its members. Each person living in responsible relationship with the whole community is free to decide what that style will be.25
When applied to women’s reproductive capacities, this principle of freedom from socially imposed stereotypes has led the church to recognize women’s rights to responsibly manage reproductive capabilities and society’s responsibility to enable women to do so.

1. **Contraception**: The 1960 PCUS assembly approved “the principle of voluntary family planning and responsible parenthood.” It affirmed that “the proper use of medically approved contraceptives may contribute to the spiritual, emotional, and economic welfare of the family” and urged “the repeal of laws prohibiting the availability of contraceptives and information about them.” The 1971 General Assembly of the PCUS commended the U.S. Congress for enacting the first comprehensive family planning legislation and called for “more vigorous, better coordinated and more adequately funded efforts to make available both the information and the means of birth control to all persons in the country.” In the following decades, the PC(USA) has continued to affirm the need for safe, effective, and available contraceptives for all people, both in the U.S. and globally. In light of rapid population growth, the church called for “encouragement and support, respect and honor” for “those who choose not to conceive children and those who do choose to conceive.” It has continued to call upon Congress to make comprehensive family planning programs available to all who need them.

2. **Abortion**: Since 1970, the church has spoken of the termination of a pregnancy at any stage as a serious moral matter requiring careful ethical consideration by a woman, her family, and her counselors. The church’s convictions have been grounded primarily in two principles:

   a. Women’s capacity to make difficult moral decisions: “Problem pregnancies are the result of, and influenced by, so many complicated and intractable circumstances that we have neither the wisdom nor the authority to address or decide each situation. … We affirm the ability and responsibility of women, guided by the Scriptures and the Holy Spirit, to make good moral choices in regard to problem pregnancies;” and

   b. Religious freedom for the diversity of views on when human life begins within our church and the broader Christian community: “Affirms the civil and religious freedom both of those who hold the position that abortion is never permissible and of those who hold the position that abortion is permissible under certain circumstances.” Clearly there is both agreement and disagreement in our use and interpretation of Scripture. There is also agreement and disagreement on the basic issue of abortion. … Therefore, the Presbyterian Church (U.S.A.) encourages an atmosphere of open debate and mutual respect for a variety of opinions concerning the issues related to problem pregnancies and abortion.”

3. **Legalization of and access to abortion services**: In order to protect both women’s moral agency and the religious freedom of those holding diverse views, the church has argued since 1970 against legal restrictions on abortion and urged the availability of “medically sound, easily available, and low-cost abortion services.” “No law or administrative decision should (1) limit access to abortions; (2) limit information and counseling concerning abortions; or (3) limit or prohibit public funding for necessary abortions for the socially and economically disadvantaged.” It has also expressed grave concern for the number of abortions in the U.S. and called for Presbyterians to work to reduce those numbers by reducing the conditions that lead
women to consider abortion, such as unintended pregnancies, lack of medically accurate and comprehensive sex education, lack of access to health care, poverty of women and children, and workplace policies unfriendly to parental responsibilities.

4. **Supporting alternatives to abortion**: The church has also called upon Presbyterians to support women in finding alternatives to abortion, including the establishment of resource centers for women in each presbytery, as well as supporting public policies that provide support for such alternatives.\(^{34}\)

E. **Our Call to Action**

Guided by our faith, we are called to respond to political changes that threaten the right of all women to the reproductive health care they need, including adequate access to the knowledge and services needed to choose the number and spacing of their pregnancies, in order to develop their God-given personhood, support and sustain their families, and contribute their gifts to society. What can we do?

1. Learn from the theological and moral reflections that undergird the church’s policies.
   - Read the church’s policies on problem pregnancies: *Do Justice, Love Mercy, Walk Humbly* (*Micah 6:8*) (PC(USA), 1992)\(^{35}\) *Statement on Post-Viability and Late Term Abortions* (PC(USA))

2. Learn how legislation in your state is impacting women’s reproductive health by searching websites such as:
   - The website of your own state legislature,
   - Religious Coalition for Reproductive Choice at [www.rcrc.org](http://www.rcrc.org),

3. Support legislation that protects women’s access to reproductive health care, respects religious diversity, and supports alternatives to abortion for women who so choose.
   - Locally:
     - Support funding of family planning clinics that provide comprehensive reproductive health care;
     - Find out if your hospitals offer rape survivors emergency contraception;
     - Find out if sex education curricula in public schools are comprehensive and medically accurate;
• Support legislation requiring insurance companies to include contraceptive coverage in prescription drug coverage;

• Support legislation requiring insurance companies to cover comprehensive family planning services;

• Develop a comprehensive women’s resource center in your presbytery;

• Find out how proposed legislation will impact women in your area, especially low-income women.

Internationally, urge Congress to:

• give higher priority to global health issues and impacts in all aspects of U.S. diplomacy;

• implement the Global Code of Practice on the International Recruitment of Health Personnel;

• Strive for health workforce self-sufficiency within the U.S. and contribute to financial and technical support for global health workforce capacity building for poor countries;

• Urge Congress to ratify the Convention on the Elimination of All Forms of Discrimination against Women.

II. Workers’ Rights Are Human Rights

A. The Human Rights of Workers

Grounded in the biblical affirmation that all human beings are created in the image of God, the PC(USA), with its predecessors, believes that all humans have a God-given dignity, an intrinsic value, which creates an entitlement, a right, to those conditions of life necessary to sustain this dignity and enable effective participation in the decisions that impact individual and communal life. Therefore, in addition to civil and political rights, the church also champions economic rights. These include the right to adequate food, shelter, and health care. In modern countries, these rights are typically dependent on the right to employment at wages that adequately sustain families, the right to safe working conditions, the right to recuperative rest and leisure, the right to security in old age, and the right to organize and participate in collective bargaining. The movement to establish the rights of workers is global and long-standing. In 1948, the United Nations adopted The Universal Declaration on Human Rights, which affirmed these rights as integral aspects of the human right to exist and live in dignity. The Declaration was approved by the 161st General Assembly of the Presbyterian Church in the USA in 1949.

Two ecumenical statements, issued a century apart, attest to the persistent response of Christian churches in the U.S. to economic practices that deny these rights: The 1908 Social Creed of the Federal Council of Churches and A Social Creed for the Twenty-first

B. What Is Happening in the United States?

Since industrialization emerged in the U.S., balancing the human rights of workers with the property rights of owners has been a contentious undertaking. Nineteenth century courts routinely ruled against workers’ rights as they upheld the property rights of private owners. The courts assumed that all individuals, whether worker or owner, were equal in freedom and opportunity. For example, in the 1830s a court found twenty-five tailors guilty of “conspiracy to injure trade” for forming a trade union—so unnecessary in a land where each one is free, according to the judge.\(^36\) A Massachusetts judge found that an injured worker had no right to compensation because by taking the job the worker had willingly agreed to the risks.\(^37\) The right of business to pay workers in company script instead of American currency was upheld repeatedly. Courts argued that a company is free to pay in script and a worker is equally free to accept or reject the job. Child labor was upheld as a private and free family decision. Not surprisingly, workers and business owners clashed throughout the 19th century, often violently, over the number of work hours in the day, the number of working days in a week, wages, and safety conditions.

By the latter half of the 20th century, the working conditions that many of us take for granted—eight-hour days, five-day weeks, health and safety protections, child labor restrictions, overtime pay, workman’s compensation, health benefits, pensions, and the right to organize—were put into place by law or by negotiation. The unionization of about one-third of U.S. workers helped to set the standard of good jobs for all workers in a highly productive U.S. economy. Jobs are good:

- when they enable a family to care for its members; that is, to educate the young, to care for the sick and the elderly, to enjoy time together;
- when they allow time to be active at church, school, and in one’s community;
- when they offer an opportunity to contribute skills, intelligence, and creativity to the company and the community;
- when they teach skills, enhance capabilities, and fairly reward committed work.

Of course, many American workers never enjoyed these good jobs. There were never enough to go around. Opportunity was never equal for the poor, women, immigrants, and those stigmatized by race and ethnicity. For these workers, especially, business practices that violated labor laws continued to devastate families and their communities. For example, a group of restaurants in New York was recently found to have systematically erased employees’ time cards, paid less than minimum wage, paid no overtime, discriminated against Asian and Latino
workers, and deducted the cost from waiters’ pay if customers left without paying. In America too many workers are still fired for labor organizing activities or for joining unions. Too many workers still experience being locked into their work places with no way to exit. Even in America, too many workers are still subject to extreme conditions of intimidation, exploitation, and control over their lives and mobility that constitute modern conditions of slavery.

Today’s recession has been especially devastating to these low-wage workers. For several decades, they have seen their working conditions, wages, and benefits legally eroded as the result of several larger social and judicial trends:

- the growth of hostility to government regulations,
- the decline in government oversight of the workplace,
- the shifting of responsibility for workers from employers to subcontractors,
- the redefining of employees as contract workers or as self-employed in order to exempt them from various labor laws, and
- systematic business and some state government attacks on unions and the rolling back of long-established worker benefits.

With the deep recession of 2007—still very real for 25 million unemployed, under-employed, and discouraged workers—an extraordinarily significant phenomenon has occurred: the dramatic reduction in our expectations of what a worker deserves from working. In an historic reversal, investors’ economic risk and companies’ labor costs have been shifted disproportionately to the backs of the great majority of American workers and their families:

- wages decline,
- jobs disappear,
- working hours become “flexible,” and undependable,
- defined benefit pensions are eliminated,
- health care coverage is reduced, ended, or the cost is shifted to employees,
- no worker is indispensable, no job is secure, and
- workers are being stripped of their right to organize and negotiate.

The loss of that once proud standard called good jobs, now said to be too costly for our economy to be competitive in the world market, is contributing to an almost unprecedented level of economic inequality in our country. Today the top 400 households in the U.S. own as much as
the bottom 150 million of us. The widespread belief that in the U.S. our children can aspire to good jobs that support stable families is profoundly shaken. The struggle to preserve and protect the dignity of all workers has intensified.

C. Labor Rights from an International Perspective

Economic globalization has created worldwide supply chains that depend heavily on the exploitation of labor for their viability. Because most production costs, including the acquisition of physical materials and the expenses of distribution, are largely inelastic, the only way that firms can create competitive advantage is to lower manufacturing costs. This is most often accomplished by reducing the cost of labor.

For workers, this translates into stagnant wages, long hours, obligatory overtime, loss of benefits, high-intensity procedures, and stress that increase the likelihood of accidents and suicides. An investigation of ten global electronics suppliers in China (e.g., Dell, IBM, Microsoft, Apple, Hewlett-Packard, Nokia, and others) documented widespread practices of forced overtime, high-intensity work processes, worker discrimination, absence of safety precautions, and other violations of China’s own labor laws. To appreciate the strength of the incentives in play, consider that the production costs for the iPhone4, which sells for $600, are composed of materials ($187.51); operating expenses, e.g., plant, utilities, maintenance, security ($45.95); assembly labor ($6.54); and profit ($360). In other words, workers receive just 1 percent of what the consumer pays for the iPhone4 while corporate owners capture 60 percent apart from recovering production costs.

As capital has become more mobile in the quest for favorable profit-making conditions, employment opportunities appear and disappear with increasing frequency. Consequently workers have often been forced to follow capital in search of jobs. For example, as NAFTA vastly undercut Mexican agriculture by enabling cheap American and Canadian food imports, unemployed Mexican farmers sought to enter the United States in the quest for work. Likewise, as many as 500,000 Chinese have immigrated to Africa, lured by jobs in its oil, copper, uranium, wood, and other natural resource industries. The International Organization for Migration estimates total international migration rose 40 percent between 1990 and 2010.

The intense downward pressures on wages worldwide create financial incentives for the abuse of workers’ rights. These take several different forms.

• First, organizations that defend workers’ rights, such as trade unions, are increasingly the targets of bias and intimidation. The International Labor Organization (ILO) notes that anti-union discrimination is their largest area of complaints received. Charges of employer interference in union activities, violations of collective bargaining agreements, and government interference in union affairs have all increased since 2000.

• Second, a de facto war on trade unionists has been declared in various countries such as Colombia, where 4,000 trade unionists have been murdered since 1986. In other countries,
notably Bangladesh, China, Indonesia, Mexico, Philippines, and Russia, union organizers are frequent victims of harassment, intimidation, and arbitrary detention.\textsuperscript{49}

- Third, it also creates a global market for forced labor. According to the ILO, in 2005 an estimated 12.3 million adults and children around the world were the victims of forced labor, bonded labor, and coerced prostitution (i.e., slavery). Forced labor constitutes a lucrative international business that generates an estimated $32 billion annually.\textsuperscript{50, 51} For example, workers from Asia and Africa who migrate to the Middle East in search of higher wages have been subjected to involuntary servitude, nonpayment of wages, threats, physical abuse, deprivation of food, and restrictions on movement such as confiscation of passports.\textsuperscript{52} In Vietnam, the government partners with private firms to use forced labor by prisoners in national drug detention centers to produce export goods such as cashews, garments, toys, and soccer balls. During 2010, some 40,000 individuals were picked up in “street sweeps” and committed to these centers by administrative decision, which operates outside the criminal justice system with no right to hearing or trial by those accused.\textsuperscript{53} This practice is not unlike the use of prisoner labor in privately run U.S. prisons to carry out low-cost information processing, electronic component assembly, garment manufacturing, telemarketing, and travel reservations.\textsuperscript{54}

- Fourth, child labor constitutes another cost-saving violation to established labor rights. For example, 10 to 15 percent of the global workforce in the tourism industry is estimated to be less than eighteen years old. Child labor is extensive in the cocoa industry of West Africa. A particularly onerous illustration comes from Uzbekistan, where government authorities have annually closed schools for up to eight weeks and compelled school children—some as young as 10 years—to participate in the country’s cotton harvest. Many worked ten-hour days, lived in tents, and received daily “wages” ranging from $1.50 to $3.60.\textsuperscript{55}

In sum, worldwide economic competition, engendered by globalization, creates relentless downward pressure on workers’ wages, whether in the United States or abroad. In their efforts to lower wages, countries and firms often engage in illegal or unethical labor practices and seek to dismember organizations that defend workers’ rights. The net result provides consumers with cheaper products, even though workers may be less able to afford them.

D. \textit{How Our Faith Responds} …

The PC(USA) responds to these circumstances with this affirmation: Our faith, rooted in the Lordship of Jesus Christ, has something to say to the 25 million underemployed, unemployed, and discouraged workers in the U.S.; to the 46 million Americans relying on food stamps; to the one-in-five U.S. children who are food insecure; to the foreclosed; to the 25 percent of U.S. workers earning poverty-level wages; to the 50 million without health insurance; and to those whose decisions shape our economy. Our faith in one sovereign God generates a message of hope for all the workers of the world:

1. “Work … is an integral part of the believer’s response to God’s call.” It provides “… not only the means for subsistence, but also a way to honor human dignity and participate in community life.”\textsuperscript{56} We are created to work, paid or unpaid, as a means of pleasing God, of
developing God-given capabilities, and of contributing to the common good. Therefore, unemployment, underemployment, and work that do not protect human dignity and sustain families seriously disrupt God’s plan for human community. Calvin wrote:

We know that people were created for the express purpose of being employed in labor of various kinds, and that no sacrifice is more pleasing to God, than when everyone applies diligently to one’s own calling, and endeavors to live in such a manner as to contribute to the general advantage.  

2. Our church states, “… servanthood means that economic activity needs to be viewed as serving the needs of the world.” Sin tempts us to value things over people, measuring our worth by the quantity of goods we acquire and consume, rather than by the quality of our relationships with God and with others. We are created to share the products and profits of our work so that all may benefit. Employment must sustain people with dignity and security. The market economy and public policies must ensure that there is sufficient employment for all who need it. Therefore, gross economic inequality is a serious violation of God’s intent for God’s children and the earth’s bounty. Calvin, commenting on Corinthians, writes:

he [Paul] orders every one to bring what he has to the common heap, and not to keep back gifts of God in the way of enjoying every one his own, apart from others, but aim unitedly at the edification of all in common.

3. In addition, the PC(USA) teaches, “All conditions of paid employment, including compensation and working conditions should sustain and nurture the dignity of individuals, the well-being of households and families, the social cohesiveness of communities, and the integrity of the global environment.” The ultimate goal of an economy is to serve people as we live out our calling to love God and neighbor. Every human economy, throughout the world, is subject to the sovereignty of God.

E. Our Call to Action …

Guided by faith, we are called by God and our church to respond to cultural and economic changes that threaten human dignity, the wellbeing of families, the just character of our communities, and the health of the earth. What can we do?

1. Learn how our faith teaches us to evaluate our economic lives by reading and networking.

- Read PC(USA) policies, such as, “God’s Work in Our Hands,” “Hope for a Global Future,” “The Social Creed for the 21st Century,” and more;
- Join ACSWP’s Salt and Light listserv at http://gamc.pcusa.org/ministries/acswp/getting-involved;
2. Be an informed consumer.
   - When traveling, stay only at hotels that have signed the industry’s Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism. This is an industry-driven initiative for responsible tourism. For example, Hilton Hotels have so far not signed this code.
   - Consult periodically the Department of Labor’s List of Goods Produced by Child Labor or Forced Labor to guide your consumer purchases.
   - Consider faith-based investing or socially responsible investing; for example, Oikocredit, a church-based organization making loans globally to economic development projects benefiting the poorest people in their societies.
   - Buy chocolate, coffee, and tea from Equal Exchange, a fair-trade partner of the PC(USA) Hunger Program, and participate in the Campaign for Fair Food.

3. Act in your congregation and community.
   - Join those supporting and advocating for the poor;
   - Join those aiding the unemployed;
   - Review your congregation’s beliefs and practices about work and compensation;
   - Learn about worker justice issues in your community;
   - Look into Interfaith Worker Justice at http://www.iwj.org/;
   - Use your consumer power to urge changes in businesses you and your congregation use;
   - Tell your government representatives what your faith demands of our economy; and
   - Become passionate about one issue and work for values-driven change.

[NOTE: The Advocacy Committee for Racial Ethnic Concerns (another “standing” committee of the assembly) is requesting the 220th General Assembly (2012) to call the church to renew its commitment to a living wage for all people and to reaffirm its support for collective bargaining rights regarding wages, benefits and employment. Such advocacy demonstrates continued efforts within the church to respond faithfully to economic changes that threaten human dignity and the wellbeing of families.]
III. Civil Liberties and National Security in the United States Since 9/11/01: Concerns for Consideration

A. Civil Liberties as Human Rights

Domestic and foreign surveillance by the U.S. government have grown enormously since the destruction of the World Trade Center and damage to the Pentagon on September 11, 2001. Since the threat of terror moved across borders, law enforcement was seen to need more and better coordination between domestic and foreign information gathering, blurring traditional lines between the CIA and external intelligence operations and the domestic sphere of the FBI. Concern for national security increased relative to concern for civil liberties, which are based in the first ten amendments to the U.S. Constitution, the Bill of Rights, ratified on December 15, 1791. Additional threats to civil liberty, privacy, and democratic practice relate to advances in surveillance, electronic data gathering, and automated war technologies. Both the overall security-liberty balance and a range of recent threats to civil and religious liberty prompt this brief review and statement of concerns.

Any government must protect its citizens as part of its service to the common good. Yet the total elimination of risk is impossible, especially if political, cultural, and religious factors are included in threat assessment. In a summary of the ethical issues facing governments in the use of counterterrorism measures, a European expert affirms the basic truth that “transnational terrorism is substantively a battle of values, which cannot ultimately be won by force.” Put positively, we believe it is an aspect of the church’s witness to hold civil society to the highest values, in keeping with the prophetic dimensions of Christian obedience.

In describing the U.S. political and civil liberties milieu, this report offers data on the growth of the “security-surveillance complex” and summarizes reasons for concern based on the views of several professors of law active in human rights and government accountability work. The report then briefly describes the church’s approach to civil liberties and closes with thoughts for further consideration. The Presbyterian Church (U.S.A.) has very strong policies on religious freedom, civil liberty, and against torture, though its strongest statement on privacy and the restraint of government and private information-gathering dates back to 1973.

B. What Is Happening in the United States?

Perhaps the clearest recent challenge to civil liberties came in the National Defense Authorization Act signed by President Obama on December 31, 2011, which gives the president the power to order U.S. citizens, as well as alleged international opponents, held in indefinite detention. This effectively suspends “due process” for individuals defined as threats to national security, without reference to a traditional battlefield or a specific war. As seen in the targeted killing of U.S. citizen, Anwar Al-Awlaki in September 2011, after the president had placed him on a “kill or capture” list, Executive Branch power has continued to grow following its expansion under President George W. Bush. The president currently has the discretion to direct whether an alleged terrorist may be subject to civil courts or to military tribunals. Such tribunals have less strict and public standards of due process that have allowed the use of evidence gained
from torture, although President Obama reaffirmed a historic ban on torture in the United States.\textsuperscript{67}

1. \textit{The Growth of Surveillance and Counter-terrorism Activities}

In July 2010, \textit{The Washington Post} published the results of a two-year investigative journalism project on secret government agencies, including those that have been created since 9/11. Here are some of the findings excerpted from their report:

- Some 1,271 government organizations and 1,931 private companies work on programs related to counterterrorism, homeland security, and intelligence in about 10,000 locations across the United States.

- An estimated 854,000 people, nearly 1.5 times as many people as live in Washington, D.C., hold top-secret security clearances.

- In Washington and the surrounding area, thirty-three building complexes for top-secret intelligence work are under construction or have been built since September 2001. Together they occupy the equivalent of almost three Pentagons or twenty-two U.S. Capitol buildings—about 17 million square feet of space.

- Many security and intelligence agencies do the same work, creating redundancy and waste. For example, fifty-one federal organizations and military commands, operating in fifteen U.S. cities, track the flow of money to and from terrorist networks.

- The U.S. intelligence budget is vast, publicly announced last year as $75 billion, 2-1/2 times the size it was on September 10, 2001. But the figure doesn’t include many military activities or domestic counterterrorism programs.

- Within the Defense Department alone, eighteen commands and agencies conduct information operations, which aspire to manage foreign audiences’ perceptions of U.S. policy and military activities overseas.

- And all the major intelligence agencies and at least two major military commands claim a major role in cyber-warfare, the newest and least-defined frontier.

- DHS (Department of Homeland Security), in existence for only seven years, already has its own Special Access Programs, its own research arm, its own command center, its own fleet of armored cars, and its own 230,000-person workforce, the third-largest after the departments of Defense and Veterans Affairs. [Special Access Programs are top secret task groups, highly insulated and administratively camouflaged to blend in with other programs—ed].\textsuperscript{68}

The legal trigger for this wave of development was the USA Patriot Act, formally the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct
Terrorism Act of 2001. Though more than 300 pages long—incorporating some previously written material—Congress passed the bill seven weeks after 9/11. In the words of legal affairs analyst, Adam Liptak, “it quickly became a sort of shorthand for government abuse and overreaching.”

According to Human Rights Law professor, William Quigley, On May 27, 2011, President Obama, over widespread bipartisan objections, approved a Congressional four-year extension of controversial parts of the Patriot Act that were set to expire. In March of 2010, (The President) signed a similar extension of the Patriot Act for one year. These provisions allow the government, with permission from a special secret court, to seize records without the owner’s knowledge, conduct secret surveillance of suspicious people who have no known ties to terrorist groups and to obtain secret roving wiretaps on people.

The “material support” provision refers to assistance given to terrorist organizations that may be taken to include communications, “expert advice and assistance,” with such organizations, broadly defined. Under expansive definitions, some reporting on organizations may be restricted and “Friend of Court” briefs by third parties prevented. The Obama Administration Justice Department was challenged on this, but upheld 5-4 by the Supreme Court in Holder v. Humanitarian Law Project.

2. The Demands of Secrecy and the Role of Whistleblowers, the Press, and Concerned Citizens

While all nations have some kind of intelligence service, the United States preserves its democratic character by constitutional checks and balances, including the Bill of Rights, and public accountability, including the free press. The reach of national security can thus be seen in the obstacles, good and bad, placed in front of the disclosure of government “secrets.” For Presbyterians concerned with the morality and legality of government actions, what follows are examples and important developments for consideration.

The role of Wikileaks, a self-styled cyber-accountability group, is well-known for its release of thousands of classified documents from U.S. embassies—including confirmation of official corruption in Tunisia, Libya, and other countries that aided the “Arab Spring.” Thousands of field reports from Afghanistan described lack of progress in that war and many civilian deaths not reported elsewhere, arguably making for a more truthful public debate. Defenders of government secrecy point to the diplomatic damage done by disclosing confidential reports and the danger to the trust and security among those who cooperate with U.S. officials, while critics point out that few specific negative effects have been presented, even for later documents not “scrubbed” with the assistance of The New York Times and Guardian (Britain) newspapers. The treatment of Corporal Bradley Manning, accused of being the source of the documents, has included prolonged forced nudity and solitary confinement in a remote prison, raising questions about his own due process.

The Washington Post study cited earlier claimed that the culture of secrecy was self-perpetuating and hard to monitor. Another test case for the treatment of whistleblowers occurred in a case carried over from the Bush to the Obama Administration, that of senior National Security Agency (and former military officer) Thomas Drake. Prosecuted under the Espionage Act, Drake was accused of being a primary source for reporter Sioban Gorman of the Baltimore
Sun. Gorman “wrote a prize-winning series of articles for the Sun about financial waste, bureaucratic dysfunction, and dubious legal practices in N.S.A. counterterrorism programs.” Jane Mayer provides a lengthy analysis of the case, which William Quigley summarizes:

They charged a National Security Agency adviser with ten felonies under the Espionage Act for telling the press that government eavesdroppers were wasting hundreds of millions of dollars on misguided and failed projects. After their case collapsed, the government, which was chastised by the federal judge as engaging in unconscionable conduct, allowed him to plead to a misdemeanor and walk.

Other reasonably well-known censorship cases include the memoir by former CIA agents; Ali Soufan’s The Black Banners, and Glenn Carle’s The Interrogator.

Any particular case can be debated, of course; concerned citizens have to assess broader patterns. In the Drake case and those two books, long-time U.S. agents involved in the “war on terror” claim that they crossed moral lines that became hard for them to justify in terms of the values and purposes of their country. To make sense of testimonies like theirs, Mark Danner speaks of the United States after 9/11 entering a “state of exception,” when traditional moral restraints were and remain suspended.

In assessing the policies and practices of the United States, the once covert use of drone aircraft in Pakistan provides an example of the limits of secrecy. Admiral Denis Blair, former director of National Intelligence for the Obama Administration, publicly argued that this program should be run by the military rather than the CIA, as “Covert action that goes on for years doesn’t generally stay covert.” The use of drones in Pakistan as well as Afghanistan raised two sets of questions for U.S. citizens, one related to the morality of targeting individuals outside an established battlefield setting (including rules on evidence and collateral damage), and one related to foreign relations, specifically the deterioration of relations with Pakistan. Since drones are used for surveillance now along U.S. borders and were used extensively in supporting the Libyan insurgency, more public debate may be needed on operations that may be secret from the American people, but not necessarily secret from people in other nations.

The range of government data collection that concerned the 217th General Assembly (2006) related to the disclosure of large scale warrantless wiretapping that appeared to violate provisions of the Foreign Intelligence Surveillance Act (FISA) of 1978. That act established a secret intelligence court and the use of “national security letters.” Other information disclosed the use of electronic “data mining” among all the international e-mail and phone transmissions harvested by the government’s listening posts. Subsequent legislation has updated FISA with some restrictions on the roles of internet service providers subject to government access and other forms of warrantless information gathering now deemed not to violate the Fourth Amendment against unreasonable search and seizure.

Technological advances in data-gathering can appear benign or worrisome, depending partly on how aware citizens are of the limits to their privacy. Recent concern has focused on the amount of personal information disclosed for commercial purposes by such companies as Facebook and Google, whose value is partly constituted by once-private data provided by users.
that is linked to advertising. Most users of those services willingly trade privacy for connection and convenience. Another source of data are GPS applications in mobile phones; such devices can also be put on vehicles without a warrant for ease in tracking suspects. Potentially more worrisome are developments lifted up by William Quigley, drawing on studies by the American Civil Liberties Union (ACLU) and Center for Constitutional Rights:

- Wiretaps for oral, electronic or wire communications, approved by federal and state courts, are at an all-time high. Wiretaps in year 2010 were up 34 percent from 2009, according to the Administrative Office of the U.S. Courts.

- The Electronic Frontier Foundation documented thousands of violations of the law by FBI intelligence operations from 2001 to 2008 and estimate that there are over 4000 such violations each year. President Obama issued an executive order to strengthen the Intelligence Oversight Board, an agency that is supposed to make sure the FBI, the CIA, and other spy agencies are following the law.

- Western companies sell email surveillance software to repressive regimes in China, Libya and Syria to use against protestors and human rights activists. Surveillance cameras monitor residents in high-crime areas, street corners, and other governmental buildings. Police department computers ask for and receive daily lists from utility companies with addresses and names of every home address in their area. Computers in police cars scan every license plate of every car they drive by.

- There are at least 72 fusion centers across the U.S., which collect local domestic police information and merge it into multijurisdictional intelligence centers, according to recent report by the ACLU. These centers share information from federal, state and local law enforcement and some private companies to secretly spy on Americans.87

C. How Our Faith Responds

In the 2006 “Resolution on Human Rights in Time of Terrorism and Torture,” the General Assembly called for

the humane treatment with due process for all combatants held by U.S. forces anywhere in the world, and support[ed] the provisions of the Bill of Rights and the principles of judicial review and congressional oversight over Executive Branch operations, now including counterterrorism, Homeland Security, and domestic surveillance programs, both classified and publicly acknowledged.

That resolution also called for “the protection of the right of privacy for U.S. citizens against intrusion by government or private entities.” This update follows most clearly upon that 2006 statement.

Traditionally, the focus of Presbyterian and other religious engagement with civil liberties is the First Amendment’s first phrase, the “Establishment clause,” which guides the separation of church and state. Yet the founders wisely saw the freedoms of worship, speech and press, assembly, and “to petition for redress of grievances,” connected with each other, and combined them all in the First Amendment. Particular Christian concerns for freedom, justice, and peace are addressed in various later amendments (now totaling twenty-seven), but the First Amendment itself ensures the capacity of individuals and groups to address any of those and other topics. A notable example of the Presbyterian church’s use of its voice on behalf of civil liberties in general was the 1953 Letter to Presbyterians of the General Assembly Council that challenged McCarthyism and its distortion of national security fears.88
The General Assembly’s most extensive treatment of religious and civil liberties, *God Alone Is Lord of the Conscience* (1988), is named for the key Presbyterian belief in God’s direct address to the individual conscience. That thorough statement considered civil disobedience, aid to religious schools, prayer in public schools, Sabbath observance, tax exemption, and other questions, including government intervention in religious affairs. This last matter has direct bearing in the current climate.

In 1984 and possibly before, the U.S. government sent covert agents into several congregations of the Presbyterian and American Lutheran churches in order to investigate the “Sanctuary Movement,” which protected persons fleeing from government-sponsored violence in El Salvador, Guatemala, Honduras, and other countries. In January 1986, the Presbyterian Church (U.S.A.), the American Lutheran Church, and four of their congregations, filed suit alleging that the undercover operation (later acknowledged) violated the free exercise of religion. Freedom of the pulpit and of parishioners to speak truth was clearly connected to freedom of speech.

That lawsuit, described in the booklet, “Why Churches Fight Government Infiltration,” bears some analogy to efforts by Muslim congregations in the U.S. to address more recent government surveillance and use of informers, intended to track down terrorism. Though the issues are different, the First Amendment principle of noninterference and the need for warrants for entry, search, and seizure stipulated by the Fourth Amendment, have clear bearing. Government surveillance and pressure under an expanded understanding of the “material aid” statute has severely limited Muslim charities that give funds overseas for any purpose, and thus jeopardizes any religious giving across borders that the government may wish to discourage. The Associated Press uncovered a specific program of the New York City Police Department, done in cooperation with the CIA, that involved “mosque crawlers” who investigated worship services based on the ethnic profile and reputation of the mosques.

In the current context, all PC(USA) funds sent overseas must comply with the Treasury Department’s Office of Foreign Asset Control, which means assuring that each grant or disbursement to recipient or intermediary does not go to someone on a published list of proscribed persons and entities (that listing is available on line: [www.treasury.gov/ofac/downloads/t11sdn.pdf](http://www.treasury.gov/ofac/downloads/t11sdn.pdf)). Other watch-lists and security reviews have made it more difficult for nationals from many countries to receive visas, reducing numbers of international students, tourists, mission partners, and participants in church gatherings such as the Uniting General Assembly of the World Communion of Reformed Churches (June 2010, Grand Rapids, Michigan).

To recognize the context of fear of Muslim and other terrorism is not to enter into a full analysis of its scope and of the status of allegations and arrests made over the years since 9/11. Nor is this report to address specifically the use of torture, which the assembly strongly condemned in 2006 when it also called for the closing of extraterritorial prisons (such as Guantanamo). And neither is this to deny the need for accountable government investigation and targeted surveillance capacities. Yet the “mission creep” of police power, in a country already characterized by the highest level of incarceration in the world, raises concern for overreaction and the weakening of legal safeguards already in debate. Before 9/11, church
concern about torture (the Eighth Amendment’s “cruel and unusual punishment”) had to with the U.S. criminal justice system, including the effects of prolonged solitary confinement on the mental health of inmates.93

D. For Further Consideration and Reflection

This update is not comprehensive, but has tried to point to some of the major trends in post 9/11 domestic civil liberties. Most church members’ conscious experience of increased surveillance may be at the airports, especially if travelling overseas, but the scope of state security operation is far more pervasive and linked to everyday police operations. Beyond personal concern for privacy, however, is the church’s historic concern for the rights to dissent, to protest, to exercise one’s conscience in freedom, and to have a say and a vote in governance structures. Not all dissenters are prophets, but some are. The church itself, as a corporate body, has also valued its corporate social witness as part of its responsibility in society. How much may the church’s concern for reconciliation and peace, for example, attract government surveillance and endanger international partners? How much do church members in prison ministry, for example, encounter a more militarized environment?

In these areas, there are observers who are quite worried that the “war on terror” has a momentum of its own, based in enormous investment without oversight. Fear can also feed upon itself, magnify distrust, and narrow our willingness to act on Gospel imperatives of love and justice, even with strangers. And while Presbyterians value the role of government for both protection and provision for the common welfare, limits are also needed.

What this review has revealed, however, is that technical advances in surveillance, commercial data collection, and new forms of warfare raise major new questions about civil liberties. The latest substantial treatment of privacy itself goes back to 1973, when the 185th General Assembly adopted a strong statement that called for “public and private agencies to provide for maximum protection of privacy” and recommended guidelines for self-regulation for such agencies and the church itself in dealing with bank credit, insurance, welfare, law enforcement, education, personnel, counseling, and medical data. That assembly addressed domestic surveillance, whistleblowing, and protective regulation dealing with secrecy and technology in that pre-Watergate, pre-cyberspace time:

Regarding domestic security, we favor action to: (a) prohibit any branch of the Department of Defense from engaging in surveillance of, or data collection on, domestic political activity, and (b) require the destruction of all such political surveillance files accumulated by the military.

Regarding confidential relationships, we urge: (a) enactment of uniform state legislation and consistent federal legislation to establish guidelines that protect legitimate news professionals from being compelled to testify about their sources, (b) development of legal guidelines for limiting the use on privacy grounds of subpoenas and immunity provisions in the conduct of grand juries, and (c) review of current statutes.

We recommend the creation of an independent regulatory body with carefully defined authority to review, oversee, and approve the collection and dissemination of personal data by governmental bodies… and by entities that collect and disseminate personal data for public and commercial purposes. Despite the fears and deficiencies which seem inherent in regulatory administrative bodies, we feel that such a regulatory agency offers the hope of flexibility and expertise to meet the threat of dehumanization in an area of rapidly developing technology.
Then, after emphasizing the inability of all agencies to regulate themselves, the Assembly called “for the formation of a National Privacy Service Office…in the manner of an ombudsman…” (Minutes, UPCUSA, 1973, Part I, pp. 535–42).

For Reflection

The area of civil liberties is quite wide, but its core remains the freedom of conscience that for us is linked to the presence of the Holy Spirit in our lives. The threats that all developed societies face are continuously reshaped by new technologies, and then protective technologies themselves need oversight. Freedom and privacy are closely related, and the data collection of government and digital age corporations are also closely related. In this environment shaped by flows of information, advertising, and virtually inescapable monitoring, not only our personal liberties but the independence of the Church is potentially at risk. In such a setting, new legal protections may be necessary and new questions opened about intelligence technology in our society.

To provide historical perspective, we include the Bill of Rights in its original language as an appendix, and close with two quotes from wise judges; from Learned Hand, cited by David Cole:

Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can even do much to help it. While it lies there it needs no constitution, no law, no court to save it.94

And along with liberty is moral connection, addressed as “Ethics” by Earl Warren:

In civilized life, law floats in a sea of ethics. Each is indispensible to civilization. Without law, we should be at the mercy of the least scrupulous; without ethics, law could not exist… Society would come to grief without Ethics, which is unenforceable to the courts, and cannot be made part of the Law

…Not only does Law in civilized society presuppose ethical commitment; it presupposes the existence of the abroad area of human condition controlled only by ethical norms and not subject to Law at all. There is thus a Law beyond the Law, as binding on those of us who cherish our institutions as the Law itself, although there is no human power to enforce it.95

If ethics are a sea, it is one of the church’s tasks to help that sea level rise. Paul’s efforts to receive due process under Roman law in the Book of Acts (such as 23: 26–35) do some of that extending ethical awareness. Similarly, when people fear speaking out and claiming their rights, may the Holy Spirit give us courage to witness to Christ and unmask idolatries, as A Brief Statement of Faith affirms. Then we may hear the echo of Peter’s words from earlier in Acts, “we must obey God rather than human beings!”

E. Our Call to Action

Guided by our faith, we are called to respond to political changes that threaten the freedom of religious practice and the civil liberties of God’s children, both abroad and in the United States. What can we do?
1. The General Assembly may want to request several experts in civil liberties and cyber-intelligence to update the 1973 study, in light of new technological advances, focusing particularly on matters related to the First Amendment.

2. Education for individuals and congregations:
   
   a. Read “God Alone Is Lord of the Conscience” (http://www.pcusa.org/resource/god-alone-lord-conscience/), adopted by the 200th General Assembly (1988), referring to the Book of Order, F-3.0101. and The Book of Confessions, 6.109. In addition to containing excellent guidelines for all areas of church-state interaction (such as public school and public religious display questions), this policy statement explains why the Presbyterian Church (U.S.A.) has had such a significant history in the progress of religious liberty. Additional information on church/state issues and “government intervention in religious affairs” can be obtained from the Advisory Committee on Social Witness Policy (ACSWP).

   b. Read the “Friend of Court” (amicus curiae) briefs filed in notable legal cases when recommended by the Advisory Committee on Litigation and authorized by the Stated Clerk of the General Assembly. Information can be obtained from the Office of the General Assembly: http://oga.pcusa.org/section/departments/constitutional-services/amicus-curiae-briefs/.

   c. Conduct an adult education class using a past Human Rights Update study guide, several of which can be found on the ACSWP website: http://gamc.pcusa.org/ministries/acswp/.

   d. Before participating in public protest and acts of civil disobedience, inform participants of their legal rights in case of arrest, possible injury, and probable surveillance. The American Civil Liberties Union (ACLU) can provide this information: http://www.aclu.org/free-speech/know-your-rights-demonstrations-and-protests. Many ACLU state-affiliates provide further details: http://www.aclu.org/maps/aclu-affiliate-involvement-occupy-movement-around-country. Click on a state and see “know your rights / materials”.


4. Take action:
   
   a. Review and consider getting involved in public interest groups active in the area of civil liberties: ACLU, Lawyers’ Committee for Civil Rights, Center for Constitutional Rights, Brennan Center for Justice, and Human Rights First are examples.

   b. Review and consider getting involved with international civil liberties and human rights, such as Amnesty International and Human Rights Watch. Check out Amnesty’s

c. If you are facing a serious ethical quandary about the misuse or suppression of information in your work, you may wish to contact the Government Accountability Project at: http://www.whistleblower.org/.


e. On the rights of refugees and asylum seekers, a source for information is: http://www1.umn.edu/humanrts/asylum/refugee_index.html Advocates connected to the new sanctuary movement may be found at: http://www.religionlink.com/tip_081208.php.

f. Write or call your elected officials to voice your concerns for civil liberties.

g. Contact the Presbyterian Church (U.S.A.) Advisory Committee on Litigation with concerns for specific legal proceedings that might warrant an amicus brief.

Appendix A
The Text of the Bill of Rights

Amendment I
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II
A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III
No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.
Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.
Endnotes

Endnotes for 1. Human Rights of Women

3. See the Advisory Committee on Social Witness Policy website under resources: www.pcusa.org/acswp.
5. U.N., Convention on the Elimination of All Forms of Discrimination against Women, 1979, at http://www.un.org/womenwatch/daw/cedaw/text/ecrconvention.htm. The U.S. is the only modern, industrialized country that has not ratified this Convention. 167 countries, including some very poor ones, have ratified it.
17. UN Fact Sheet: Goal 5 Improve Maternal Health, DPI/2650 E/Rev.1, September 2010.
34. Do Justice, Love Mercy, Walk Humbly (Micah 6:8), 204th General Assembly (1992), 27.122.
Endnotes for II. Workers’ Rights Are Human Rights

37. Ibid., 234.

Endnotes for III. Civil Liberties and National Security in the United States Since 9/11/01: Concerns for Consideration

56. The Department of Justice’s “Top Management and Performance Challenges in the Department of Justice—2011” states at the outset, “we continue to believe that Counterterrorism presents the greatest challenge to the Department.” Though this helpful overview of DoJ work states that its 10 areas of concern are not ranked, “Protecting Civil Rights and Civil Liberties,” a section less than half the length of “Counterterrorism,” is the fourth subject listed. http://www.justice.gov/oig/challenges/2011.htm.
58. http://www.washingtonpost.com/politics/obama-signs-defense-bill-pledges-to-maintain-legal-rights-of-terror-suspects/2011/12/31/qiQATzhkSP_story.html At least one public interest challenge to this law on Fifth Amendment grounds has been filed, by a theologially trained Presbyterian and former war correspondent, Christopher Hedges: http://www.truthdig.com/report/item/why_im_suing_barack_obama_20120116/
targeted killing, a largely secret process widely criticized by other nations.  


76.  Ibid.
77.  Quigley, op. cit.
82.  See Stephen Carter’s overview of the debate over the morality of drone use:  http://www.law.yale.edu/news/14817.htm.
84.  http://www.indiana.edu/~globalm/pdf/isa08_datamining.pdf  This summary paper by Prof. Jeffrey Hart of Indiana University describes the technologies and companies as well as government programs involved in this still growing area: “The Controversies over Data Mining and Warrantless Searches in the Wake of September 11.”
86.  Jonathan Turley of Georgetown Law Center is among those concerned: http://www.washingtonpost.com/opinions/is-the-united-states-still-the-land-of-the-free/2012/01/04/1Q0AcD1wP_story.html.
87.  Quigley, op. cit.  Quigley also notes the influence on civilian policing of military approaches. Protest police…uniformed like soldiers with SWAT shields, shin guards, heavy vests, military helmets, visors and vastly increased firepower …are accompanied by helicopters, special tanks, and even sound-blasting vehicles first used in Iraq. Wireless fingerprint scanners first used by troops in Iraq are now being utilized by local police departments to check motorists. Facial recognition software introduced in war zones is now being used in Arizona and other jurisdictions.
88.  See Minutes, PC (USA), 1953, Part I, pp. 180–81.
89.  See Minutes, 1988, Part I, pp. 549–99. This study was printed and is available from the Advisory Committee on Social Witness Policy. It updates several prior assembly policy statements including, Relations of Church and State (1963), and draws on three long articles in the May/June 1968  Church & Society, “Reformed Faith and Religious Liberty.”
95.  http://www.conservativeforum.org/quotelist.asp/SearchType=5&Interest=57  Warren was speaking before at the Jewish Theological Seminary, 11.11.62.