

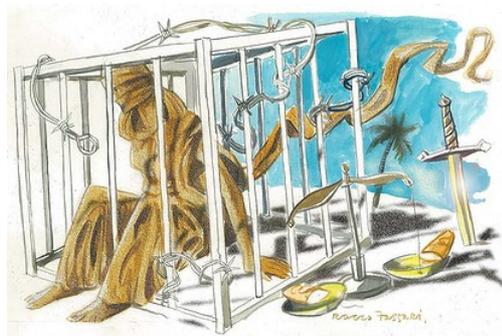
When keeping terror at bay means a nation loses its soul

Richard Ackland, **Sydney Morning Herald, Opinion.** *January 13, 2012*

It's unlikely too many birthday candles were lit to mark the 10th anniversary on Wednesday (January 18, 2012) of Guantanamo Bay as a US military prison.

In fact, some prisoners were on a hunger strike, others hung protest signs inside their cell blocks, while more were holding a sit-in at a recreation area.

Guantanamo, or Gitmo, has become a lasting symbol of the suspension of America's once noble values, a reminder that in fighting a war a nation can lose its soul.



Human rights and the rule of law have been replaced by indefinite detention without charge or trial, suspension of international treaties and obligations, offences unknown to the law of war, in fact novel offences that do not require a war at all, and torture.

Due process has been replaced by a system of military trial commissions, where the accused have no right to see the "evidence" against them and where guilty pleas are extracted on pain of going more dreadful years.

Guantanamo Bay was the place for George W. Bush's "worst of the worst". Now that about 600 of the total of 779 Guantanamo prisoners have been released without charge, the remainder must be the "worst of the worst of the worst". Eighty-nine of the prisoners still held there have been cleared for transfers to their home countries or elsewhere, but remain incarcerated because no one will take them. Being held in Guantanamo is a permanent stain, rendering detainees unfit for anywhere. Only one person at the internment camp faces a formal charge and of all those detailed only six were convicted in the military commissions after trial or plea bargain.

The conception was a "black hole" prison, beyond the reach of American law, much in the way that Australia crudely designed the migration exclusion zone as a lawless sink hole for asylum seekers.



Just as our High Court has to some extent brought the protection of asylum seekers within Australian law, even if they are held on Christmas Island, the US Supreme Court found that foreign nationals held by the US military in Cuba have a right to habeas corpus and a day in court.

That landmark case was brought by Lakhdar Boumediene, who had been held for seven years without charge and with no access to the information against him. He had been an employee of the Red Crescent Society of the United Arab Emirates and was seized by the US in the wake of the September 11, 2001, attacks while working for the charity at its

Sarajevo office. He was falsely suspected of wanting to blow up the US embassy in Bosnia. He now lives in France and writing in *The New York Times* last week he said the importance of the decision in his Supreme Court case was the recognition of "a basic truth: the government makes mistakes".

The US President, Barack Obama, promised to close the prison in Cuba but faced sustained Congressional opposition, including from many Democrats, who did not want these detainees in their backyard.

Far from winding back Guantanamo Bay to hold the rump who pose an established threat to the US, new and exciting possibilities await Gitmo. The Congress has just passed, and Obama has signed into law, the National Defence Authorisation Act. Great swathes of the Bill of Rights, and habeas, have effectively been suspended by this law, which allows US citizens to be held indefinitely without charge in military detention at Guantanamo Bay. It allows the armed forces to be engaged in domestic policing, and to arrest anyone suspected of being engaged in terrorist activity.

Other legislation defines who might be a terrorist very widely. The conservative, libertarian senator Rand Paul pointed to a few: people with missing fingers, someone with guns, or with ammunition that is waterproof, citizens with more than seven days food in their house - all can be considered potential terrorists.

Relevantly, the average time between arrest and conviction in a US federal court for terrorism-related cases was 1.4 years. In the Guantanamo military commissions, the average time for the all six detainees prosecuted between capture and conviction was 7.6 years.

The militarisation of US domestic law needs a willing accomplice, and that is where Guantanamo comes in so handy.

Two Australians have had more than a passing brush with Guantanamo, David Hicks and Mamdouh Habib. After six years detention, Hicks pleaded guilty to a charge of providing material support for terrorism. It was a charge that did not exist at the time he was alleged to have committed it, only retrospectively springing into life when Congress passed new military commission legislation in the wake of the US Supreme Court decision in *Hamdan v Rumsfeld*; Hamdan being Osama bin Laden's former driver. It is an offence that still causes angst and even the administration's lawyers at one point conceded that no such war crime existed.

Still, Hicks suited the Howard government's requirement for a global terrorism pin-up boy.

Just before Habib was to be charged before a military commission, *The Washington Post* ran a story detailing his allegations of rendition and torture. The charges were never laid and he was flown back to Australia in a specially chartered plane. For some time his passport was suspended, but ultimately the government settled his claim that Australian officials knew



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about and did nothing to prevent his torture at the hands of outsourced US agents in Pakistan and Egypt.

US governments live in fear there may be an horrendous slip-up in the struggle against terrorism. They would then stand accused of failing to defend America, or worse. It is the fear that leads to the interminable ratcheting-up of the rhetoric and the suspension of the very elements

of life that were worth fighting to protect. As the war on terror is a war without end, the internment prison at Guantanamo will still be open for business in another 10 years time.

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