

Guantánamo: America's war on human rights

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The military aircraft in which Asif Iqbal and Shafiq Rasul sat chained to a bench, soaked in their own urine, ear-muffled, masked and unable to see, landed at the American airstrip at Guantánamo Bay, Cuba [1], on 14 January 2002. The two men, who had travelled to Pakistan from their homes in Britain five months earlier in order to attend Iqbal's wedding, had already survived a massacre of prisoners by their original captors, the private army of the Afghan warlord Rashid Dostum. They [2] were filthy and half-starved.

David Rose's book Guantanamo: America's war on human rights [3], on which this article is based, is published in the United Kingdom by Faber in October 2004

As their seemingly interminable flight ground on, they remained unaware of their destination. But to the rest of the world, its name had recently become very familiar. The first contingent of alleged Taliban and al-Qaida prisoners had reached the new detention camp at Guantánamo (GTMO, 1 or "Gitmo", as the United States military usually terms it) from Kandahar in Afghanistan three days earlier.

Over the preceding week, marines had laboured to build their makeshift prison, Camp X-ray: a dozen rows of steel-mesh cages, open to the elements, ringed by a razor-wire fence. On arriving, the detainees had been led into its compound and photographed as they waited to be processed. Shackled hand and foot, dressed in orange jumpsuits, still wearing the black-lensed goggles, surgical masks, headphones and taped-on gloves which they had been forced to don at the start of their twenty-seven-hour flight, the detainees knelt in the Gitmo [4] dust, as crew-cut servicemen loomed in threatening poses over them.

Within a few days, the US defense secretary, Donald Rumsfeld, would regret allowing these pictures to be released: to have done so, he said, was "probably unfortunate".

Although they had been captured in Afghanistan, a place where America was at war, Rumsfeld said they would not be viewed in legal terms as prisoners of war, but as "unlawful combatants". As such, he went on, "they do not have any rights under the Geneva Conventions." Nor, as foreign nationals held outside the United States, would they have any recourse to American courts. The Pentagon's power over them appeared to be absolute. In due course, some of the prisoners were to face trial by a military commission, and eventually, the death penalty.

As individuals, the prisoners had ceased to exist.

A rush to judgment

What is the detention of the prisoners at Guantánamo *for*? What is its place in the so-called "war on terror", and how effectively is it fulfilling its intended mission? How far has it measured

up to the claims made about it and its inmates by leading figures in George W Bush's administration?

In autumn 2003, I saw America's Gitmo experiment at close quarters, spoke to many soldiers and officials there, and followed up my trip with interviews in Washington and elsewhere. A full account of these investigations is in my book *Guantánamo* (Faber, 2004 [5]), which also describes the experience of men like Asif Iqbal and Shafiq Rasul in more detail.

A writer who seeks to elicit concern about the human and legal rights of such men, or sympathy for their suffering during twenty-six months at Gitmo, must first confront the assertions made by Donald Rumsfeld and others in the first months of 2002. "These people are committed terrorists," he said in response to the rising tide of international criticism of Guantánamo on 21 January [6]. "We are keeping them off the street and out of the airlines and out of nuclear power plants and out of ports across this country and across other countries."

But few of the approximately 750 individuals who have passed through Guantánamo [7] or are still imprisoned there were devoted to killing Americans in any active sense – and the people who really fit this description and are now in US custody have never been detained in Cuba. The evidence suggests that large numbers of the Gitmo prisoners – citizens of over forty countries around the world – were absolutely innocent of the least involvement in anything that could reasonably be described as terrorist activity.

Each week in openDemocracy since the aftermath of 9/11, Paul Rogers writes a column [8] tracking the latest developments in the "war on terror" – from Afghanistan and Iraq to Washington itself

They ended up there as a result of military intelligence screening procedures in Afghanistan and elsewhere that were flawed and inadequate, made still worse by the use of woefully poor and virtually untrained translators. At a deeper level, they were there because of the way an American administration, which was already isolationist and disinclined to fetter its autonomy through treaties and international law, responded [9] to the world's worst terrorist attacks.

From 9/11 to Guantánamo

Before 11 September 2001, President Bush had repudiated the Kyoto treaty on global warming, indicated his desire to tear up agreements on ballistic missile defence, and declined to participate in the new International Criminal Court [10]. In the wake of the enormous blow to the American psyche which the attacks represented, his decision that the war on terror would be fought according to new rules of his own administration's devising seems to have been almost a reflex.

As the White House chief counsel, Alberto Gonzalez, put it in a memo [11] to Bush on 25 January 2002, "the war against terrorism is a new kind of war" in which there would be no place for old-fashioned strictures such as the Geneva Convention on the treatment of prisoners of war. According to Gonzalez, the war on terror had rendered Geneva "obsolete". The English Court of Appeal later memorably described Guantánamo Bay as a "legal black hole", beyond the reach of any jurisdiction. That was exactly its creators' aim.

Indeed, from the moment the Guantánamo detention camp was first conceived in the Pentagon in December 2001, its most salient feature was that Gitmo and its prisoners would be outside all known mechanisms of American and international law [12]. As a French detainee, Nizar Sassi, put it in a postcard to his family, which somehow eluded the military censor: "If you want a definition of this place, you don't have the right to have rights."

Through autumn 2001 and the first days of 2002, a large and bold legal idea was taking shape in the collective mind of the Bush administration. It sprang from the judgment, reached in less than twenty-four hours after 9/11, that the attacks on New York and Washington could not be treated as matters for law-enforcement agencies, but as acts of war. But this was a war unlike any other, being fought not against some distinct and visible foe, but an amorphous, global enemy: “terror”.

At Gitmo, at the war on terror’s other detention facilities in Iraq and Afghanistan, and in the convoluted set of reasons the government’s lawyers set down to justify the use of torture, the Bush administration was seeking to modify old rules; not in order to accommodate them to a new kind of war, but in order to jettison them, and to replace them with a system governed by a single principle – that because America and its president were fighting a just war, whatever they might find expedient would be right. This was not evolution, but a violent rupture.

A revolutionary system

In this light, we need to see Gitmo not as a discrete phenomenon, but as a large component in a revolutionary system, in which the Bush administration has subverted two pillars of the Enlightenment and the United States’s own constitution – on the retreat from torture [13], and on due process. This twin legal assault was only made possible by a third, against the separation of powers. Running through the entire documentary record of the war on terror is a single theme: the unlimited power of the American president to override treaties, conventions and laws in time of war.

How could an American administration have contemplated and executed such actions, and in so doing turn its back on the very philosophies which informed the genesis of the nation? The answer has to be that Guantãnamo reflects other battles being fought for the soul and direction of American society, deep conflicts which have been aptly described as a “culture war”.

This war is between the secular and constitutional principles of the American republic and the Christian authoritarianism of figures like John Ashcroft, William Boykin and George W Bush himself. The latter represent an exceptionalism which for the rest of the world means only the justice of theocratic American might, and which in some senses is a mirror image of the millennialist obscurantism espoused by Osama bin Laden in his mysterious Asian cave [13].

Their ascendancy has been devastating for the Guantãnamo inmates. For almost three years, the United States has imposed a warped and largely imaginary version of reality on the men held under its command there, at enormous human cost. This is Gitmo’s most immediate meaning: the shattering of innocents’ lives, and for detainees’ families, an indeterminate sentence of uncertainty and loss.

Those who championed the new system often did so in pragmatic as well as ideological and legal terms. But is Guantãnamo, with its vast costs – in treasure, in effort and human resources, and to America’s standing in the wider world – a justifiable means to the end of defeating Islamist terror? My answer, bleakly, is no. Gitmo’s advocates, above all its former commandant, General Geoffrey Miller [14] – who went on to command the notorious Abu Ghraib prison in Iraq – have claimed repeatedly that it has provided a rich harvest of “enormously valuable intelligence”, which has prevented further terrorist attacks and laid al-Qaida low. Serving and recently retired intelligence officers with direct access to Gitmo’s “product” have told me that this is at best wishful thinking.

Also in openDemocracy, Geoffrey Bindman examines the legal nightmare of security suspects detained without trial in a British prison, Belmarsh; see “Civil liberties and the ‘war on terror’” ([May 2004](#) [14])

These officers will admit that the scale of the injustice at Gitmo, the sheer numbers of people held in the most rigorous conditions, interrogated time and time again and vilified in public, is staggering. The verdict from a senior Pentagon official with extensive knowledge of Guantánamo was even more critical: “At least two-thirds” of the 600 detainees held as of May 2004 could, he said, be released without hesitation.

The impact on the Muslim world

Meanwhile, if Guantánamo has provided but a few meagre scraps of information, it has also become an icon of oppression throughout the developing – and especially the Muslim – world.

Across the [middle east](#) [14], those pictures of the newly-arrived detainees kneeling in the dirt in their shackles have become a trope for cartoonists and pamphleteers, a graphic rendition of oppression which speaks to millions of Muslims. The unjust suffering of families and individuals engendered by this aspect of “Operation Enduring Freedom” is sowing dragons’ teeth, turning moderates into fanatics determined to smite the west.

On Islamist websites and in the Arab press, Guantánamo is cited time and again as a rallying point for *jihad*, as a justification for creating more suicide “martyrs”. At the time of writing, [terrorism](#) [14] has discovered a new vogue: the decapitation of western hostages in Iraq and Saudi Arabia, videotaped before and during their executions in orange costumes, in deliberate [imitation](#) [15] of the detainee uniform at Gitmo.

In the aftermath of Abu Ghraib, there are signs that the complacency and insouciance that marked early American responses of criticism its conduct in the war on terror are beginning to evaporate. The victim-as-warrior [mentality](#) [15] which swept the US after 9/11 appears to be giving way to a climate in which it is becoming possible to address the morality of an institution such as Gitmo; to ask whether holding such numbers in such conditions outside the scope of the rule of law truly serves the values which the American nation and its constitution seek to represent.

openDemocracy’s [debate](#) [16] “After image: the meanings of Abu Ghraib” presents different perspectives on the torture scandal from Isabel Hilton, Maï Ghoussoub, Laila Kazmi, Douglas Murray, and George Soros

On 28 June 2004, the US Supreme Court took the first, vital steps towards limiting what had been the exercise of untrammelled executive power, when it overruled the administration’s position and [decided](#) [17] that Gitmo prisoners did after all have rights under federal law, and could use the courts to challenge their detention.

But the damage has been enormous, and it is to more than America’s reputation. In the 1990s, international lawyers were for a few years seized with optimism: with the tribunals in Rwanda and Sierra Leone, and the indictment of Slobodan Milosevic, it was beginning to seem that states could find effective means to collaborate in the name of justice, to use law as a way of making tyrants and terrorists accountable. After Gitmo, that impetus has been scattered to the winds.

The conservative writer Samuel Huntington has famously spoken of a clash of [civilisations](#) [18] between the west and Islam, a coming titanic conflict which will drench the world in blood. At

Guantánamo, America adopted some of the modes and techniques of those it classed as enemies. In so doing, it has brought Huntington's baleful prophecy nearer to fruition.

Guantánamo is having a radicalising effect in the Islamic world today [18]. The case that Gitmo is legally and morally questionable is overwhelming. But according even to the terms of its own stated mission – to stop further terrorist attacks – it has proved ineffective. Its legacy may indeed be written in blood.

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