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The Two-Guantanamo Solution

Obama's "Remainees"

Will not one but two Guantanimos define the American future?

by Karen J. Greenberg

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It all began in Afghanistan (the War on Terror, of course). It was there as well that, in late 2001, the Bush administration first "[took the gloves off](#)," a phrase its top officials then [loved](#) to use. So the first torture and abuse of prisoners, including the [use of dogs](#) to intimidate, took place there and only then migrated to Guantanamo in Cuba and Abu Ghraib in Iraq. By 2004, the U.S. was [already operating](#) approximately two dozen off-the-grid prisons in Afghanistan and a [report](#) in the British *Guardian* could speak of the U.S. prison system there as "the hub of a global network of detention centers." It included a notorious CIA-run secret Afghan prison nicknamed "the Salt Pit." The first [killing of prisoners](#) by Americans occurred at our prison at Bagram Air Base, the huge former Soviet base that became a focus of American military activities. One of the nastier spots on the planet for many years, Bagram was, as Karen Greenberg, author of *The Least Worst Place, Guantanamo's First 100 Days*, has termed it, "[the missing prison](#)" (at a time when all attention was focused on Guantanamo). It remains George W. Bush's unmentioned living legacy to Barack Obama.

Bagram itself theoretically cleaned up its act – with \$60 million [invested](#) in a full-scale facelift in 2009 and so, as Anand Gopal [reported](#) at TomDispatch, "the mistreatment of prisoners [in

Afghanistan] began to shift to the little-noticed Field Detention Sites,” a series of prison “holding areas” on U.S. military bases around the country. To this day, the U.S. still operates a remarkably extensive, essentially off-the-grid prison system there. It’s [not completely clear](#) who is in all of these prisons, and reports are not encouraging. The BBC, for instance, recently found nine witnesses it considered credible who were ready to testify to abuse – in the period since Barack Obama entered the Oval Office – at a secret prison [nicknamed “the Black Hole,”](#) also at Bagram. (“The U.S. military has denied the existence of a secret detention site and promised to look into allegations.”)

Even more ominously, the first reports have appeared in the U.S. press indicating that the Obama administration may once again actually [expand](#) the use of Bagram to include the interrogation and incarceration for indefinite periods of new prisoners, wherever taken, in the Global War on Terror, whatever it may now be called, and is actually [drawing up](#) classified guidelines to that effect. As Greenberg, executive director of the Center on Law and Security at the NYU School of Law and a [TomDispatch regular](#), indicates, Bagram could turn out to be only one of two future American Guantanos. Yes, we can! (By the way, check out the latest TomCast audio interview in which Greenberg discusses the quagmire of U.S. detention practices by clicking [here](#) or, if you prefer to download it to your iPod, [here](#).) *Tom*

On his first day in office, President Barack Obama [promised](#) that he would close the Bush-era prison at Guantanamo Bay, Cuba, “as soon as practicable” and “no later than one year from the date of this order.” The announcement was met with relief, even joy, by those, like me, who had opposed the very existence of Guantanamo on the grounds that it represented a legal black hole where the distinction between guilt and innocence had been obliterated, respect for the rule of law was mocked, and the rights of prisoners were dismissed out of hand. We should have known better.

By now, it’s painfully obvious that the rejoicing, like the president’s can-do optimism, was wildly premature. To the dismay of many, that year milestone passed, barely noticed, months ago. As yet there is no sign that the notorious 8-year-old detention facility is close to a shut down. Worse yet, there is evidence that, when it finally is closed, it will be replaced by *two* Guantanos – one in Illinois and the other in Afghanistan. With that, this president will have committed himself in a new way to the previous president’s “long war” and the illegal principles on which it floundered, especially the idea of “preventive detention.”

Guantanamo in Illinois

For those who have been following events at Guantanamo for years, perhaps this should have come as no surprise. We knew just how difficult it would be to walk the system backward toward extinction, as did many of the former lawyer-critics of Guantanamo who joined the Obama administration. The fact is: once a distorted system has been set in stone, the only way to correct it is to end the distortion that started it: indefinite detention.

As of today, here’s the Guantanamo situation and its obdurate math. One hundred eighty-three detainees [remain incarcerated](#) there. Perhaps we should call them “remainees.” [According to](#) the estimates of the Guantanamo Detainee Review Task Force set up by Attorney General Eric

Holder, about half of them will be released sooner or later and returned to their homelands or handed over to other “host” countries. They will then join approximately 600 former Guantanamo inmates released from custody since 2002. Another 35 or so remainees will be put on trial, according to [reports](#) on the task force’s recommendations and, assumedly, convicted in either civilian courts or by military commissions. For the remaining [50 or so](#) – those for whom evidence convincing enough for trial and conviction is absent, but who are nonetheless deemed by the president to constitute a threat to the nation – the legal future is dim, even if the threat assessment which keeps them behind bars has nothing to do with normal American legalities.

Some of these long-term remainees may, in fact, have been *jihadists* at the time they were rounded up. Given the years of incarceration and the conditions they experienced, many more of the remainees may have been radicalized in Guantanamo itself, and might now seek to harm the U.S. or its citizens. In addition, half of them originally came from Yemen, a country unstable enough that, on return, some might indeed be recruited by forces intent on doing the U.S. harm. Although, in defiance of the warnings of its right-wing critics, the Obama administration did return six remainees to Yemen at the end of 2009, the Christmas Day bombing attempt by Umar Farouk Abdulmutallab only [ratcheted up concerns](#) about possible radicalization and training there. There have been no further transfers to Yemen since then.

So what is an administration that has made a firm promise and encountered an obstacle-laden, politically charged reality to do? If you take seriously the plans that this administration has been floating, the answer is simple: close down Guantanamo by putting in play two other Guantanimos (lacking the poisonous name) – one on American soil and one in Afghanistan, one future-oriented and sure to prove problematic, the other reeking of past disasters.

At some future date, the Obama administration has [announced](#) plans to move those Guantanamo detainees who are neither tried nor released to the still-to-be-refurbished Thomson Correctional Facility in Thomson, Illinois – “[Gitmo North](#),” as it’s been dubbed by Senate Minority Leader Mitch McConnell (R-Ky.). Plans to relocate at least some detainees to a prison in the U.S. surfaced last summer. The idea has since encountered congressional resistance on the grounds of safety and security, heightened by [outsized American fears](#) that such prisoners have Lex Luthor-like powers and that al-Qaeda has the capability to attack any non-military prison holding them. The administration, however, is still pursuing the Thomson plan.

McConnell and other Republicans may be using the “Gitmo” label to stoke American fears of terrorism on our soil, but they are not wrong in another sense. A jail holding uncharged and untried remainees for the foreseeable future – or even a remainee who has been tried and acquitted – will indeed be “Gitmo,” whatever its official name and whatever happens to the prison in Cuba. In July 2009, in fact, the strikingly un-American idea of a presidentially imposed post-acquittal detention was [first suggested](#) by Jeh Johnson, the current general counsel for the Department of Defense, as one possible fate for a dangerous detainee whom a deluded jury (or a jury deprived of torture-induced confessions) might free. In this scenario, such a remainee, like those never brought to trial, would potentially remain under lock and key until the end of hostilities in the “long war,” itself imagined as at least a generational affair.

Guantanamo in Afghanistan

In other words, what's being proposed is the moving of a (renamed) Guantanamo, body and soul, to the United States. That's already a dismal prospect, but hardly the end of the line when it comes to post-Guantanamo thinking for this administration. In fact, a new idea has emerged recently. Last month, [according to](#) the *Los Angeles Times*, the White House hinted that the administration was contemplating using the already existing prison at Bagram Air Base in Afghanistan as yet another replacement for Guantanamo – apparently for housing future prisoners in what is no longer officially termed the Global War on Terror.

Were this to happen, it would be a squaring of the circle, a strange return to the origins of it all. Bagram was, notoriously enough, the place where, in 2001-2002, many of the prisoners who ended up at Guantanamo were first held (and often badly mistreated). Perhaps my mind has simply taken a cynical turn, but I can't help wondering whether the administration might someday simply dump some of the Guantanamo remainees there as well. Then, we would be grimly back where George W. Bush's Global War on Terror began. The "advantage" of Bagram, of course, is simple enough: prisoners on an American military base in distant Afghanistan might not be subject to the same levels of scrutiny or legal "meddling" (as the supporters of the Guantanamo process like to term it) as in Cuba or the United States – all those *habeas* challenges and challenges to military commissions that have, in eight years, convicted only three detainees (only one of whom still remains in custody), and all those human rights concerns.

There are indications that, in considering the reuse of Bagram as a parking lot for "the worst of the worst," Obama administration officials remain remarkably blind to the history they are threatening to repeat. Evidently they don't grasp the obvious parallels between Guantanamo and Bagram. Nevertheless, the language they are wielding has begun to sound eerily familiar. Last month, for instance, a senior Pentagon official was [quoted saying](#) that the idea of reinvigorating Bagram as a holding facility for such prisoners might not be the ideal solution, but was the "least bad" choice. How similar that sounds to the words former Secretary of Defense Donald Rumsfeld applied to Guantanamo Bay when he announced its opening in 2002. It was, he acknowledged almost apologetically, the "[least worst place](#)."

If a two-prison solution were to go into effect, that would mean President Obama had fully accepted the Bush administration's notion of a generational global battlefield against terror. After all, that's what underlay Gitmo from the beginning, and that's what would underlie a rejuvenated Bagram as well. In theory, there could be a workable solution lurking somewhere in all this murky planning, if it were undergirded with actual legal definitions; if, in the case of Thomson, the Illinois facility-to-be, the prisoners placed there were first charged, tried, and convicted; and if, in the case of Bagram, anyone placed there was declared a prisoner of war, or given some legally recognized status according to the laws of war or the Geneva Conventions. But as of now, it looks like both facilities will instead offer an endorsement of so-called preventive detention.

The administration's disingenuousness on this point is overwhelming. On the one hand, we are told that the terms "war on terror" and "enemy combatants" are history and that Guantanamo will soon join them. But Guantanamo was never purely a place in Cuba. What made it so wrong was the system of indefinite detention that lay at its core and that continues to defy the rule of

law as defined by the U.S. Constitution, U.S. military law, and the international conventions that this country has signed onto.

Closing Guantanamo does not simply mean emptying the prison cells at that naval base and throwing away the keys. It means ending the policy that has become synonymous with Guantanamo – of incarcerating individuals without the need to prove their guilt, and without a clear and recognizable process for determining the grounds for their detention.

Faced with [opposition](#) in Congress and in public sentiment generally, the Obama administration increasingly seems focused on ending not the conceptual nightmare we call Guantanamo, but the irritating problem that Guantanamo represents. Unfortunately, as this administration will learn to its regret, there is no closing Guantanamo if preventive detention continues.

In reality, a two-Guantanamo policy is likely to prove an unwieldy disaster and will hardly lead the country out of the quagmire of incarceration that the Bush administration mired us in. In the end, that quagmire is not legal (though the legal issues it raises are fundamental), nor political (though it may look that way from Capitol Hill); it's psychological. And there is only one way to escape from it: end once and for all the notion of preventive detention by placing firm and unbending confidence in our military, our intelligence agencies, and our system of justice to identify enemies, prosecute those whom they can, and abide by the laws of war for prisoners of war.

Perhaps it's also time for us to accept life in a world of imperfect security. It may sound harsh, but it's not nearly as soul-defeating as the idea that not one, but two Guantamos, will define the American future.