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2008-01-01

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Recommended Citation
Clonan, T., 2008: Executions At Guantanamo Bay Would Mock US Democracy, Dublin: The Irish Times

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Death Row Guantanamo

This week's announcement by the Pentagon to seek the death penalty in the case of six prisoners at Guantanamo Bay – charged with involvement in the 9/11 attacks – represents yet another step in a long-term planning process for executions at Camp Delta at the US Naval station in Cuba. US Army Regulation 190-55 has for some time allowed for military executions by lethal injection. Until recently however, precedent within US martial law has identified Fort Leavenworth in Kansas as the location for military executions – a location which in theory, would place the condemned prisoner within the jurisdiction of US federal law and all of its protections, constitutional guarantees and appeal processes. However, in January of 2006, the US military code was amended to allow for 'other locations' such as Guantanamo Bay to be selected as legitimate sites for the execution of those sentenced to death by military courts.

Under the revised military code, at paragraph 7, the US military's Provost Martial General (PMG) is authorised to contract 'for the following services … (a) Acquisition of lethal substance for lethal injection, (b) Medical or other qualified personnel to insert intravenous needles into the condemned prisoner. (c) Personnel to administer the lethal substance.' In addition to this authority to contract these services to the US military, the PMG is now also authorised to conduct such executions, at the behest of the President of the United States and the Secretary of the Army, at Guantanamo Bay – outside of the jurisdiction of the US federal legal system. These are alarming developments when considered in light of this week's announcement by the US military to act as judge, jury and potentially as executioner in the case of the accused prisoners at Guantanamo.

The military court at Guantanamo is unlike any standard court martial. In standard courts martial, the accused is afforded a full adversarial defence and legal process. In Guantanamo, the Commission process as it is known does not allow the accused or his defence team to have access to much of the evidence levelled against him – in the interests of 'national security'. Nor does the accused have the right to challenge the testimony of or to cross examine such witnesses as deemed by the US military to be 'vital to the security interests' of the United States.

During a visit to Guantanamo Bay in 2005, I challenged senior staff officers at Camp Delta as to the legitimacy of the 'para' legal process in train at the base – in its Commissions procedures and 'pre-trial' 'Administrative Review Boards'. I also enquired as to whether or not - if a prisoner were to receive the death penalty - this would bring the US military into disrepute. The response I got from one senior officer was brief and to the point. 'Look, this isn't Nuremberg, we're not gonna hang 'em'. My relief at this response was short-lived.

Another senior officer went on to say by way of explanation, 'You see, the American people regard hanging to be a cruel and unusual punishment. And, we cant shoot 'em, because that would be bad for morale here on the base. Believe it or not, the guards here build up a relationship, a rapport with the prisoners which would make it hard for them to shoot them. And it would be a big deal to bring in a firing squad. The best way to deal with this is by lethal injection'.

In hindsight, these remarks seem all the more sinister given this week's statement of intent by the Pentagon. The architecture of Camp Delta in 2005 also gave some clues as to the long term planning and intentions of the Bush Administration. Much of Camp Delta was temporary breeze block accommodation consisting of relatively open structures comprised of corrugated iron roofs and wire fencing. However, these structures were being replaced by 'hard' permanent structures, built by Halliburton and Kellogg Brown and Root at a cost of tens of millions of dollars to the American taxpayer.

One particular structure, Camp 5, based on a correctional facility at Bunker Hill, Indiana was a state of the art maximum security prison which held the six prisoners currently facing possible death sentences at Guantanamo. Inside its air-conditioned interior, US military police monitored its 'high-value' prisoners on a twenty four hour basis. At the time I concluded that this facility was permanent in nature unlike the remainder of the camp complex which contained over 500 prisoners. Just over two years later, the prison population at Guantanamo has shrunk to 275. The mission and focus at Guantanamo also appears to have shrunk and narrowed from intelligence gathering in support of Operation Enduring Freedom in Afghanistan to one of retribution and punishment in support of the Bush Administration's 'Global War on Terror'.

If the Commissions process at Guantanamo eventually sentences and executes these prisoners on the basis of withheld evidence and confessions obtained under torture, the United States will be brought irrevocably into disrepute. It would represent an affront to the core principles of US democracy - the separation of powers - in which the US executive, in the form of the US military would become the arresting authority, detaining authority, judge, jury and executioner of foreign nationals. Aside from legal challenges to this process, it would seem the best hope for Guantanamo's detainees to obtain a fair trial lies in November's elections in the US – a change of administration or 'regime change' that might once more uphold the guarantees of the US constitution.

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