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The Prisoners At Guantanamo, And The Rule Of Law

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LETTERS

The Prisoners at Guantánamo, and the Rule of Law

Published: January 20, 2013

To the Editor:

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After reading “[Don’t Close Guantánamo](#),” by Jennifer Daskal (Op-Ed, Jan. 11), I am prepared to believe that it might possibly be in the best interests of the existing prisoners to leave them there. But Ms. Daskal misses the fundamental point.

Our founders established a country based on the rule of law, not the convenience of either prisoners or the government. Whether we look at Magna Carta, the Petition of Right, the Declaration of Independence or our Constitution, it is a keystone of the rule of law that no one be indefinitely detained without indictment and conviction in a regular court of law. The only exceptions are legitimate prisoners of war, protected by the Geneva Conventions.

DAN COUILLETTE

Newton, Mass., Jan. 11, 2013

The writer is a professor at Boston College Law School and a visiting professor at Harvard Law School.

To the Editor:

Waiting to close Guantánamo until the end of the war against Al Qaeda, as Jennifer Daskal argues, faces two major hurdles.

First, what incentives are there for the administration to declare an end to this war in the near term? For one thing, such a declaration would undermine one legal foundation of America’s drone policy. Even if correct, such a declaration would face tremendous political blowback.

Second, let’s assume that the administration declares the war over. What, then, is more likely: the United States releases four dozen prisoners who “couldn’t be prosecuted” but are “too dangerous to be transferred or released,” or Congress and President Obama agree to a domestic legal framework to hold these people indefinitely at Guantánamo, even in the absence of war with Al Qaeda?

My bet would be the latter, even if it would violate international law.

Guantánamo should be closed, now, for all the “policy imperatives in favor of closure” that Ms. Daskal alludes to but does not spell out. But will it? Sadly, without an effort to close it now, it’s hard to imagine.

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DAVID KAYE

Irvine, Calif., Jan. 11, 2013

The writer teaches at the University of California, Irvine School of Law and was a principal State Department lawyer handling Geneva Convention issues after 9/11.

A version of this letter appeared in print on January 21, 2013, on page A20 of the New York edition with the headline: The Prisoners at Guantánamo, and the Rule of Law.

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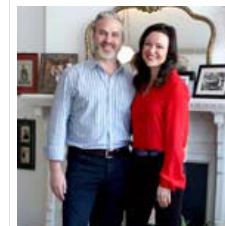


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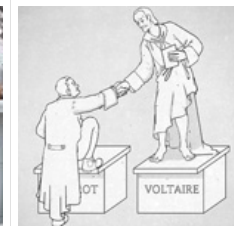


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