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Dreams of Detention

By Dr. Binoy Kampmark
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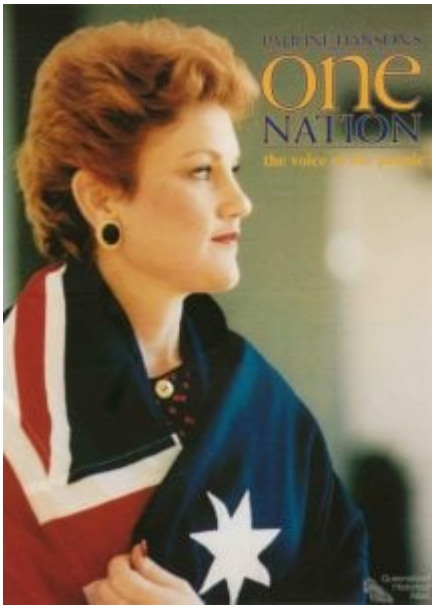
Detention comes in various forms, and all have a basic premise: the removal of liberty of the subject, the presence of permanent control and surveillance, the utter reduction of rights to life to obligations to the state.

The suggestion of internment of terror suspects by One Nation leader Pauline Hanson hints at a historical awareness of one thing: that rounding up citizens and keeping them under lock and key, assisted by firearms, is one way of dealing with a threat. That such an idea is dangerously flawed is not something that enters the One Nation party room.



One Nation leader Pauline Hanson (Source: ABC News via Spook Magazine)

On the Sunrise program, Hanson insisted that Yacqub Khayre's attack in Brighton had been motivated by religion. Then came her suggestion.

> "It is an ideology and with these people, you know what? Intern them. I don't want to see one more Australian killed or one more person in far of their life or their kids lives."[1]

In the United States, this form of internment was on practised on a massive scale during the Second World War. Citizens were held up; rights were trammelled and even muted. In *Korematsu v United States*, such internment was subjected to Supreme Court scrutiny.[2]

Given the times, the verdict was not favourable for US citizens of Japanese ethnicity and ancestry.

While it is commonly mistaken to be a case decided solely on whether internment was legal (it had, in fact, to do with a bureaucratic matter of excluding persons from various zones on West Coast of the US), the result was not pretty.

Even by the admission of the court, exclusion and detention were knotted to begin with, and only superficially distinct. As David Cole explained, the majority in *Korematsu*, in upholding the legality of mass exclusion based on racial and ethnic identity, would "as a logical matter, extend to detention."[3]

Hanson has not had a good time with the law of late, and the belligerent language in her open letter to the prime minister shows a distinct disdain for meddlesome members of the legal profession. They, she suggests, ought to be frozen out, paving the way for more robust executive action.

> "It is imperative that the final decision in these cases should sit with the Minister and not with unelected lawyers and bureaucrats as is presently the case."

Leave it to the executive – they know best.

Despite the relative insignificance of Australia in the global terror stakes (the latest attack in Melbourne hardly elevates it), Australian politicians wish to muscle in and make themselves count in the security debate. Far better to be entirely forceful, because there is always strength in unquestioning unity rather than questioning thought.

This ignores dangerous trends in law and practice that have effectively permitted the indefinite detention or monitoring of Australian and non-Australian citizens. An actuarial, risk assessment model has already been dominating penal and detention practice for some years, be it in terms of assessing paedophiles' propensity to reoffend or the use of control orders on those who have already served their sentence. Rather than expanding such powers, these should be reined in.

It is also worth noting that Hanson is by no means the only one suggesting a vigorous pruning of civil liberties. Her extreme stances merely reflect a broader tendency in Australia's political classes.

Victorian Premier, Daniel Andrews (Source:

ABC News)

The Victorian Premier, Daniel Andrews, is suggesting what amounts to a surrender of judicial worth and wisdom: the Australian Federal Police, ASIO and the security community should be part of the decision making process on “persons of interest”. The inexorable shift to the unaccountable executive is fluttering in the wings.

This reactive jolt provides a snifter of totalitarian creep: the more cooks in the establishment attempting to make sure that a person remains in a state of permanent incarceration. The Prime Minister Malcolm Turnbull does little to disabuse us of this.

> “What I want to make sure is that people with these characteristics – with a history of violence and a connection with extremism – that that is taken into account and they should not be let out on parole unless the decision is taken at a higher level.”[4]

Coming from an accomplished lawyer long engaged in arguing before gowns, grey wigs and bound volumes of legal precedent, such argument is disheartening. Sniffing the glue of populism and fear has left its mark. The only ones to profit will be deskbound bureaucrats with greater powers.

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Notes

[1] http://www.news.com.au/national/politics/pauline-hanson-stands-firm-on-call-to-intern-terror-suspects-who-cant-be-deported/news-story/9aaddc154d6239a2bd31a41b80a3ae0d

[2] https://www.law.cornell.edu/supremecourt/text/323/214

[3] http://www.nybooks.com/articles/2017/06/22/how-internment-became-legal/

[4] https://www.businessinsider.com.au/pauline-hanson-wants-internment-for-australians-with-terror-links-to-neutralise-their-possible-harm-to-this-country-2017-6

Featured image: Ian Waldie / Getty Images via ABC News

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