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Displacement

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As I emphasized in a recent [piece](#), geography and territory are powerful regulatory tools. They are often relied upon to confine and control disfavored or dangerous populations. Racial-spatial segregation, Japanese internment, and Guantanamo Bay detentions are all examples of territorial regulation. They all produced, at least initially, a form of constitutional displacement. These and other displacements confined, segregated, and held persons outside the law's protective sphere. Displacement made it more difficult in a literal sense to see the affected groups, and hence to see them as full persons under the law.

Much has been done to counter the effects of displacement. The territoriality of official racial segregation has been condemned in the U.S. Apologies and reparations have been issued for internment. And the Constitution has been at least partially extended to those held at the Guantanamo Bay.

Two stories from today's news remind us that the practice of territorial displacement remains a threat to constitutional and human rights. A lot has been said and written about the practice of rendition, particularly during the George W. Bush Administration. An Italian court has [convicted](#) a CIA base chief and several operatives (in absentia) of kidnapping a Muslim cleric and transferring him to Egyptian authorities, where he claims he was tortured. The convictions are likely to have little or no practical effect, however, either in terms of the individual defendants (other than, of course, the effects of restricting their [ability to travel abroad](#)) or the practice of rendition itself. Although rendition to "black sites" does not seem to be part of current U.S. policy or practice, the Obama Administration has not entirely ceased rendition. Rather, as [this story](#) suggests, the current administration prefers to call the practice of removing persons from a territory for purposes of interrogation "expulsion." Owing to state secrets claims and other obstacles, the legality or constitutionality of rendition, whatever its form or label, is not likely to be adjudicated in U.S. courts. Especially if there are future terrorist attacks, the practice is likely to be revived in its most aggressive form.

Meanwhile, Australian authorities are holding thousands of asylum seekers from Sri Lanka and Afghanistan on Christmas Island. Sounds nice, right? At least until one considers that Christmas Island is located nearly 1,000 miles from the Australian mainland, and that the facility that has been constructed to hold the asylum-seeking population is a detention center surrounded by 13-foot-high razor wire fences. In other words, it's a prison. As [reported](#) by the *New York Times*:

But even as boats arrive every few days, advocates for refugees and even the government's own human rights commission are urging the government to close the place down and sort the asylum-seekers on the mainland. They compare Christmas Island to Guantánamo Bay or describe it as a reincarnation of the many notorious prison islands in Australia's convict history.

A lot of negative attention has been focused on U.S. detention policies, including those involving immigrants, over the past several years. But fear and territoriality are a potent, and dangerous, combination across the globe.

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