

Obama's Dilemma -- Torture, Accountability and Partisanship

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The information that is being released now regarding interrogations of suspected terrorists conducted by the US during the last several years makes it clear, for those who did not yet understand, that America does not torture, except of course when it does. The treatment of prisoners during the Bush years is a stain on the moral standing of the US which the rest of the world will not easily forget. These policies have undermined our credibility and ethical position while doing little to ensure our safety.

The primary defense of the interrogation policy, which in the name of calling things what they actually are, I will refer to as torture, put forth by defenders of the previous administration, most notably former vice-president Dick Cheney, has been the ticking bomb scenario. This defense poses the dilemma of whether or not we should torture somebody if we knew the subject had specific information about a specific and imminent threat to the US.

This relevance of this argument rests on two somewhat shaky premises. The first is that the detainee being tortured would always tell the truth rather than simply say anything to stop the torture. The second premise is that the detainee would always have knowledge of an imminent terrorist threat. It is difficult to know the extent to which either premise is true. Evidence suggests that people will say anything to stop the intense pain of being tortured, while the pattern of US interrogation suggest that while the subjects of the interrogation were often terrorists for whom I certainly have no sympathy, it is unlikely that the ticking bomb scenario applied each time they were water boarded or otherwise tortured.

The notion that the US shouldn't torture people and that we are a better country than that runs very deeply for many Americans across the ideological spectrum. If we truly believe this notion, it seems that there are at least two ways we could demonstrate this. The first would be to pound our collective rhetorical fist on the table and loudly exclaim "America doesn't torture". The second would be to hold those who led us down the byzantine legal and political path to torture accountable for their actions. The former approach might briefly make us all feel better, but the latter is far more likely to show the world and ourselves that we really are a better country than we have shown in recent years; and that we are a country of laws and accountability.

The politics and modalities of this process are not simple, but they are not so difficult that they preclude doing what is right for our country. A congressional inquiry, blue ribbon bipartisan panel or special prosecutor are all possible ways to seek accountability on this issue. It is also not yet clear who should be held accountable, the individuals who committed these acts, the lawyers who presented the, excuse the pun, tortured legal reasoning for turning us into a country that tortures, or the higher ranking politicians who are supposed to be responsible for what goes on in

their departments and their governments. There are no obvious answers to any of these questions, except that it would be wrong to do nothing.

The hesitancy of the Obama administration seems to originate in a healthy desire to look forward and move beyond the disastrous previous administration, but these worthwhile ideas will end up sending the message that twisting the law around and torturing people is ultimately acceptable. There is, however, one additional, and thus far unspoken, issue which may be a concern for the current administration. There is a precedent which will be set by any legal steps which the new administration might take. Part of that precedent will be that people who break the law, even if they hide behind flimsy legal thinking, will be held accountable, but that is not the only precedent which will arise from efforts to prosecute.

For Obama's political opponents, who have spent the last four months attacking the new president, calling him a socialist, and accusing him of compromising our national security simply for having the temerity to revisit failed policies from recent years, the precedent will be a different one. Opponents of the president will see these prosecutions as license to prosecute members of President Obama's administration when they leave office, whether or not they have broken any laws. This is an unfortunate reflection on the state of partisan politics in the US, but it is real and makes the decision about what to do about those who authorized torture, just a little more difficult.

The solution for Obama is to address this concern directly and to leverage his popularity and broad support into getting bipartisan buy in for some way of holding some of the torturers accountable, making it more difficult for this issue, which goes to the core of what America is, to devolve into simply partisan noise. This solution will not be perfect and will not satisfy everybody, but will allow us hold some people accountable and demonstrate that torture is not okay in the US, while not allowing those on the political fringes to cripple our political system through future unfounded legal retributions.