Torture's Future

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ABSTRACT: The definition and application of torture has been contentiously debated around the world during the Bush Administration’s War on Terror. The issue is unlikely to be resolved before Mr. Bush’s impending exit but the stances of the most viable candidates for the upcoming presidential election in the United States suggest that the next executive will take a different approach.

KEY WORDS: torture, detention, due process, international

The issue of torture and the overall treatment of those in the custody of the American government abroad has been an especially controversial and omnipresent topic during the Bush Administration’s tumultuous tenure, particularly after the ghastly images from Abu Ghraib surfaced in 2004. Saddam Hussein’s infamous prison was closed shortly after the scandal broke and the uproar hit its crescendo. Calls from around the world and within the United States were then made for the detention center in Guantánamo Bay to be closed as well after suspicions of torture and incarceration without due process came to light.

The reasons for advocating the closure of the facility varied. Among them included the inhumanity and ineffectiveness of torture, the contravention of U.S. and international law, the besmirching of the reputation of the United States, the ceding of an ostensible moral authority over those who torture as well as a host of other justifications. The requests went unheeded by the Bush Administration that cited the key role Guantánamo Bay played in fighting what the Bush Administration referred to as “The War on Terror.”

Michael Mukasey, the current Attorney General of the United States, was grilled about torture in relation to U.S. and international law during his confirmation. Specifically, Mr. Mukasey was asked about reports indicating that the C.I.A. uses a technique called ‘waterboarding’ in which those being interrogated are given the sensation of drowning so as to facilitate the procurement of information. Mr. Mukasey equivocated whether the controversial technique constitutes torture, although those who have experienced the tactic seem to universally agree that it is.

Additionally, last spring European nations were implicated in suspect interrogation techniques in reports that they were complicit with the U.S. in permitting C.I.A. officers to practice something called “rendition” in European airspace. Rendition is thought to be a practice in which detainees are sent to countries with dubious rules concerning torture in order to circumvent American and European human rights standards and rules of engagement.
The fate of holding terrorist suspects without due process in places such as Guantánamo Bay and alleged torture tactics such as waterboarding, as well as how the U.S. and Europe treat detainees will not be resolved by Mr. Mukasey or Mr. Bush given that Mr. Bush’s Administration is in its twilight and the president’s successor will almost certainly not retain Mr. Mukasey.

As of February 5, 2008, there are four candidates with a credible possibility of being elected the next president. Among the Democrats, Hillary Clinton and Barack Obama have both condemned the use of torture, including waterboarding, and have declared that one of their first matters of business if elected would be to close Guantánamo Bay.

On the Republican side, the only candidate to have actually experienced torture is the Arizona Senator John McCain, who was imprisoned and tortured by the Vietcong for five and a half years. He has condemned torture as morally wrong and ineffective, and includes waterboarding in interrogation techniques that should be prohibited. He would also close Guantánamo Bay.

That leaves Mitt Romney. When the question of whether Guantánamo Bay should be closed was posed during a debate among the Republican candidates Mr. Romney advocated for the opening of more detention centers like Guantánamo Bay as opposed to closing the current one. He is also in favor of what he described as “aggressive interrogation tactics.” However, Mr. Romney’s inclusion in those who stand a chance to become the next president of the United States is generous to say the least given his showing in the primaries up to date, and therefore a proliferation of Guantánamo-type detention centers is doubtful.

Instead, it is fairly safe to predict then that Guantánamo Bay will close early next year. Waterboarding and other techniques largely deemed as torture will also likely be condemned by the next president of the United States.

However, what is written in U.S. and International code, what is announced with attempted moral clarity in front of cameras is rarely parallel to what transpires in clandestine places around the world in the gravest of circumstances. Moreover, even if the question of what a law should mean is generally agreed upon, where, when and how it is actually applied can be an entirely different matter. The difficulty in discerning its proper application is compounded when it is employed in relation to something as amorphous, ambiguous and, well, terrifying as “The War on Terror.”