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GOP Candidates Compete Over Who Will Commit Most War Crimes Once Elected

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At a rally in New Hampshire on Monday night, Donald Trump was criticizing Ted Cruz for having insufficiently endorsed torture — Cruz had said two nights earlier that he would bring back waterboarding, but not “in any sort of widespread use” — when someone in the audience yelled out that Cruz was a “pussy.” Trump, in faux outrage, reprimanded the supporter, repeating the allegation for the assembled crowd: “She said he’s a pussy. That’s terrible. Terrible.”

The spectacle of one Republican presidential candidate being identified by another as a “pussy” for failing to sufficiently endorse an archetypal form of torture exemplifies the moral state of the current race for the GOP nomination.

The Republican candidates have seemingly been competing with one another over who would commit the gravest war crimes if elected. In recent months, one candidate or another has promised to waterboard, do a “helluva lot worse than waterboarding,” repopulate Guantánamo, engage in wars of aggression, kill families of suspected terrorists, and “carpet bomb” Middle Eastern countries until we find out if “sand can glow in the dark.”

The over-the-top bombast plays well in front of self-selected Republican audiences — the crowd responded to the description of Cruz Monday night with full-throated chants of “Trump! Trump!”

Trump!” But such promises of future criminality from potential presidential nominees have outraged many legal experts.

“Torture, indiscriminate killing of civilians, and indefinite detention are clear violations of international and domestic law,” says Hina Shamsi, director of the ACLU’s National Security Project.

Cruz not only called for the reinstitution of waterboarding during Saturday’s presidential debate, but actually justified the practice using language reminiscent of the infamous 2002 “Bybee Memo,” authored by disgraced former Justice Department lawyer John Yoo. The Texas senator, who had previously said that “torture is wrong, unambiguously, period, the end,” was asked if waterboarding qualified as torture, and responded: “Well, under the definition of torture, no, it’s not. Under the law, torture is excruciating pain that is equivalent to losing organs and systems, so under the definition of torture, it is not. It is enhanced interrogation, it is vigorous interrogation, but it does not meet the generally recognized definition of torture.”

But Yoo’s definition is absolutely not “the law.” His torture memos, written for Vice President Dick Cheney to provide legal cover for clearly illegal acts, were later rescinded and repudiated by the Bush administration itself, for being barbaric, legally unsupported, and unreasonable. “This question regarding whether waterboarding is torture? It’s not arguable,” says Pardiss Kebriaei, a staff attorney at the Center for Constitutional Rights.

Trump, at the same debate, said, “I would bring back waterboarding, and I’d bring back a helluva lot worse than waterboarding.”

Trump has vociferously argued in favor of the utility of torture, despite the fact that interrogation experts are nearly unanimous that, moral considerations aside, it’s no good for extracting truthful information; it’s best for revenge, false confessions, and propaganda. “Don’t kid yourself, folks. It works, OK? It works. Only a stupid person would say it doesn’t work,” Trump said in November. But, he added, “If it doesn’t work, they deserve it anyway, for what they’re doing.”

Says Kebriaei: “Ted Cruz and Donald Trump can choose to opt in or out of both international and American understandings of what constitutes torture, but that doesn’t change the legal status of waterboarding as torture.”

Another frequent Republican presidential talking point, embraced most vocally by Cruz, is the need to “carpet bomb” territories under the control of ISIS. These territories happen to be home to millions of civilians with no connection to ISIS, other than having the misfortune to live under the group’s control. Nonetheless, Cruz has pledged to “carpet-bomb them into oblivion,” stating that “I don’t know if sand can glow in the dark, but we’re going to find out!”

Cruz has further claimed that his carpet-bombing would actually be restrained. “When I say saturation carpet bombing, that is not indiscriminate,” Cruz said during the most recent debate. “It’s targeted at infrastructure. It’s targeted at communications. It’s targeted at bombing all of the roads and bridges going in and out of Raqqa. It’s using overwhelming air power.”

But when asked if he would like to expand the rules of engagement that currently serve as a restraint to bombing civilians, Cruz responded: “Absolutely, yes.”

Experts say that carpet-bombing is by definition a war crime because it lacks individual targets. “One must always distinguish civilians and civilian objects from combatants and military objects and never target that which is civilian,” says Widney Brown of Physicians for Human Rights. “Depriving civilians of energy, attacking communications infrastructure, roads and bridges ... such a bombing plan is a form of collective punishment against civilians and it is unlawful.”

Under Rule 7 of the International Committee for the Red Cross guidelines for the laws of war, “parties [to] conflict must at all times distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian objects.”

Meanwhile, Marco Rubio has promised voters that he would start sending new prisoners to the facility at Guantánamo Bay at a time when the Obama administration is trying to close it. In the January 14 debate, Rubio said of members of ISIS, “If we capture any of them alive, they are getting a one-way ticket to Guantánamo Bay, Cuba, and we are going to find out everything they know.”

At Saturday’s debate, Rubio left the clear impression that the only reason he was not specifying what kind of torture he supported was that “we should not be discussing in a widespread way the exact tactics that we’re going to use because that allows terrorists to know to practice how to evade us.”

Hope Metcalfe, an international law expert at Yale Law School, warns that any of these policies would be a “disaster, on both legal and policy fronts.”

“The United States is bound by international treaties prohibiting practices that result in physical and psychological harm to detainees, which is why the Bush administration had no choice but to reverse course when the Yoo memo became public,” Metcalfe says. “Prior attempts to evade settled law on torture were met with universal disdain, because arguments in its favor are morally corrupt and legally indefensible. ”

But the ACLU’s Shamsi argues that the current positions of the candidates are a reflection of the U.S.’s unsettled moral climate related to national security. “Policies like these would be harder for politicians to embrace today if the Obama administration had provided meaningful torture accountability, and if it weren’t carrying out unlawful drone strikes or holding Guantánamo prisoners indefinitely,” she says.

The debate is also alarming American allies, particularly in Europe, says Scott Horton, an international human rights lawyer. “How could somebody who talks like this be the leader of the Atlantic alliance? It’s not possible. It’s disqualifying. And nobody in the United States seems to get that,” he says.

Horton says that mainstream U.S. media are barely covering the outrageous comments being made by the candidates. “They are so obsessed with the horserace,” he laments. To write about issues like torture — and put outrageous comments in their proper context — “you actually have to know facts, which is so hard,” Horton says. “Just talking about the latest opinion polls, that’s so easy.”