American Allies need to actively Oppose Trump’s Torture Policy

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With President Trump we are in somewhat uncharted waters. Never has there been an American president who has been so forcefully pro-torture in the modern era. The domestic environment in which he will make this decision is also dangerously supportive of his views.
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 Throughout the 2016 presidential campaign, President Donald Trump openly supported the use of torture. At the beginning of the campaign, he argued that torture works, but even "if it doesn’t work, they deserve it anyway for what they do to us." Later in the summer, he claimed that "I would bring back waterboarding, and I’d bring back a hell of a lot worse than waterboarding. We’re like a bunch of babies, but we’re going to stay within the laws. But you know what we’re going to do? We’re going to have those laws broadened. They say, what do you think about waterboarding? I said I like it a lot. I don’t think it’s tough enough. You have to fight fire with fire.”

 Trump has not changed his position since becoming president. When his Defense Secretary, General James M. Mattis, surprised him by arguing, “give me a pack of cigarettes and a couple of beers and I do better with that than I do with torture,” Trump explained, “I’m not saying it changed my mind. Look we have people that are chopping off heads and drowning people in steel cages and we’re not allowed to waterboard.” Vice President Mike Pence kept the option open in a subsequent interview responding to criticism over the potential waterboarding policy, claiming that, “We’re going to have a president again who will never say what we’ll never do.”

 Even in the few weeks since Trump has become president, there have been indications that this tough rhetoric might become policy. His choice for CIA deputy director oversaw a black site in Thailand where the CIA tortured high-value detainees. A leaked draft order would have forbidden the ICRC from accessing detainees, revoked protections put in place by President Obama and reinitiated the use of overseas black sites. Though this was revised to omit the black site plans after it was exposed, it suggests that the use of torture is still an active option for the administration.

 Despite this grim outlook, a return to torture under the Trump administration is not a fait accompli. President Trump, like all politicians, faces political pressures that can either help or hinder him in going from idea to action. However, given the current political conditions domestically, it is particularly important that allies of the United States make it clear that the use of torture is not only unacceptable, but that it will damage the interests of the United States by putting intelligence- and military-cooperation at risk.

 Permissive Domestic Conditions

 The domestic conditions for President Trump to reinstate torture are quite permissive, particularly when set against the high international legal standard of “no exceptional circumstances whatsoever.” First, torture has become acceptable among the American public. An ICRC poll in December 2016 showed that 46% of Americans believed that torture could be used on an enemy combatant, with 30% opposing. Likewise, in a March 2016 poll, 63% of Americans claimed that torture is often or sometimes justified, and only 15% claimed that it is never justified — even though this is the prevailing legal position in international law.

 This is not a short-term phenomenon. Americans have consistently supported the use of torture in public opinion polls throughout Obama’s presidency. In fact, we can trace a steady increase in American’s support for torture, starting after the torture scandals of Abu Ghraib and the revelations of torture at CIA black sites in 2005 and 2006. As things stand, it is unlikely that President Trump will face serious consequences electorally should he decide to put torture back on the table.

 Institutionally, President Trump might have greater difficulty. The State Department and the US Armed Forces have traditionally been against removing Geneva Convention rights from detained prisoners. The CIA’s recent experience being investigated by the Senate over their role in torture during the Bush administration has also dissuaded some at the top of this organization to engage in torture again. Finally, certain members of Congress, particularly Senator John McCain, have come out vocally against even the possibility that torture be reinstated as an interrogation method.

 On the other side of the coin, Trump has the ability to hire and fire those in the executive, and he has shown that he will get rid of anyone who publically speaks out against his wishes. Equally, while there are certainly members of Congress against the use of torture, there are also those, like Senator Tom Cotton, who have openly promoted its use.

 So while Trump can certainly expect more political and legal resistance institutionally, this must be set against the general acceptance of torture among the American public. If this does not change, it will almost certainly affect more calculating politicians in their decisions to support or oppose Trump’s torture policy.

 Importance of the American Allies

 Given the relative permissive conditions domestically, it is therefore important that American allies play an active role in dissuading Trump from reinsituting torture. The international community has certainly taken on this mantle before. In my own research, I found that many states were openly opposed to Bush’s use of torture and grew increasingly so between 2001 and 2008. This made cooperative efforts difficult. The CIA black site program, for instance, could only operate through constant diplomatic effort on the part of the United States and the transfer of large sums of money to black site hosting states. Even when the program was secret, cooperation was unstable. Once it came to light in 2006, the CIA found it almost impossible to maintain existing partners.

 Unlike the Bush administration, Trump openly uses the word ‘torture,’ which is unambiguously in violation of the laws of armed conflict and international human rights law. There is thus an important role for US allies to be clear about their disapproval and to make the international diplomatic costs of using torture clear. But the way in which they should do this is not straight-forward.

 One of the big questions of the Trump administration is whether traditional name-and-shame techniques used by human rights NGOs, international organisations and foreign governments will have the same effect in a political environment where communinist populism is much more pronounced. Openly criticising Trump for his torture policy, whether promoted or actually enacted, could lead to a rally-around-the-flag effect among his supporters, who are already primed for a president that will make the tough decisions and put America’s interests ahead of what foreign governments might want. If this is the case then a direct confrontation approach might not be as successful as it has been in the past.

 Given this, there is an argument to be made that American allies need to be subtle but persistent over in their interactions with the Trump administration over torture. Statements such as those made by Angela Merkel, which reinforced cooperation based on “the dignity of each and every person,” combined with sustained closed door lobbying to emphasise the costs of lost cooperation, might be more important than open declarations of opposition to Trump’s plans. This is particularly the case since there is much to lose: the United States and their allies are partners in many military and intelligence-gathering operations, all of which would be at risk if Trump decides reinstates torture. Theresa May’s recent comments, which reinforced the UK position to not share intelligence with states practicing torture, is an example of what all American allies can do to make these costs clear.

 Conclusion

 With President Trump we are in somewhat uncharted waters. Never has there been an American president who has been so forcefully pro-torture in the modern era. The domestic environment in which he will make this decision is also dangerously supportive of his views. This suggests a clear role for American
allies to help tip the scales against torture by putting pressure on the United States. However, the way in which this should be done is not as clear. It is very possible that the nature of Trump’s communitarian populist movement is such that open opposition to Trump and his policy might be less productive that it has been in the past. If this is the case, an approach that emphasises the benefits of cooperation contingent on torture being taken off the table might be the best strategy to keep Trump’s ideas from being turned into policy.

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