

Does Cheney Make Obama Look Good Enough?

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Dick Cheney could make anyone look decent, honorable, and law-abiding by comparison. But is the existence of someone worse, no matter how many hours our media monopoly gives him, enough to make Obama's decisions acceptable? Let's look at their pair of speeches given on Thursday in Washington, D.C., and depicted as a debate by the media.

President Obama began speaking at 10:28 a.m., 18 minutes late, and spoke until 35 minutes after Cheney's scheduled start, but Cheney delayed and began at 11:20. Obama had scheduled his own speech to coincide with Cheney's, no doubt to defend against some of Cheney's statements, but also probably because of the politically advantageous contrast with someone so very unpopular and someone always advocating greater illegality and abusiveness.

Obama began by talking about keeping Americans safe from an extremist ideology, 9-11, and al Qaeda (which he said, based on what I know not, was "actively plotting to attack us again"). He depicted war in Afghanistan and Pakistan as revenge: "taking the fight to the people who attacked us." But he said this standing in the National Archives in front of a Constitution that requires a declaration of war by Congress before launching a war against Pakistan or Afghanistan or anywhere else. Just as I had that thought, President Obama named the documents in the room (the Constitution, Bill of Rights, and Declaration of Independence, but not the Magna Carta which is usually there too). The words "CONSTITUTION OF THE UNITED STATES OF AMERICA" appeared behind the president as he spoke.

Obama said we'd grown into "the strongest nation in the world" because of our principles. And yet, the Constitution says nothing about being "the strongest nation in the world". Obama said that "from Europe to the Pacific we've been the nation that has shut down torture chambers and replaced tyranny with the rule of law." (But is our imposition of power on other nations around the world, where we have some 1,000 bases in some 130 nations at a cost of roughly \$140 billion per year, itself within the rule of law? Is that what we're doing in Iraq and Afghanistan and Pakistan? Is that why we're redrawing the boundaries of Iraqi cities in order to stay in them despite a treaty requirement that all troops leave by June 30th?)

Obama referred to the Bush-Cheney decision to create new torture programs as "hasty". And he only used the word "torture" when announcing, just as Bush did, that "the United States does not torture." Whenever referring to the actions of his predecessors, he said "enhanced interrogation techniques." The "hasty decisions" were aimed at protecting the American people, Obama claimed, but were based on fear. Our principles were treated as luxuries that we could no longer afford, he said. And citizens and journalists fell silent. (Hey, Mr. President, please don't lump us with journalists!!) Nowhere did Obama mention other

motivations for torture, including what we now know to have been the primary motivation, the eliciting of agreement to false justifications for war. I suspect that another motivation was the fear mongering of the American people, which Obama later denounced in his speech without connecting it to the establishment of torture policies.

Obama listed the three things he'd done when he first took office, but said little of the many contradictory things he'd done since. He said that he had "banned the use of so-called enhanced interrogation techniques." That is absolutely and recklessly false. And I don't mean just because torture is ongoing. I mean that torture was always banned by the anti-torture statute and the war crimes statute, not to mention the Eighth Amendment, and presidents do not have the Constitutional power to make laws.

Obama went on to say that "these techniques undermine the rule of law," as well as that torture is ineffective, serves as a recruitment tool for terrorists, endangers troops, etc. But how do you restore the rule of law? By enforcing laws or by claiming that you've newly and royally created as law things that already were law and can be found in the 8th amendment behind you in the bulletproof case?

Secondly, Obama said that he had ordered the closure of the prison camp at Guantanamo Bay. There have been 3 convictions in over 7 years, he pointed out. In 2006, he added, the Supreme Court invalidated the entire system. Moreover, two-thirds of the detainees were released before he'd taken office. Guantanamo, the president said, set back America's moral authority and undermined the rule of law. The idea behind Guantanamo, he said, was to be beyond the law, which the Supreme Court rejected. Yes, but if you won't enforce laws, in what sense have you returned to them?

Third, Obama said, he had ordered review of all Guantanamo prisoners' cases, which he said had to be done whether or not Guantanamo was closed. He then denounced the "fear mongering" by unnamed people during the recent public debate over this issue.

Obama then announced two major sections for the rest of his speech. The first would be about Guantanamo and detentions policies and the second about security and transparency. The second part, however, never really arrived. Or, at least, I didn't recognize it as addressing transparency when it did.

On Guantanamo, Obama began by saying that he would not release anyone if it would endanger our national security or anyone in the United States if it would endanger the American people. But we will put people into high security US prisons, he said, from which, he pointed out, no one has ever escaped and which already hold hundreds of convicted terrorists. The idea that we cannot do this, Obama said, is not rational. However, he would soon admit that he intended to hold some people indefinitely without charge, and there is still the possibility that doing that within the United States will create new problems with that document he was standing in front of.

Obama claimed that detainees released in the past have "returned to the battlefield". But what "battlefield" is that? And if they'd been on it before, then why were they released to "return" to it. The rules of war are meant to apply to actual battlefields, not the "Overseas Contingency Operation."

Obama divided Guantanamo prisoners into five categories:

1. Those he will try in federal courts.

2. Those he will try in military commissions as “violators of the laws of war”. This he said will allow evidence from battlefields that cannot always be effectively used in federal court. Does that mean evidence from torture? What else can it mean? That was my thought until Obama’s next statement was that “we” will no longer use evidence from “enhanced interrogation techniques” or from hearsay. So what evidence does he have in mind?

Michael Ratner of the Center for Constitutional Rights (CCR) said, “The president wrapped himself in the Constitution and then proceeded to violate it by announcing he would send people before irredeemably flawed military commissions and seek to create a preventive detention scheme that only serves to move Guantanamo to a new location and give it a new name.” For that see #5 below.

3. Those ordered released by the courts. “I cannot ignore these rulings because as president I too am bound by the law,” Obama said. But he never mentioned and has perhaps never before mentioned the Convention Against Torture, the Anti-torture Act, the War Crimes Act, the UN Charter, the Freedom of Information Act, or the Geneva Conventions as laws he is bound to enforce as well as obey.

4. Those who can be safely transferred to another country. Obama said his team had identified 50 thus far who fit this category.

5. Those who cannot be prosecuted but pose a clear danger to the American people. For example, they’ve expressed allegiance to Osama bin Laden (something a judge did rule yesterday was grounds for holding people indefinitely without charge, but replace “Osama bin Laden” with “Communism” and then think about it). They are at war with the United States, Obama said of such people, blurring the definition of war exactly as Bush and Cheney did.

Obama proposed to construct a “legitimate legal framework” for category 5. To do this, he said, he’ll create judicial and congressional oversight, “consistent with our values and our Constitution”. That sounds better than Cheney-Bush but is still based on the fundamental lie that it is legal to imprison people indefinitely without charge. How is a court and a congress to find someone deserving of incarceration but neither guilty nor innocent, and to do so without a trial? Will such non-trials be public? Obama never suggested that they would be.

Managing Attorney for CCR’s Guantanamo project Shayana Kadidal commented: “Preventive detention goes against every principle our nation was founded on. We have courts and laws in place that we respect and rely on because we have been a nation of laws for hundreds of years; we should not simply discard them when they are inconvenient. The new president is looking a lot like the old.”

Obama claimed that those in the photos he just decided not to release (if courts go along with him) have already been held accountable and that nothing has been withheld to protect anyone from prosecution. This is a nonsensical claim, given that 2,000 photos would strongly motivate the demand for prosecution of those higher up by revealing to people who cannot read the written word the systemic nature of the torture regime.

Obama did mention transparency by saying that he had campaigned promising it and that he understands people's desire for accountability. When he doesn't release information, he said, he will make sure there is oversight by Congress or the courts. Yeah? The courts said to release the photos. How will getting a judge to accept defiance of the decision help?

Obama did not discuss his justice department's recent assertions of "state secrets" power but instead asserted principles exactly contrary to those actions. The "state secrets" power, he said, should not be abused merely because information reveals violation of laws or embarrasses the government. He said his administration was doing a "review" and would follow "a formal process" before asserting the privilege, at least in the future, and would tell Congress why, in each case, it had done so. But that is not the same as allowing courts and the congress to see the information in closed session and overrule a decision. Telling congress (or the public??) what you did is not the same as Congress making the decision. Obama called the other branches of government "co-equal," ignoring the fact that congress in the Constitution is far and away the most powerful branch of our government, and the fact that the president is that now. Obama never mentioned the State Secrets Protection Act, a bill in congress now that would give courts the power to review and reverse state secrets claims.

Attorney General Eric Holder recently refused to tell the House Judiciary Committee whether the president could throw out an entire case, not just block one piece of evidence, by claiming "state secrets". Holder also refused to say that the president cannot hold people indefinitely without charge. Obama is currently doing so in Bagram (unmentioned on Thursday) and elsewhere, including Guantanamo, and did not forswear that power in his speech.

All of which sounded ominous until the Dark One appeared immediately following Obama's speech preempting the usual media chatter with his own, which my notes recorded thus:

<blockquote>9-11, everything changed, blah, fear, horror, 9-11, blah blah, everything changed, blah blah blah, We saved lives with illegal spying, blah, blah, no evidence, NY Times treasonous, blah blah blah blah blah, We saved lives through "tough interrogations" blah blah, no evidence, blah, blah, Only the highest value detainees were tortured, blah, blah, never mind the photos we've already seen, the Red Cross report, the endless accounts from victims and participants, blah blah.

We had to get information out of people fast, blah, never mind that Ali Soufan said torture is slower as well as produces nothing, blah blah. Abu Ghraib was a few sadistic bad apples, blah, blah, blah BLAH!

Cheney denounces Obama's renaming of "war on terror" and "enemy combatants" not because Obama is continuing the policies under new names but because he supposedly isn't.

Cheney points out that Obama has reserved for himself the authority to order torture if he deems it necessary. Cheney denounces not this imperial assertion of power but Obama's criticism of Cheney-Bush's torturing.

Cheney again makes his claim about memos that he knows cannot and no doubt always knew could not be released because of Bush-Cheney policies, and which Senator Russ Feingold says do not show what Cheney claims. But Cheney now says that Obama can

release the memos if he chooses to and dares him to do so.

I too demand that Obama release those and dozens of related memos that we know of as well as all those we do not. I further insist that being better than Dick Cheney is just not good enough. I demand an end to detention without charge and rendition and foreign occupations. And I demand that instead of talking about laws our government enforce them.

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David Swanson is the author of the upcoming book *“Daybreak: Undoing the Imperial Presidency and Forming a More Perfect Union”* by Seven Stories Press. You can pre-order it for a discount price at <http://tinyurl.com/daybreakbook>

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