

THIS GITMO ANNIVERSARY NEEDS TO BE ABOUT BAGRAM, TOO

On a near daily basis in the last week or so, Jason Leopold has tweeted some quote from the daily White House press briefing in which a journalist asks Jay Carney a question about detention, to which Carney responds by insisting the Administration still intends to close Gitmo.

Q One other topic. Wednesday is apparently the 10th anniversary of the prison in Guantanamo Bay, and I'm wondering what the White House says now to critics who point to this as a pretty clear broken promise. The President had wanted to close that within a year. That hasn't happened for a lot of the history that you know of. And now it's like there's really no end in sight. How do you respond to the criticism that this is just a big, broken promise?

MR. CARNEY: Well, the commitment that the President has to closing Guantanamo Bay is as firm today as it was during the campaign. We all are aware of the obstacles to getting that done as quickly as the President wanted to get it done, what they were and the fact that they continued to persist. But the President's commitment hasn't changed at all. And it's the right thing to do for our national security interests.

That has been an opinion shared not just by this President or members of this administration, but senior members of the military as well as this President's predecessor and the man he ran against for this office in the general election. So we will continue to abide by that commitment and work towards its fulfillment.

And that response usually succeeds in shutting the journalist up.

No one has, as far as I know, asked the more general question: “does the Administration plan to get out of the due process-free indefinite detention business?” That question would be a lot harder for Carney to answer—though the answer, of course, is “no, the Administration has no intention of stopping the practice of holding significant numbers of detainees without adequate review.” Rather than reversing the practice started by the Bush Administration, Obama has continued it, even re-accelerated it, expanding our prison at Bagram several times.

That question seems to be absent from discussions about Gitmo’s anniversary, too. Take this debate from the NYT.

Deborah Pearlstein takes solace in her assessment that Gitmo has gotten better over the last decade.

In 2002, detention conditions at the base were often abusive, and for some, torturous. Today, prisoners are generally housed in conditions that meet international standards, and the prison operates under an executive order that appears to have succeeded in prohibiting torture and cruelty. In 2002, the U.S. president asserted exclusive control over the prison, denying the applicability of fundamental laws that would afford its residents even the most basic humanitarian and procedural protections, and rejecting the notion that the courts had any power to constrain executive discretion. Today, all three branches of government are engaged in applying the laws that recognize legal rights in the detainees. Guantánamo once housed close to 800 prisoners, and most outside observers were barred from the base. Today, it holds 171, and independent lawyers, among others, have met with most

detainees many times.

But she doesn't mention that the Administration still operates a prison alleged to be abusive, even torturous, still rejects the notion that courts have any power to constrain executive discretion over that prison. And that prison holds over 3,000 men in it!

Sure, Gitmo has gotten better, but that only serves to distract from the fact that our detention **practices**—except for the notable fact that we claim to have ended the most physical forms of torture—have not.

David Cole scolds those in Congress who “don't seem troubled at all about keeping men locked up who the military has said could be released, or about keeping open an institution that jeopardizes our security,” yet doesn't mention that Bagram does the same. Nor does he note the part of the Administration's NDAA signing statement that suggested Congress' salutary effort to expand detainee review would not necessarily apply to Bagram. How can it all be Congress' fault when Obama isn't fulfilling the letter of the law providing more meaningful review to those we're holding at Bagram?

Even the brilliant Vince Warren focuses on the “legal black hole” that is Gitmo, without mentioning the bigger legal black hole that is Bagram.

Among the four participants in the debate, only Eric Posner even mentions Bagram, suggesting that that's one less optimal alternative to keeping prisoners at Gitmo.

To be sure, there are other options. Detainees could be placed in prison camps on foreign territory controlled by the U.S. military, where they lack access to U.S. courts and security is less certain.

But then Posner misconstrues the issue.

Some critics believe that the whole idea of a war on terror is misconceived, that Congress could not have lawfully declared war on Al Qaeda, and that therefore suspected members of Al Qaeda cannot be detained indefinitely like enemy soldiers but must either be charged in a court or released. This position has been rejected repeatedly by the courts, but even if it were correct, Guantánamo would remain a legitimate place to detain enemy soldiers picked up on “hot” battlefields wherever they may be now or in the future – places like Afghanistan, Iraq, Libya and maybe soon Iran, to name a few.

There’s a difference between what is legal under international law developed for very different wars and what is just or what is the best way to conduct that war. And the problem with Gitmo (mitigated somewhat over the decade)—and the problem with Bagram, still—is that we’re spending unbelievable amounts of money to detain and abuse people that we haven’t even adequately reviewed to make sure we need to detain them. That’s not a smart way to conduct a war, particularly not one its backers insist will never end, particularly one that depends on our ability to win support among Afghans and other Muslims.

The only thing that was and is problematic about Gitmo that is not also problematic about Bagram is the publicity surrounding it (presumably, though, just here and in Europe—I imagine Afghans, Pakistanis, and al Qaeda members know as much about Bagram as they do about Gitmo). That is, by treating—and allowing the Administration to treat—Gitmo as the problem, rather than due process-free and possibly abusive indefinite detention generally, we’re all acting as if the problem is that **people know** we’re conducting due process-free indefinite detention, not that we’re doing it at all. We’re letting the Administration off easy with its

claims that mean old Congress has prevented it from closing Gitmo, when Bagram offers proof that it wants to do so not for the right reasons—because it is wrong, because it damages our ability to claim to offer something better than corrupt regimes—but because what America has become and intends to stay is embarrassing, politically inconvenient.

I understand that this anniversary will attract general attention to Gitmo. I'm thrilled that, for once, people are listening to the reporters and activists and lawyers and guards and especially the detainees who have fought to close it. But by allowing the myth that Gitmo is the problem to go unchallenged, and not our due process-free indefinite detention generally, we're simply pretending that unjust and stupid actions that occur outside of the glare of the press don't matter as much as those that make the news.