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The Antitorture Law That Wasn't

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With passage of the antitorture McCain amendment over the vehement objections of the president, Congress congratulated itself for its high-minded morality. "We are Americans," Sen. John McCain, R-Ariz., proclaimed during the debate on the Senate floor, "and we hold ourselves to humane standards of treatment of people no matter how evil or terrible they may be."

Nice sentiment. If only it were true.

Bush appeared to be handing McCain a victory when he eventually acquiesced to language barring the "cruel, inhuman or degrading" treatment of anyone in U.S. custody. But it was a Br'er Rabbit protest. Bush was getting more than he was giving up. The protections against abuse that Congress gave with one hand it took back with the other. And Bush declared in an accompanying signing statement that he plans to ignore it all anyway.

The swirl of press surrounding passage of the Detainee Treatment Act of 2005 focused on the provision that protected prisoners from mistreatment and directed the military to abide by the interrogation techniques laid out in the Army Field Manual.

It appeared to be an affirmation of America's finest principles - what made this nation stand as a model of justice and humanity for more than 200 years. But the measure had numerous other provisions, nearly all of which stripped prisoners in Guantanamo of rights and protections. Congress grandly declared the end of cruel treatment, while more quietly making it impossible to assert that right.

Since the U.S. Supreme Court ruled in 2004 that prisoners at Guantanamo could get into court, at least 100 habeas corpus petitions have been filed by the 500 or so prisoners there - some of whom have been incarcerated for nearly four years. The suits charge everything from abusive treatment and conditions (such as beatings and years of solitary confinement with nothing but a Koran to read) to an insistence that they are being wrongly held and given no chance to prove it.

The New York-based Center for Constitutional Rights, which is coordinating many of these suits, estimates that at least 125 prisoners at Guantanamo are engaging in a hunger strike to call attention to their indefinite detention - their only available avenue of protest. Dozens are also being cruelly force-fed through tubes shoved down their noses.

The administration has fiercely challenged the notion that these prisoners have any cognizable human rights, essentially telling the courts that the prisoners are at the utter mercy of the president.

Obviously worried about how such an unprincipled stance would fly, the administration pressed Congress to shield it from the courts. And with the help of Sens. Lindsey Graham, R-S.C., and Carl Levin, D-Mich., the administration got most of what it wanted.

The Graham-Levin amendment stripped the federal courts of jurisdiction to hear any claims of abusive treatment from Guantanamo detainees. These prisoners now may only go to court if they were handed a severe sentence by a military commission or if they want to challenge the process

by which they were designated an enemy combatant (not whether their imprisonment is justified, but whether the military violated its own rules in determining their status).

There is a current debate over whether the new law applies retroactively to the habeas petitions already filed by Guantanamo detainees. But the administration wasted no time in demanding that the courts dismiss the habeas cases now before them.

On top of all this, the act takes the unprecedented step of explicitly allowing the use of coerced statements as evidence. So while Congress has paid lip-service to a ban on torture, it has bounced those who claim they're a victim of torture out of court and then allowed testimony elicited from torture to be used in official proceedings.

Then there was that signing statement.

It wasn't well known until recently that Bush has been issuing his own interpretations of the bills he signs. Rather than veto the bills, which is his right, Bush has simply usurped Congress' authority and declared that the executive branch will ignore parts of the new laws - about 500 parts so far.

Accompanying the antitorture bill, Bush issued a statement that he would construe it in a manner consistent with his power as commander-in-chief. In other words, if he felt the use of torture was needed for national security, it would be used despite the law.

At the same time, the Pentagon is promulgating new prisoner interrogation rules for the Army Field Manual. They are expected to be completed and approved sometime next month and include a 10-page classified appendix. The current interrogation rules are public, effective and humane. They are the ones McCain referred to in his antitorture bill. But the new rules, according to an official quoted in the New York Times, "(go) right up to the edge" of illegality.

"This is a stick in McCain's eye," said the official.

So what we have with the antitorture bill is a whole lot of hoopla signifying nothing. Bush is determined to keep dragging us through the mud, no matter what laws he has to break or manipulate into irrelevance, and Congress seems willing to go along. It's a disheartening, demoralizing disgrace all around.