

Dead or alive: American vengeance goes global

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After 11 September 2001, the Administration of George W. Bush dismissed any criminal-justice model, put forth by various voices at home and abroad, for understanding and combating terrorism. This was ‘war’, the President insisted on 17 September, as he did repeatedly – directly, implicitly, and by analogy – in his 20 September address to Congress and on many later occasions, with American war in Afghanistan and later Iraq making that claim true. The criminal-justice model persisted, however, not least in Bush’s more colourful rhetoric. As he commented on the 17th regarding Osama bin Laden, ‘There’s an old poster out west, as I recall, that said, “Wanted: Dead or Alive”’. On the 20th came his odd analogy, ‘Al Qaeda is to terror what the mafia is to crime’. On 11 October, drawing on crime-fighters’ lingo, he announced a ‘Most Wanted Terrorist list’ as part of his effort to ‘round up’ – both cowboy and cop words – ‘the evildoers’.¹ In word and action, he kept blurring the neat line between war and crime he asserted.

To be sure, war and crime have long overlapped in deed, law, and rhetoric. Hence the term ‘war crimes’ and the recognition in international law that starting a war may be a crime (as some foes accused Bush of committing by invading Iraq). American leaders on occasion had figured the fascist and communist threats as criminal enterprises, and Al Qaeda had abundant attributes of such an enterprise and few of conventional war-making. But Bush’s fondness for the crime-fighting mode was more persistent and ingrained. It owed to his faux-cowboy style, Texas adulthood, political conservatism, and religious beliefs, but also to a swelling punitive system at home that shaped American responses to 9/11. Just as terrorism crossed the smudgy line between war and crime, America’s responses straddled waging war and fighting crime, for all the rhetorical bluster and real-life action privileging war.

This essay traces the growth of that punitive system and its connections to American, primarily Bush Administration, words and actions after 9/11. Those connections hardly alone explain post-9/11 policy, but they have been neglected by most pundits and scholars.² In turn, this essay revisits an old claim: that American foreign relations (like those of most nations) are shaped as much by the nation’s character – its defining attributes and ethos – as by its interactions with the world.

¹ President’s Remarks, ‘Guard and Reserves “Define the Spirit of America”’, 17 September 2001; Address to a Joint Session of Congress and the American People, 20 September 2001; ‘President Unveils “Most Wanted” Terrorists’, 10 October 2001, all as recorded at (www.whitehouse.gov/news/releases/2001).

² See, for example, the otherwise excellent collection, *The New American Empire: A 21st Century Teach-in on US Foreign Policy*, eds. by Lloyd C. Gardner and Marilyn B. Young (New York: The New Press, 2005).

The nation acts abroad much as it does at home, albeit with different results. Historians have found that claim, seemingly self-evident, hard to sustain – agreement on ‘defining attributes’ is nearly impossible, and connecting them to the actions of the state and other players difficult.³ Moreover, recent scholarly emphasis on multi-national perspectives and transnational patterns can make the American-values approach seem old-fashioned, even reeking of ‘American exceptionalism’. But it is still useful. Given how a Progressive mentality shaped American occupations of the Philippines, Panama, and the Caribbean early in the century, and how a New Deal ethos filtered into the occupations of Germany and Japan after World War II, we might ask what ethos shaped the American occupation in Iraq and other post-9/11 policy. More suggestive than conclusive, this article will, I hope, provoke further inquiry along those lines.

Punitive America

In a far-reaching change, the United States became a strikingly more punitive nation late in the twentieth century, above all by imprisoning far more people. Almost no one predicted or sought that development at its start, at least on the scale that emerged.⁴ Indeed, it ran counter to the de-institutionalisation and deregulation otherwise fashionable and to the proclaimed distaste for ‘social engineering’ among conservative elites.⁵ This indeed was social engineering – ‘a utopian experiment: a social cleansing by penal means’, although, ‘like many utopia, it has become dystopia’.⁶ In two decades the imprisoned population quadrupled its 1980 size, reaching over 2 million, and the federal inmate population doubled between 1990 and 2000. Those increases resulted from more arrests and convictions, but also from longer and fixed sentences, especially for drug-related crimes, and more vigilant enforcement of probation and parole. Incarceration rates in Western Europe and America had been roughly comparable thirty years earlier, but in another way that the two parted company over these years, by 2002 the US rate was six to twelve times

³ Notable examples include: Robert Dallek, *The American Style of Foreign Policy: Cultural Politics and Foreign Affairs* (New York: New American Library, 1983); Loren Baritz, *Backfire: A History of How American Culture Led Us into Vietnam and Made Us Fight the Way We Did* (New York: Ballantine, 1985); and Michael Hunt, *Ideology and US Foreign Policy* (New Haven, CT: Yale University Press, 1987).

⁴ On the surprising nature of this development, see Marc Mauer, ‘The Causes and Consequences of Prison Growth in the United States’, in David Garland (ed.), *Mass Imprisonment: Social Causes and Consequences* (London: Sage, 2001), p. 4.

⁵ Historical scholarship on the broad changes sketched here is thin. I have instead relied on journalists’ reporting, and especially on historically-informed sociology. Katherine Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics* (New York: Oxford University Press, 1997), is a concise, careful, critical summary of these changes and the scholarship about them. Norwegian sociologist Nils Christie’s *Crime Control as Industry: Towards GULAGS Western Style?* (London and New York: Routledge, 1993) is chilling and angry – he contends ‘that the prison system in the USA is rapidly moving in the same direction’ as that of Hitler’s effort to obtain ‘the purified product’ (p. 163) – but also offers complexity, international perspective, and much information, and his predictions about the growth of incarceration in the US were largely borne out in the subsequent decade. Valuable essays generally critical of surging imprisonment rates can be found in Garland, *Mass Imprisonment*.

⁶ David Downes, ‘The Macho Penal Economy: Mass Incarceration in the United States – a European Perspective’, in Garland, *Mass Imprisonment*, p. 54.

higher than in Western Europe and Canada.⁷ Western Europe was hardly immune to direct US influence and to the forces shaping US patterns: its own drug wars pushed up incarceration rates, and especially after 2001, imprisonment of Muslims moved nations like France closer to the American model of mass minority incarceration, with the attendant characteristics and problems as well.⁸

Still, American distinctiveness was glaring. By 2002, the US had surpassed Russia and even China in not only incarceration rates but the gross size of its imprisoned population, and California's correctional system had become 'the largest in the western hemisphere' – trends that kept US unemployment low, allowing champions of a deregulated American economy to claim its superiority over statist Europe.⁹ The larger 'correctional population' – those on probation and parole as well as those under lock-and-key – reached a new high in 2003 of 6.9 million, about 3.2 per cent of the adult population.¹⁰ Millions more had once done time. As of 2002, 13 million Americans either had been or were jailed – nearly 7 per cent of the adult population.¹¹ Among them, African Americans constituted about half of those 'admitted to prison' in 1992, compared to only 22 per cent in 1930 under the coercive rule of Jim Crow, and black men were imprisoned in the 1980s at a far higher rate than in South Africa under apartheid.¹² Beyond them were thousands of foreigners, some children, in detention centres awaiting deportation or status rulings or simply lost in a complex, secretive system, and new fences and other barriers (not altogether effective) to illegal immigrants, especially from Mexico.

Just when American leaders were pulling at the walls of their enemies – the Berlin Wall, the Iron Curtain, the walls of communist prisons and Baathist jails – they were erecting more walls at home. Nor did these developments draw much notice from scholars outside the criminal-justice field, except when politicians and journalists cheered them on, suggesting 'how nearly hegemonic the law and order perspective has become', wrote Katherine Beckett in 1997.¹³ Also muting attention was the incremental nature of the changes. They were scattered over hundreds of jurisdictions and several decades, enacted in countless administrative and court rulings as well as formal legislation, and never the product of a grand national debate. Among those with the greatest stake in resistance – poor and minority Americans – a few championed the new punitive order and most lacked political power, especially ex-felons disenfranchised in some states, although civil rights leaders offered vigorous criticism. Since some states counted non-voting inmates in determining apportionment and districts for elections, opposing the system was even harder.¹⁴ The new century saw more opposition, as when Illinois Governor George Ryan set aside capital punishment for those on death row and imposed a moratorium on new death

⁷ See, among many sources, the table given under the heading 'Gentle Finland, Lenient Europe. Number of Prisoners per 100,000 inhabitants in 2002', *New York Times*, 2 January 2003.

⁸ See Craig Smith, 'In Europe's Jails, Neglect of Islam Breeds Trouble', *New York Times*, 8 December 2004.

⁹ On this use of unemployment figures, see Downes, 'The *macho* penal economy', p. 62. Joan Didion, *Where I Was From* (New York: Knopf, 2003), p. 185, on California.

¹⁰ Fox Butterfield, 'US "Correctional Population" Hits New High', *New York Times*, 26 July 2004.

¹¹ Estimated by University of Minnesota sociologist Christopher Uggen, as reported in Fox Butterfield, 'Freed From Prison, but Still Paying a Penalty', *New York Times*, 29 December 2002.

¹² Beckett, *Making Crime Pay*, pp. 89, 119.

¹³ *Ibid.*, p. 106.

¹⁴ On New York state in this regard, see Brent Staples, 'Why Some Politicians Need Their Prisons to Stay Full', *New York Times*, 27 December 2005.

penalties, but the opposition was as piecemeal and incremental as the changes it challenged.

Incarceration rates were only a crude measure of changes that made the US a far more policed and punitive nation. Some states spent more on prison systems – not counting their other criminal-justice apparatus – than on higher education, even as growth in spending and employment by private security firms far outpaced that of public agencies.¹⁵ The death penalty was reintroduced in many jurisdictions, mandatory minimum sentences instituted, and judicial discretion restricted, with sentencing effectively automated under point systems. ‘Three strikes and you’re out’ laws were passed in California (1994) and elsewhere, and the autonomous juvenile system was partially dismantled, with more teenagers tried and housed in the adult system. Jails and prisons themselves changed. Private companies operated more of them (or services like health care within them), placing them further beyond public accountability. Many became more Spartan, or inhumane as critics saw it: configured to deprive inmates of natural light and recreation, to increase isolation, and to minimise costs, as if incarceration alone was insufficient punishment, which had to be maximised in inmates’ daily lives. Many facilities tried to bill inmates for those costs, even though the effort was legally dubious, more expensive than the revenues secured from mostly poor inmates, and damaging to the rehabilitation of released convicts.¹⁶ The federal system, facing charges (akin to lore about women on welfare driving Cadillacs) that it operated ‘Club Feds’, reduced the privileges and services it provided. Nor did severe incarceration compensate for leniency elsewhere. Systems to monitor probation and parole advanced mightily – a major reason many were re-jailed without further trial. The ‘electronically governed home prison’ tracked individuals’ movements and use of drugs, alcohol, telephones, and television. These developments contributed to the formation of what critics called American ‘gulags’ and ‘mass imprisonment’. ‘Land of the free is now home to 25 per cent [of] world’s prison population’, ran a complaint from England in 2000.¹⁷

Punishment was the point of the system, which thrived by swelling the numbers who entered or re-entered it. Regarding crime (and other social problems like mental illness), management replaced explanation, control replaced redemption, and retribution replaced rehabilitation (though its place was never secure). Speaking of ‘the war on crime’ in 1981, President Ronald Reagan asserted that ‘some men are prone to evil’ and ‘retribution should be swift and sure for those who prey on the innocent’. ‘Nothing in nature is more cruel or more dangerous’ than the criminal, he maintained, hinting that even for conservatives the criminal was supplanting the communist as enemy. Politicians like Reagan excoriated social explanations for crime as the dangerous plaything of weak-kneed liberals. Crime was a choice evil people made, they insisted, although with no hint of irony they advanced one environmental explanation: liberal ‘permissiveness’ and welfare fostered the irresponsibility and dependency that nourished crime. Often, no goal beyond punishment seemed in

¹⁵ Didion, *Where*, p. 187, on California. Christie, *Crime Control*, p. 105, on spending by private firms.

¹⁶ See ‘Many Local Officials Now Make Inmates Pay Their Own Way’, *New York Times*, 13 October 2004.

¹⁷ ‘Gulags’ is the term of choice in Nils Christie’s *Crime Control*, and for other critics; ‘mass imprisonment’ is the title of the Garland volume cited above. On the electronic ‘home prison’, see Christie, *Crime Control*, p. 114. The quotation comprises the title of an article by Duncan Campbell, *Guardian Limited UK*, 15 February 2000, (www.commondreams.org/headlines/021500-01), accessed 6 January 2005.

mind. After careful study showed that the death penalty had little deterrent effect, 'Vengeance and retribution – the misunderstanding of the Biblical limitation of "an eye for an eye" – . . . emerged as the primary rationale' for the death penalty.¹⁸

The punitive turn in criminal justice highlighted a larger shift toward surveillance and punishment. That shift was manifest in workplace and school drug testing, private security forces, gated communities, missing child posters, Amber alerts, a metastasis of surveillance cameras in public and private spaces, a massive if messy corporate and governmental apparatus of electronic surveillance, tougher requirements for welfare recipients, more demanding academic tests for public school students, and, under legislation pushed by the Bush Administration, a system for flunking entire schools. For the most part, that shift bore down on the less powerful and coincided with growing disparities in wealth and income between the richest Americans and the rest. 'Historically, the watchtowers of the American penal system stood at the fringes', three experts note, 'separating the most violent and incorrigible offenders from the rest of society'. Now they are deeply 'disruptive of the social networks of kin and friendship' in poor and minority communities, determining their fundamentals.¹⁹

What caused this punitive turn? The obvious explanation was that growing crime did, but it was deeply flawed.²⁰ 'Crime' was a slippery benchmark, since its statistical bases shifted over time, behaviours were newly or more harshly criminalised (though some, like abortion, were largely decriminalised), and crime became more vigilantly analysed and prosecuted. To some extent, there was more crime because authorities defined and found more. Moreover, while crime rose in the 1970s and 1980s, incarceration still soared in the 1990s even as crime levelled off or fell – proof, some argued, that incarceration worked, but proof also that the urge to incarcerate floated free of crime rates. Imprisonment became 'an experiment that cannot fail – if crime goes down, prisons gain the credit; but if it goes up, we clearly need more of the same medicine whatever the cost'.²¹ Nor did popular agitation force the punitive turn. At least as measured by polls, that agitation usually followed, rather than instigated, politicians' efforts to highlight crime and punish it more severely.²² Moreover, changes in sentencing policy increased the prison populace far more than changes in crime rates. The drug war, declared by every president from Richard Nixon through to Bill Clinton – the subject of President George H. W. Bush's first prime-time address – accounted for much of the growth. A 1978 Michigan law, for example, required a first offender to be sentenced to life without parole – 'the same penalty as for first degree murder' – for the sale of 650 grams of heroin or cocaine.²³

In one perspective, the punitive turn involved little novelty. Slavery, convict labour, indentured service, extermination of Indians, lynching, Jim Crow, and similar

¹⁸ Beckett, *Making Crime Pay*, p. 47, (Reagan), p. 28 ('permissiveness'); Mauer, 'Causes and Consequences', p. 10 ('vengeance').

¹⁹ Mary Pattillo, David Weiman, and Bruce Western, in the Introduction to their edited volume, *Imprisoning America: The Social Effects of Mass Incarceration* (New York: Russell Sage Foundation, 2004), pp. 2, 5.

²⁰ Among many who see that explanation as flawed, Beckett, *Making Crime Pay*, offers a lengthy critique; see also Christie, *Crime Control*, especially pp. 90–2.

²¹ Downes, 'The Macho Penal Economy', p. 57.

²² Beckett, *Making Crime Pay*, in particular develops this point.

²³ Mauer, 'Causes and Consequences', p. 6.

practices had a large place in American history.²⁴ Perhaps coercion, rather than increasing, merely changed form late in the twentieth century. When other coercive systems diminished, the prison system swelled as an inadvertent consequence, not just the intended result of a lock-'em-up mentality. As hospitalisation of the mentally ill met disfavour and underfunded alternatives failed, patients often drifted onto the streets and into crime, mostly petty, and then into prisons. Downsized mental hospitals also sometimes shifted gears – the state hospital in Rochester, Minnesota was reborn as a Federal Medical Center in the Bureau of Prisons, housing prisoners for many reasons besides medical ones. If California is now the archetypal penal state, a century earlier it was the archetypal asylum state. 'The idea of how to deal with insanity in California began and ended with detention', Joan Didion notes, even though many of the detained fit no definition of insanity.²⁵

Downsizing of the armed forces played a similar role. When conscription ended in 1973 and active personnel shrank from over 3 million in 1970 to 1.41 million in 2002, many who once would have seen military service entered the prison system as either inmates or workers. By one limited measure – inmates sentenced to maximum terms of more than one year – growth in the prison population, from 200,000 in 1970 to 1.345 million in 2001, closely matched declines in the armed forces. Meanwhile, employment in criminal justice leaped from 600,000 in 1965 to over 2 million in 1993 and 'crime control expenditures' from 0.6 per cent to 1.57 per cent of gross domestic product, while defence expenditures declined from 7.4 per cent to 4.4 per cent of GDP.²⁶

Correlation does not prove causation – and this was hardly the only correlation – but the penal and military systems did draw on similar populations, fears, pressures, and interests. The Cold War military-industrial complex hardly disappeared, but as it attenuated, parts of it found new life in the criminal-industrial complex. Private companies provided guards and armaments and built and ran prisons in the US and abroad, further eroding tenuous distinctions between 'private' and 'public', 'civilian' and 'military', and 'foreign' and 'domestic'. Industry lobbies and unions of construction and prison workers demanded new prisons and measures like 'three strikes' laws that would fill them, as Joan Didion reported.²⁷ Small towns that once laboured to gain or hold military bases now bid for prisons as a reliable industry amid deindustrialisation, although the jobs often went to outside unions or contractors. The United States became not so much more coercive as differently coercive.

Yet this was no simple trade-off. However coercive and degrading, mental

²⁴ Christie, *Crime Control*, pp. 116–22, stresses this point.

²⁵ Didion, *Where*, p. 195, drawing on Richard Wrightman Fox, *So Far Disordered in Mind: Insanity in California 1870–1930* (1978).

²⁶ Figures on military personnel, defence spending, and inmate population drawn from Census Bureau, *Statistical Abstract of the United States: 2003*, Tables HS-51 and HS-024, as found in the Census Bureau website under 'Mini-Historical Statistics', accessed 1 June 2005. The numbers of those incarcerated were much larger in any given year than the figures provided by the Census Bureau on inmates 'under jurisdiction of federal and state authorities rather than those in the custody of such authorities'. Figures on criminal justice employment and criminal justice as percentage of GDP are drawn from Beckett, *Making Crime Pay*, pp. 99, 3. Beckett may underestimate crime control spending as percentage of GDP: although 'defense spending' was scattered among many agencies and measured in different ways, it was still largely a federal and well-monitored activity; crime control spending was scattered among far more numerous, and often obscure, federal, state, and local jurisdictions, making complete figures far harder to assemble.

²⁷ See Didion, *Where*, esp., pp. 184–5.

hospitals still had offered a greater prospect for treatment than prisons, especially since mounting prison costs prompted cuts in 'frills' like counselling and education, and ex-patients bore fewer legal restrictions and less stigma than ex-inmates. Military service, though deadlier than jail and sometimes equally degrading, still carried no blatant stigma. It drew soldiers into service to the nation and survivors enjoyed many benefits; imprisonment signified betrayal of the nation and abundant penalties afterwards for its survivors. Those who traded military service for prison jobs – many did both as members of the National Guard or Reserves – still got low pay, few of the benefits of military service, and many of its dangers. In such ways, the US became more coercive, not just differently so.

The ascendant criminal-industrial state also meshed well with resurgent suspicions of centralised authority flowing out of the Vietnam era. The militarised state of World War II and the high Cold War dispersed resources and patronage widely but concentrated power in Washington. Despite new federal crimes and mandates, crime-fighting remained largely a state and local operation, with power and resources widely scattered. Each state and good-sized city could have its own little Pentagon. The role of private companies in surveillance, crime-fighting, and prison operation also reflected suspicion of centralised authority.

Yet institutional forces do not fully explain these shifts. The resources freed by shrinkage in mental health and defence systems might have gone elsewhere had education lobbies, parks agencies, road-builders, or environmentalists prevailed. That the criminal-industrial complex was the winner suggests not only its power but the appeal of the fears it played to, especially among conservatives determined to diminish social welfare and increase social control. When leaders like Reagan called for 'retribution' against criminals, they invited players in the criminal-industrial complex to expand their roles and demands.

The punitive trend also responded to the upheavals of the 1960s and 1970s, including the defiance of authority, urban riots, drug use, and anti-war agitation they featured. The response was conservative in a loose rather than ideological sense. It included liberals like President Lyndon Johnson, and moderates like Governor Nelson Rockefeller, who championed New York's draconian anti-drug laws, and Bill Clinton, who as Arkansas governor supported the death penalty and as president pushed harsh anti-drug and anti-terrorism measures. Diverse forces converged on the same result for different reasons: some liberals complained that indeterminate sentencing allowed judges to discriminate against minorities, while many conservatives asserted that it let criminals off too lightly. Some feminists sought harsh treatment of anti-abortion radicals and sex offenders or joined the Reagan Administration crusade against pornography. Other voices pursued hate crimes laws. The politics in notorious crime panics, like that over the alleged sexual abuse of children in day care, were too murky to fit on any liberal-conservative grid.

But the core of the urge to imprison was fear of 'a newly jobless marauding underclass', a fear that conservatives more often raised and exploited.²⁸ A reaction against the black quest for equality was also evident in how incarceration surged for African Americans while social welfare for poorer Americans diminished – two trends linked by politicians who charged that civil rights agitation had been 'criminal' and associated welfare with 'underclass' blacks. The Reagan Administration

²⁸ Downes, 'The *Macho* Penal Economy', p. 57.

strengthened that class and race focus by neglecting white-collar crime in favour of addressing 'street violence', which often became synonymous with all crime. Seen this way, as Katherine Beckett does, the punitive turn indicated an 'effort to replace social welfare with social control as the principle of state policy'.²⁹ While US-European differences in welfare spending were less than often assumed, Western Europe did deal with the 'underclass' more through the soft power of welfare and the US more through the hard power of prison bars. That over half of prisoners were by 1991 serving drug-related sentences indicated how much social control was at issue, especially of an 'underclass' (drugs favoured by affluent whites were less criminalised and policed).³⁰

The punitive impulse also surged when many Americans, from Nixon on down, decided during the Vietnam era that their greatest enemies were stateside, rather than in Moscow, Hanoi, or Peking.³¹ Although the Cold War continued, much energy once devoted to it turned inward. As both candidate and president, Nixon was a master practitioner of law-and-order politics. Reagan's Attorney General, William French Smith, viewed the Justice Department as 'not a domestic agency' but 'the internal arm of the nation's defense' and the 'Internal Defense Department', language placing criminals on a par with foreign enemies.³² The resonance and durability of the term 'drug war' hinted at how much it displaced the Cold War. That the aftermath of 9/11, when a newly recognised external enemy coincided with sharper questioning of criminal-justice policies at home, further underlines this hydraulic model of change – passions, energies, and resources remain fairly constant but shift in outlets and targets. Fiscal trends also suggest that model: many states tightened prison budgets and reduced prison populations after 9/11 as national resources shifted from domestic crime to enemies abroad.

Finally, incarceration may have surged because other threats to security diminished after the Vietnam War, when, it is claimed, 'Expectations about safety and security . . . increased hugely.' Fewer Americans entered the armed forces and faced war's violence, and other forms of security – medical and economic – prospered, if unevenly. In that environment, violent crime stood out in sharp relief against a more pacific and secure background, with 'victimization by crime' remaining the 'principal source of risk that could not be personally controlled or ameliorated'. That explanation ignores new sources of insecurity in this era such as deregulation of the economy, oil shocks, and AIDS. But it does draw on the fungibility of war and crime in the fears, interests, media coverage, and political manoeuvring of American life.

The urge to control and punish was not solely American. Major efforts went forward against war criminals in Africa, South Asia, and the Balkans. International agencies like the World Trade Organization delivered penalties in the economic realm. Although Amnesty International and Human Rights Watch opposed many punitive practices – including in US prisons – they unavoidably sanctioned penalties for individuals, groups, or states that violated international norms. Systems of crime and punishment – or put more positively, the rule of law – flourished widely. To some extent, the United States participated in a broader change.

²⁹ Beckett, *Making Crime Pay*, p. 47, ('street'), p. 106.

³⁰ Christie, *Crime Control*, p. 114, offers the 1991 figure.

³¹ On that shift, see Michael S. Sherry, *In the Shadow of War: The United States Since the 1930s* (New Haven, CT: Yale University Press, 1995), chs. 6–9.

³² Beckett, *Making Crime Pay*, p. 53, quoting David Stockman's account.

But it offered a distinctly harsh, unilateral, global, and militarised version of that change. Especially under George W. Bush, the US rejected many international legal arrangements, even as American leaders fought crime by reaching abroad. Bush's father presented his 1990 invasion of Panama as an exercise in crime-fighting, and the US brought captured Panamanian ruler Manuel Noriega into federal court for trial (and conviction) on drug-dealing and other charges. The drug war dispatched US agents, soldiers, and policies to much of the globe, while retired general Bernard McCaffrey oversaw it under Clinton. Influence went beyond formal state efforts. As a Norwegian expert claimed in 1993, 'American criminology rules much of the world, their theories on crime and crime control exert an enormous influence'.³³ Criticised by groups like Amnesty, American crime control also became an issue in international relations.

Promoting those policies was a surge in punitive strains long present in American culture. Leaders of the religious right – Catholic and Jewish as well as Protestant – denounced a lengthening list of sins and sharpened the line between the saved and the damned (to commit or condone abortion was akin to the Holocaust). Many American colonists had regarded criminal punishment as an occasion to underline the sinfulness common to all, but that sense of common frailty diminished in the nineteenth century. In a more self-righteous climate, crime often seemed to mark its perpetrators as beyond humanity. Many Americans learned that at the end times God would make non-believers vanish in the twinkle of an eye – vaporised, in some treatments, as in science fiction – while the rapture lifted up the saved. Starting with low-budget church-basement films like *A Thief in the Night* (1972), that prediction reached millions in best-selling books and costly films by the 1990s. It marked 'a shift in American portrayals of Jesus', Nicholas D. Kristof claims, 'from a gentle Mister Rogers figure to a martial messiah presiding over a sea of blood', though the martial version certainly had antecedents.³⁴ If the sinful deserved total eradication by God, surely mortals were entitled to deal harshly with them through the law. Secular voices echoed this religious outlook: some forensic psychiatrists began regarding predatory murderers 'as not merely disturbed but evil', doing so 'long before President Bush began using the word to describe terrorists or hostile regimes', the *New York Times* noted.³⁵

Vengefulness mounted in popular culture as well. Crime had long been a staple of fiction, film, and television, but the ubiquity of TV crime shows by the 1990s was striking – *Law & Order* alone became a giant franchise of spinoffs and re-runs. And the tone was far darker than in shows like *Dagnet* and *Gunsmoke*, indeed literally darker – sunlight and full-wattage bulbs rarely penetrated the dark offices and courtrooms of *Law & Order*. Earlier shows treated criminals in matter-of-fact fashion, expending little effort to condemn them – they were simply plot mechanisms. *Law & Order* explored and condemned criminality at length and subjected criminals to the moral outrage of victims, police, and prosecutors, as figures beyond civilisation and comprehension. They were 'mean little bitches', a prosecutor dubbed the teenage killers in one episode – a far cry from earnest treatments like *Rebel Without a Cause*

³³ Christie, *Crime Control*, p. 79.

³⁴ Nicholas D. Kristof, 'Jesus and Jihad', *New York Times*, 17 July 2004, paraphrasing his colleague David Kirkpatrick.

³⁵ Benedict Carey, 'For the Words of Us, the Diagnosis May Be "Evil"', *New York Times*, 8 February 2005.

(1955), which offered sympathy and understanding of the teen criminal. Likewise, 'courtroom television shows had become increasingly prosecutor friendly', one expert noted. 'On *Perry Mason*, the lawyers were always working to save defendants who were wrongly accused', Stanley A. Goldman observed. 'On *Law & Order* everybody's guilty once they take them to trial'.³⁶ Not since *film noir* in the 1940s had American culture presented so many twisted, evil characters, but with a difference: in film noir the line between sinners and saved usually was blurry.

Crime dramas were part of a broader media culture of law, justice, and punishment. 'Judge shows', *America's Most Wanted*, and reality cop shows became the rage. Talk shows showcased lower-class violence, infidelity, and treachery. HBO's *Oz* was set in prison. The gladiatorial spectacles of 'reality' shows – from Donald Trump's *The Apprentice* to more obviously vulgar and brutal versions – offered humiliation, expulsion, and other punishment in enormous volume. Local TV news had been obsessed with crime since the 1970s, as critics complained, and cable news carried that obsession further onto the national stage, as shown by the all-Monica-all-the-time coverage of the Clinton scandal and the air time given the Washington sniper and Laci Peterson stories. After 9/11, some observers hoped that weightier issues would make TV get serious and downplay crime stories. But with any lull in war news, crime stories surged back – and sometimes with no lull. Indeed, given the equal billing and similar language employed by TV news for both war and crime – for the death of thousands and the loss of one – and the quicksilver way they switched from one to the other, the two played almost interchangeable roles in the media.

In this stew of media and politics, almost everyone, it seems, was out to get someone: the cop killers, or the cops who killed; fat-cat corporate chiefs, or those who challenged them; illegal immigrants, or those who abused them; those undergoing abortions, or those who impeded them. Not that everyone got his way: despite waves of business-related convictions in the 1980s and after 9/11, wealth and power still substantially determined who fell afoul of the law. But media politics recurrently stoked these punitive strains. The acquittal of ex-football star O. J. Simpson on murder charges unleashed a chorus of string-him-up chants. The Terry Schiavo case over the winter of 2005 yielded demands among conservatives like Congressman Tom DeLay that the judges who ruled against them be punished. Earlier sensations, from the Salem witch trials to the Lindbergh baby kidnapping case of the 1930s, indicate how old the punitive strains were, but the frequency and ugliness of their eruption in contemporary America remain striking.

A politics and culture of victims rights emerged as well, asserting that victims had a right, increasingly enshrined in law, to help set the punishment of criminals. In particular, the Oklahoma City Bombing prompted new laws to protect victims' rights, an intensified campaign for a victims' rights amendment to the Constitution, and the Effective Death Penalty Act of 1996 signed by President Clinton to speed executions.³⁷ News media often asserted that victims were not heard, even as they were heard once again. The 'perpetrator in this situation . . . was being treated more like a victim than I was', a victim of priestly abuse complained to the

³⁶ Goldman as paraphrased and quoted in 'Even for an Expert, Blurred TV Images Became a False Reality', *New York Times*, 8 January 2005.

³⁷ See Edward T. Linenthal, *The Unfinished Bombing: Oklahoma City in American Memory* (New York: Oxford University Press, 2001), pp. 103–6.

New York Times. 'I feel my story hasn't been told at all'.³⁸ Victims gained a major presence – interviewed on TV, mobilised in neighbourhood marches, networked with each other, courted by criminal-justice lobbies. They spoke the idiom of an expressive culture, articulating their rage rather than squelching it. Usually, they claimed that criminals were insufficiently punished.

Victimisation and vengeance were dominant themes in the new politics and culture of crime. A nation so changed in how it regarded crime at home would not likely be unchanged in how it responded to threats from abroad, especially ones that took on more characteristics of criminality and fewer of war than had America's mid-century enemies. Here was a double shift whose parts had unfolded in parallel to each other – as crime more and more defined American life, it more and more defined threats from elsewhere.

Vengeance abroad

How did punitive culture legitimate American responses to 9/11? The oscillation between war and crime in rhetoric, images, and actions offered clues. At first the war category flourished, as in analogies between 9/11 and Pearl Harbor and in treatment of uniformed personnel at the World Trade Center as war heroes, with the flag-raising there compared to the flag-raising by Americans at Iwo Jima in 1945. But responses to 9/11 also established those killed and injured as victims of a giant crime as much as casualties of war. Congress established a Victim Compensation Fund for the deceased's survivors, many of whom organised into groups such as the 9-11 Widows' and Victims' Families Association. The fact that survivors had roles and rights as victims was telling. World War II involved the sacrifice of civilians' rights to a common cause – the nation itself was the imagined victim, and survivors of the dead at Pearl Harbor had little special status. Responses to 9/11 echoed the language of victim rights in punitive culture. The resonance for many of the 9/11 attacks with the 1993 World Trade Center bombing and the 1995 Oklahoma City bombing – events rendered as crimes more than acts of war – strengthened crime as a category. The methods of attack – no major armaments involved, civilian airliners as the weapons – also fell outside a familiar war category. All this was understandable because thousands were indeed victims, but also congruent with decades of discourse about victimisation by crime. In turn, responses by national leaders took on the punitive character of earlier responses to crime, including a tougher regime of internal surveillance and policing. Unsurprisingly, the punitive impulse scattered in many directions, aimed sometimes at American Muslims, or, in the celebrated post-9/11 comments of Reverend Jerry Falwell, at 'the pagans and the abortionists, and the feminists, and the gays and the lesbians', who presumably had triggered God's wrath on America.³⁹

For other reasons, too, 'war' proved an awkward fit for America's post-9/11 actions, and the language of war underwent recurrent slippage. Americans had so

³⁸ 'Positive Publicity for an Abusive Priest Adds Insult to Injury for a Teenage Victim', *New York Times*, 3 March 2003.

³⁹ Quoted in Patrick Allitt, *Religion in America Since 1945* (New York: Columbia University Press, 2003), p. 253. Allitt surveys a range of such responses.

promiscuously declared war on so many things for so many years – to name only a few: drugs, abortion, trade deficits, illiteracy, AIDS, cancer, smoking, and often those blamed for those things – as to rob the word of its power to define. Presidents had declared war on terrorism since Reagan did in 1981, muddling even the onset of the war Bush now declared. And while most Americans agreed that they were at war, few were sure what they were at war *on* or *against*. The preferred official terms, terror or terrorism, referred, critics complained, to a method of war, not an enemy – as if the Allies had declared war on the *blitzkrieg* or the *kamikaze*, not on Germany and Japan. Al Qaeda was the obvious enemy, but also an indistinct one composed of loosely aggregated elements, while Islamic fundamentalism seemed too broad or politically risky to be identified formally as the enemy. Bush's impulsive favourite – 'evil' – certainly added no precision. The wars to overthrow the Taliban regime in 2001 and Saddam Hussein's regime in 2003 momentarily provided specificity – bombers dropped bombs, tanks lumbered forward, troops seized objectives. Yet these state regimes were distantly related to the stateless terrorist enemy, and official assertions of links between Hussein and Al Qaeda convinced few critical observers. Familiar drum-and-trumpets warfare in Iraq quickly yielded to war against shadowy enemies (increasingly, and tellingly, called 'insurgents' rather than 'terrorists'). Other features of American action robbed it of powerful associations with war. There was no enemy body count – the US was unable or unwilling to count, or loathe to disclose numbers; no successor to the defeated regimes had an interest in such numbers; and Al Qaeda hardly wanted to announce its losses. US losses were publicised, but official practices – the Administration barred photographs of the coffins of service personnel returning to the US, for example – muted death, the most obvious measure of war. The Administration's insistence that the US was at war was dogged but denuded of much precision or colour.

Instead, leaders devoted rhetorical richness to other language. Bush's famous evocation of outlaw-hunting in the old West conjured up images of 'Sheriff Bush leading a posse after a varmint', complained Senator Robert Byrd, who saw Bush as voicing 'a kind of retribution-soaked anger'.⁴⁰ The deck of fifty-two cards showing leaders of Hussein's regime that the US government circulated in 2003 employed a similar 'wanted' vocabulary. Fittingly, when Hussein was captured late in 2003, he was ordered to put his hands up like a captured criminal; video footage resembled a scene from television's reality crime shows more than the capture of an enemy ruler. Critics saw in these moments a peculiarly puerile style of Bush and those around him, but they missed how much that style was congruent with broader punitive culture and with precedents that his presumably patrician father set with the capture of Noriega. Bush offended some critics when on 2 July 2003, referring to insurgents in Iraq who think 'they can attack us there', he observed: 'My answer is, bring 'em on'.⁴¹ But with its echo of cinematic crime-fighters like Dirty Harry, Bush's rhetoric seemed natural rather than idiosyncratic. Critics also missed how these moments cut against the Administration's stated preference for 'war' as the category governing its actions.

Bush's pronouncements on 'evil' flowed from that punitive culture. He intended,

⁴⁰ Quoted in Russell Baker, 'Troublemaker', a review of Byrd's *Losing America* (2004), *New York Review of Books*, 12 August 2004, p. 7.

⁴¹ Or 'bring them on', as the official account recorded it: (www.whitehouse.gov/news/releases/2003/07/). For what reporters heard, see (www.cbsnews.com/stories/2003/07/03/iraq/). Both accessed 6 January 2005.

he said grandiosely after 9/11, 'to rid the world of evil',⁴² and he repeatedly depicted American, Western, or 'free world' forces as pitted against 'evil'. Those words echoed Reagan's talk of the Soviet 'evil empire' two decades earlier, but that empire was a fading memory for many Americans and unknown by younger ones. More effectively, those words reflected the nation's punitive culture and religious conservatism, and Bush's particular Protestant outlook. 'Evil' rendered the enemy, like the criminal, beyond the pale – beyond rational and moral understanding, beyond humanity rather than sharing its sinfulness, beyond redemption.

Bush's emphasis on the enemy's 'evil' was distinctive. While national leaders had dubbed earlier enemies evil, politicians, pundits, and scholars had also tried to explain the mind, motivation, and purpose of the Axis foes and the communist enemies. With Bush, 'evil' seemed its own explanation, not the starting point for inquiry. It placed the enemy beyond explanation – beyond politics itself. The question that first arose among Americans, 'why do they hate us so much?', faded away soon after 9/11, given no answer by the Bush Administration beyond the claim that terrorists hated America for its freedom and liberty. Explanation also implied possible rehabilitation – by understanding an enemy, the victor could correct what had gone wrong, as the US tried to do in postwar Europe and Japan. 'Evil' placed the terrorist enemy, and by implication the larger environments that nourished or tolerated it, beyond rehabilitation, except, improbably, through religious conversion. Only death or other punishment would stop the enemy and deter others from succouring him. 'Evil' provided Bush with an effective vocabulary for expressing national shock, grief, and anger, as it had when Franklin Roosevelt condemned Japan's 'infamy' at Pearl Harbor. But his persistent use of it muffled other lines of explanation and circled back to how many Americans regarded criminals among their own kind – cast out of humanity.

To be sure, Bush did promise rehabilitation, especially through the Iraq war: the US and its allies would liberate oppressed Iraqis, usher in democracy there, and in turn insinuate it into all the Middle East and the Islamic world. Yet many critics, including some sympathetic to Bush's objectives, found his Administration wanting in the practical efforts to implement rehabilitation. After victory against the Taliban, efforts to rehabilitate Afghanistan and crush Al Qaeda faltered. Planning for the security and rehabilitation of postwar Iraq was notoriously inept, and the occupation regime was amateurish, crowded with party and religious cronies of the Administration rather than the sophisticated, experienced experts who had flooded into Europe and Japan after World War II, the Balkans in the 1990s, and other war-torn areas.⁴³ Rehabilitation, the Administration apparently assumed, would come about through the sheer redemptive fervour unleashed by the overthrow of evil regimes. Those who resisted or backslid would get the same treatment their kind did in the United States: prison, or death.

Al Qaeda abetted this slippage from war to crime. It made (so far as I know) no demand that its captured members be regarded as prisoners-of-war under the Geneva Convention. Its *modus operandi*, however sophisticated the planning, eschewed the accoutrements of warfare, including the all-important uniform of the soldier. Men

⁴² 'President's Remarks at National Day of Prayer and Remembrance', 14 September 2001, (www.whitehouse.gov/news/releases/2001/09).

⁴³ See the extensive piece, Andrew Zajac, 'Insiders Shape Postwar Iraq', *Chicago Tribune*, 21 June 2004.

seizing airplanes and ramming them into buildings were at most reminiscent of fringe aspects of past wars, like Japanese suicide pilots. Al Qaeda operatives bombed buildings (and trains), but so too had Timothy McVeigh in the 1995 Oklahoma City bombing, an act prosecuted through criminal-justice means. Lacking status as a state, Al Qaeda in turn lacked the legal protections of a state at war. Nor did it appeal to international institutions – the United Nations, the Red Cross, the World Court – which tried to avert war, minimise the crimes it involved, or punish those who broke its laws. While Al Qaeda had its own rhetoric of war, its methods and aspirations spilled far beyond that category.

The crime-fighting ethos was also evident in how leaders told Americans to meet the threat of further terrorism. They were asked to be wary and vigilant, to report suspicious activity, and otherwise to pursue normal activities – fly airliners and shop at malls, as they were urged in the fall of 2001 – all steps they might take in dealing with crime. As for the sacrifices associated with protracted war – ones that make war ‘war’ for non-combatants – those were few, borne mainly by military personnel and their families. Other sacrifices simply expanded on what Americans had already experienced: security checks at airports and other public places, and the legal restrictions imposed under the 2001 USA Patriot Act and other measures, had ample pre-9/11 precedents, many set in the wake of the Oklahoma City bombing. The economic sacrifices of war seemed to disappear altogether in a wave of income tax cuts pushed by the Bush Administration, and even the implicit tax of inflation seen in many wars was held in abeyance. With war so little in evidence, and further terrorism feared but not unleashed, crime-fighting filled the vacuum.

Wars are usually finite, but post-9/11 conflict was too open-ended and normalised to have that quality. It was more like the Cold War, itself punctuated by hot wars, than the World War II often invoked. Crime-fighting for any society is a normal, never-concluded enterprise – pursued while normal activities persist, except in extreme circumstances. The point is not that there was some correct nomenclature the Administration should have used. The point instead is that the friction between its avowed term – ‘war’ – and its frequent resort to the language of crime went largely unnoticed by defenders and critics alike, reflecting how powerful the punitive turn in American life had been.

One expression of the punitive impulse was the war against Hussein’s regime. It probably had personal dimensions: Bush had complained about an earlier Hussein effort to kill his father and had reasons to both upstage his father and complete his work by overthrowing Hussein. Publicly the Bush Administration insinuated that Hussein was linked to Al Qaeda, and hence to the 9/11 attacks. It thereby implicitly presented the war as punishment for those attacks and tapped an unsurprising desire for revenge among many Americans. Meanwhile, it explicitly avowed other reasons – eradication of Iraq’s presumed weapons of mass destruction, the nourishment of democracy in the Islamic world, the evil of Hussein’s regime – with the first later revealed to be a fiction and the second a fragile hope. Revenge is an inescapable element of war, and especially when an avowed enemy proves elusive, it can be directed at loosely-related substitutes. The incarceration of Japanese-Americans in 1942 came amid Japan’s humiliating defeats of American forces, just as the attack on Iraq came when Al Qaeda and its leader, Osama bin Laden, proved maddeningly elusive. In that sense, the punitive dimension of the American war in 2003 was nothing new.

But the politics and circumstances differed. Unlike Japan's successes, Al Qaeda's attacks came against the American homeland, took the lives primarily of civilians (not all Americans), elicited a coarser presidential rhetoric about 'evil', and erupted in a culture far more attuned to victimisation and its redress. Those attacks also came when American military supremacy was uncontested – a far cry from the situation in 1941 – so that American leaders were far less constrained from using it as an instrument of retribution. No war springs from a single factor, and punitive war-making had a venerable American past, as with the grandly named (and not very successful) Punitive Expedition into Mexico by American forces in 1916 in response to Pancho Villa's depredations against Americans in Mexico and New Mexico. But the American war of 2003 had an unusually wilful character. It was the grandest punitive expedition of all.

To be sure, Bush presented his efforts to punish 'evildoers' as means to further ends: the promulgation of democracy, the pacification of the world, and the protection of the United States. These were all familiar goals of American foreign policy, from whose contours Bush hardly broke loose. Yet he so often and effortlessly issued his proclamations about 'evil' that its eradication seemed like a goal in itself, to be pursued even at the cost of other declared ends. Moreover, in the religious background of Bush and many of his supporters was a vision of the destruction of evil-doers in the end times, as well as his reported comment that he had been 'chosen by God' to run for President. As with other presidents, it was impossible with Bush to separate deep belief from political calculation. But certainly he presented himself and his nation – between which he made little distinction – as instruments of God's wrath against sinners, with no patience for others, like Jimmy Carter, who preached (perhaps no less self-righteously) humility before the common sinfulness of all people. Moreover, his views were echoed by other figures near him, John Ashcroft most of all. In the 1990s their impulse to purge evil was directed mainly at homeland sins such as abortion, gay rights, and Clinton's infidelities, and in stout defence of tough-on-crime measures like the death penalty. Post-9/11, that urge flowed abroad, although even without that day's attacks, the Administration most likely would have taken on Hussein.

In other ways, too, Administration postures and policies exuded crime-fighting as much as war-fighting. Even for appointments distantly related to national security (or crime), Bush's fondness for cops and other crime-fighting types showed. Gale Norton, his Interior Secretary, had been Colorado's Attorney-General. His 2002 choice of Surgeon General was Richard H. Carmona, 'who has a swashbuckling past', touted by Bush, 'as a soldier and crime-fighter'.⁴⁴ While Secretary of Defense Donald Rumsfeld was the leading face of military operations, the leading face of the broader war on terror was Attorney General Ashcroft, the nation's top crime-fighter. Justice's role went well beyond appearances, as it worked hard and successfully to limit the role and resources of the new Department of Homeland Security. The Administration expended enormous capital maintaining that combatants it seized in Afghanistan and elsewhere were not prisoners-of-war, undercutting its own claim that the US was at war. By insisting that incarceration and interrogation, not rehabilitation and repatriation, were its priorities for prisoners, it moved further toward a penal, rather than martial, model, especially since it foresaw a 'war' without

⁴⁴ 'Bush Taps Carmona as Surgeon General', *Washington Post*, 27 March 2002.

end and thus no foreseeable opportunity for postwar repatriation of those captured. Other than execution, lock-'em-up, perhaps for their lifetimes, was the only option. Most of the American media followed its lead, referring to Guantanamo and Abu Ghraib less often as prisoner-of-war camps than as prisons.

The scandal in 2004 over American personnel's abuse of prisoners at Abu Ghraib and elsewhere exposed associations in reality and perception between America's punitive system at home and its actions abroad. That prisons gained so much political and media attention, for a while eclipsing other aspects of the strife in Iraq, alone suggested the connection. Torture was also outsourced by American officials, despite Bush's flat denial of the practice, with some captives undergoing 'rendition' to other countries (Egypt, for example), trusted to carry out the worst. While Bush and others insisted that torture was un-American, a few critics complained that such abuse resembled what went on in American jails and prisons, using the similarity as another argument against the punitive course of American criminal justice.⁴⁵ Some apologists for and defendants in the torture, on the other hand, pointed to American prison practice for justification – a telling claim even if it poorly justified the behaviour. Lawyers for accused torturer, Specialist Charles A. Graner Jr., 'insisted that he was simply following orders and using lessons from his civilian life as a prison guard'.⁴⁶

But for all the momentary sensation, the scandal waned quickly. Official efforts to quell it and confusion created by multiple investigations muted the scandal, but so also did the similarity many Americans sensed between practice abroad and practice at home. Some evinced a ho-hum reaction – what happened in Iraq seemed little different from what occurred in the US – and some assumed that prisoners there, like those in the US, had to be guilty of something and got pretty much what they deserved. Few journalists explored that apparent similarity, however. Most saw torture as a problem that began abroad, or when Washington decided what to do abroad, albeit with precedents in the past practices of the US abroad and other governments quelling insurgencies – the French in Algeria, for example, and Latin and Central American dictatorships (or Israel in Palestine, a precedent rarely mentioned).⁴⁷

That view of American practice was hardly wrong, but it was incomplete. Where Administration officials maintained that torture was the work only of a 'few bad apples' (a phrase widely attributed to Rumsfeld) over there, critics saw only a few – or many – bad apples in the Administration. It was a curious metaphor, especially in Administration hands, since in its common meaning, a few bad apples spoil the whole barrel. But both sides shared the 'bad apples' perspective. That something more rooted and American was operating rarely drew comment. The connection between practice at home and abroad was, to be sure, indirect and therefore hard to make. It involved values, policies, and personnel which moved from one setting to the other, not a direct chain of causation or command. But it was also

⁴⁵ Among the few, see Joyce Braithwaite-Brickley (identified as a syndicated columnist and campaign manager for former Republican Governor William G. Milliken), 'Torture of inmates not limited to foreign prisons', *Traverse City Record-Eagle*, 8 August 2004, and distributed by MinutemanMedia.org.

⁴⁶ 'Portraits Differ as Trial Opens in Prison Abuse', *New York Times*, 11 January 2005.

⁴⁷ Two examples, rightly well regarded, of this approach are: Mark Danner, *Torture and Truth: America, Abu Ghraib, and the War on Terror* (New York: NYRB, 2004), based on his reporting for the *New York Review of Books*; Jane Mayer, 'Outsourcing Torture', *The New Yorker*, 14/21 February 2005, pp. 106–23.

hard to see because of 'how nearly hegemonic the law and order perspective ha[d] become', as Katherine Beckett wrote in 1997.⁴⁸

Torture, a panel headed by former Defense Secretary James Schlesinger maintained in 2004, had 'migrated' from Guantanamo to Abu Ghraib.⁴⁹ But how had it 'migrated' to Guantanamo in the first place? Most directly, through legal reasoning by government officials in memos that, as Anthony Lewis put it, 'read like the advice of a mob lawyer to a mafia don on how to skirt the law and stay out of prison'.⁵⁰ But few observers asked where they in turn got the idea, attributing it only to the exigencies or conveniences of the post-9/11 moment. Torture had been an aspect of the American penal system and many others, and massive growth in the penal population probably had made torture more frequent, in sheer numbers if not in per-inmate terms, especially since it met little resistance until scandals about coerced confessions, fabricated evidence, and other practices bubbled up in many jurisdictions during the 1990s. Even then, the focus was largely on wrongful convictions, not on the treatment of prisoners. 'Rendition' also had stateside precedent in the growing practice of shipping convicted felons out of state, even across the continent.

In turn, thousands of people cognisant of, complicit in, or culpable of torture at home found their way into the systems that fashioned or carried out American policy abroad. These included military guards and interrogators who handled prisoners and soldiers who patrolled streets, many of whom had held jobs – or as Guard or Reserve personnel, still did – in the criminal-justice system at home. These included prosecutors and politicians who worked their way from local, state, and federal wings of that system into positions in the armed forces, federal agencies, or the Bush White House in growing numbers after 9/11. These included thousands of private security employees newly dispatched from stateside duties to service abroad. Of course, many in the federal apparatus were career personnel; some resisted, protested, or reported abuses against captured personnel; and some guards and interrogators abroad may have been more disciplined by virtue of their experience in crime-control work at home. But the system was weighted toward those who had become used to a good deal at home. Occupation forces in postwar Japan and Germany had a different profile: at the lower ranks they were heavily war veterans or young draftees, and among civilians, New Deal bureaucrats, academic experts, humanitarians, and managers of wartime mobilisation bulked large. Few came out of America's criminal justice system, which was tiny in comparison to the vast force of 16 million mobilised for uniformed service during World War II. They brought other prejudices and impulses, borne of the ferocity and racial intensity of the war, to occupation duties, but not ones steeped in a punitive culture.

The weight of punitive culture was also evident in the US turn to incarceration as an instrument of social control, not just a means to manage POWs or military threats. In Iraq, US and Iraqi forces rounded up – Bush's operative phrase – thousands of locals, many or most, by numerous accounts, guilty only of routine criminal activity or simply caught in various dragnets. Others faced de facto imprisonment, such as the thousands forced out of Fallujah into resettlement camps by US forces seeking to reclaim that city in 2004. The process of screening and

⁴⁸ Beckett, *Making Crime Pay*, p. 106.

⁴⁹ See 'Top Pentagon Leaders Faulted in Prison Abuse', *Washington Post*, 25 August 2004. See also Mark Danner, 'A Doctrine Left Behind', *New York Times*, 6 January 2005.

⁵⁰ Anthony Lewis, 'Making Torture Legal', *New York Review of Books*, 15 July 2004, p. 4.

judging captives at Guantanamo moved so slowly as to leave hundreds of them long-term prisoners, and by late 2004, US authorities were weighing a permanent prison facility for those who might never be tried. Although these policies involved indeterminate incarceration, not the fixed sentences increasingly imposed by law within the US, a more general impulse – imprisonment as social control – was shared.

Of course, the conflation of war with crime, and the overlap (and conflict) between civil and military institutions in dealing with both, were hardly new. The armed forces had repeatedly seen action against labour strife, urban riots, and internal dissent, for example. Yet if the line had always been blurry, it had not been blurry in a static way. The nation's militarisation in the twentieth century had vastly compounded and complicated traffic across that line.⁵¹ After 9/11, the traffic intensified anew and took on distinctive forms. That it did so was not in itself surprising. More striking was how the Bush Administration insisted that the nation was at 'war' while acting more like a cop on a beat or a warden in charge of the world's inmates. Confusion seemed more at work in that process than calculation. Conservative self-righteousness about crime and disorder and decades of gathering punitiveness in American life undercut the Administration's instincts to proclaim 'war' and operate in its mode.

The Administration, its defenders, and even some critics tried to account for this confusion: this was a war 'unlike any other we have ever known', Bush told Congress on 20 September 2001. Well before 9/11, pundits had anticipated 'fourth generation warfare' featuring 'no definable battlefields or fronts' in which '[t]he distinction between "civilian" and "military" may disappear'. At the start of 2005, one critic seemed to embrace those claims, noting how 'peace wears the face of war, and war dissimulates as peace'.⁵² But the Cold War had not gained its name for nothing – its uneasy mixture of war and peace had made the name work – and during it the 'distinction between "civilian" and "military" had often disappeared. Frequently offered to and by people with no lived experience of the early Cold War, the insistence after 9/11 that the US faced a new kind of war oddly mimicked Cold War rhetoric while being oblivious to it. Ultimately, it offered a cliché: what major war is not, in some substantial way, unlike any 'ever known' before it? For explaining the rhetoric and practice of the Bush Administration, it was too empty and ahistorical to offer much.

The rise of punitive culture also helps explain the oddly pessimistic, non-triumphal manner in which the Administration often presented the 'war on terror' as open-ended, stretching into some indefinable future. Of course, seeing the war as endless served multiple purposes – it was a writ for the endless assertion of power by the Administration and the United States and a way to guard against expectations of victory that might backfire. It also, presumably, was a response to the nature of terrorism. But it made sense in another way too. Wars are to be won and concluded. But no one thinks that policing crime ever ends – crime is like death and taxes, and policing it is the permanent obligation of governments. Conceived as a giant policing action for Globalcop, the 'war on terror' need not, and could not, have any end.

Nothing in this analysis suggests that American responses to 9/11 would have been altogether different had not punitive culture gained force. Some American military

⁵¹ See Sherry, *In the Shadow of War*.

⁵² Jonathan Raban, 'The Truth About Terrorism', *New York Review of Books*, 13 January 2005, p. 22, which also offers the Bush quotation and passages from a *Marine Corps Gazette* article, 'The Changing Face of War: Into the Fourth Generation' (October 1989), pp. 22–6.

response to 9/11 was inevitable. Large-scale incarceration, resettlement, and other policing practices evident in Iraq have been endemic in neo-imperial wars, as in America's Vietnam War, as has been the torture of captives (British soldiers too were charged with mistreating Iraqi prisoners). And leaders in most wars have sent mixed messages about their nation's values and purposes as they catered to different constituencies and groped through their own confusion. The particular content, not the fact, of the mixture is always at issue. But punitive culture did further sanction the America's role as Globalcop, inform the rhetoric of the Bush Administration, underwrite the invasion of Iraq, and legitimate – make seem unremarkable – dubious practices of incarceration and torture: that is, the whole punitive character of official policy after 9/11. Once again, American values were projected outward, but these were not the values of Progressive uplift, New Deal liberalism, or Cold War management. They were the values of religious vengeance and punitive treatment of those whom Bush called 'evildoers'.

At least through 2004, the Bush Administration continued, in rhetoric as well as policy, its unsteady oscillation between the categories of 'war' and 'crime'. On the campaign trail, John Kerry suggested that the right policies might reduce terrorism until it would become more akin to the problem of crime. Vice President Richard Cheney, warning that with Kerry's election 'the danger is that we'll get hit again', condemned a 'pre-9/11 mindset, if you will, that in fact these terrorists attacks are just criminal acts and that we're not really at war'.⁵³ With Bush's re-election, the punitive strains seemed likely to moderate: second-term presidents are usually more cautious, the costs of the Iraq war constrained further action, and courts questioned some US treatment of prisoners. Yet in November Bush made the dubious choice of Bernard Kerik, New York City's Police Commissioner on 9/11, to be secretary of the Department of Homeland Security. 'The President loves cops', one Republican insider insisted after the Kerik's nomination unravelled. Cops are 'not pretentious, they do a hard job, they don't get paid a lot of money, they're real people and they live in a world that is fairly black and white, with good guys and bad guys. And that's the way President Bush looks at the world.'⁵⁴ Indeed it was. After Kerik's demise, he nominated in his place Michael Chertoff, a federal judge, former prosecutor, head of the Justice Department's criminal division, and author of the Patriot Act.

⁵³ Andrew Welsh-Huggins, 'Cheney suggests nuclear threats', 20 October 2004, at www.boston.com/news/nation/articles/2004/10/20/cheney, accessed 3 January 2005.

⁵⁴ Elisabeth Bumiller, 'In Kerik, Bush Saw Values Crucial to Post-9/11 World', *New York Times*, 19 December 2004.