

<CN>Nine</CN>

<CT>Wars of Governance: From Cancer to Crime to Terror</CT>

<EXT>To the Editor:

My brother was one of thousands of people found last week to have an aggressive cancer. We, his family, are frantically doing everything possible to save him.

I read your April 22 Week in Review article about the execution protocol for Timothy J. McVeigh, the Oklahoma City bomber, and I am so sorry that we as a society have to spend our time and energy toward death instead of toward life.</EXT>

<EXT-S>Sally Stambaugh

Portland, Oregon, April 22, 2001^a</EXT-S>

To a remarkable degree in the post–World War II era, war has been accepted as a metaphor for transformations in how we govern, by both friend and foe alike. We speak easily of the “war on poverty,” the “war on crime,” and, most recently, the “war on terrorism,” recognizing as we do that the linkage of the term “war” with the substantive issue transforms it from a question of policy to a model of how to govern. We must once again reverse Carl von Clausewitz’s (1832) famous formula, “War is politics carried on by other means.” War, in the sense it has been used

^a Please add name and date of newspaper.

in phrases like “war on crime” and “war on terror” is a marker that a transformation of the means and rationalities by which elites justify and set the desired dimensions of their own governance.

Cognitive scientists have noted the productivity of the war metaphor in mapping the possibilities for extending power over new domains, mobilizations, attacks, offensives, and so on (Lakoff^b1996). Yet there is an historical specificity to the enthusiasm associated with war. For most of the history of governments, it would have been a most inappropriate metaphor. Even victorious wars, tend to be remembered by populations through the lens of sacrifice, death, hunger, and deprivation generally. The association of war times with good times, the only reason politicians could invest in such a metaphor, belongs to a specific war and only one of the participants in that war: of the United States in World War II.

World War II is the only war in history that several succeeding generations have remembered and re-remembered as a time of unprecedented national unity, high morale, and comparative economic vitality, with full unemployment despite scarcity. . By the 1970s, when wars on poverty, cancer, crime, and drugs were all declared, this trope had already been invoked by politicians whose careers began in earnest during World War II. This war offered Americans at home not violence and deprivation, but investment, mobilization, publicity, and new possibilities for advancement, identity re/formation/, and innovation, both technological and societal.

But violence and deprivation are never out of the picture. The war metaphor gains purchase from the proximity to danger and the demands for power and knowledge that such proximity brings. The subjects chosen are almost always those that can, in a single semantic leap, strike into the deepest horrors associated with wars, chaos, mass violence, and sudden and

^b Add to biblio.

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irreversible loss. Here the transformative metaphors of governance from the second half of the twentieth century intersect with an older tradition of innovations in governance emerging in response to a “fear of power itself as corrupting and monstrous that was highly influential to the generation that framed the American Constitution. Though our best-loved politicians have often invoked American dreams as their guide, it is more accurate to suggest that nightmares have been the driving force in inventing new forms and strategies of government. Ronald Reagan may be our most compelling recent example. Like Franklin Roosevelt, Reagan’s popularity was widely associated with his optimism in the face of adversity. He was at his (speech writers’) best when he spoke after the Challenger disaster of 1985 of those who break “the surly bonds of earth to touch the face of God.” Yet from early on in his post-New Deal Democratic days, Reagan’s political appeal was built on a capacity to speak directly to the fears of many middle-class voters concerning national decline generally and rising insecurity particularly. In the 1980 elections, these were framed not so much in terms of crime as in terms that anticipated crime, inflation, mass immigration, and terrorism.

The politics of fear begins earlier, perhaps with Franklin’s Roosevelt’s promise of freedom from insecurity. Fear was separated from its New Deal social action perspective by President Richard Nixon. In choosing two exemplary American nightmares, crime and cancer, Nixon showed his intuitive grasp of what Americans feared as well as the stakes for recasting American governance. Both share a lengthy and metaphorically linked history in American culture, both would find ready support in the contemporary environment, and were brilliantly placed to cut across many of the existing political divides in American politics. Nixon made little secret of his hope to use the 1972 election to mobilize a decisive majority and mark a new realignment in American politics.¹

Since September 11 terrorism and a war on terrorism have entered American public discourse with a rapidity that seems remarkable even by the standards of hot-button issues like cancer and crime

We have shown above how the war on crime fought by federal and state governments since the late 1960s altered the way political authority of all sorts and at all levels has been exercised, including the transformation of American “private” life; The war on terrorism that has unfolded since 9/11 has been profoundly shaped by this field of crime, politics, and governance in ways that may ratify the skew toward security and the “culture of control” (Garland 2001a), even as it covers up the memory of that war on crime. That war on terror has confirmed much of the thesis of this book by highlighting how metaphoric “wars” on social threats can reshape government. We even have a new self-consciousness about fear and risk in our national experience that would seem positive [really ?], were it not linked to a deep amnesia about how much fear of crime has already reshaped American society during the three decades before 9/11.

This final chapter provides a counter-memory to the “forgetting” induced by 9/11, outlining how the response of our major political institutions to the attacks was conditioned by political rationalities previously produced by the war on crime. By comparing the sprawling war on crime with its underdeveloped twin, the war on cancer, this chapter can give us some sense of how the success of the former may have made us more vulnerable to the strategies of those who would use terrorism as an excuse to impose new strategies of governance. The high risks of relying on an essentially penal strategy to achieve global forms of security are already becoming visible in Iraq and elsewhere.

<1>FROM THE WAR ON CANCER TO THE WAR ON CRIME</1>

As social signifiers, crime and cancer are both highly productive. Crime is one of the most ancient metaphors for the moral life of human beings, but cancer is a first-class metaphoric agent of its own (Patterson 1987; Sontag^g 1977). Even professional discourse about cancer boils with anxiety-provoking terms like “invasive,” “mass,” and “spread,” other cancer terms (such as “metastases,” “remission,” and “cancer” itself have been readily adopted to other contexts (Patterson 1987, 160). Popular discourse about cancer has traditionally been even more vivid, invoking explicitly monstrous themes of aggressive and malevolent flesh- and organ-consuming predators .

While 1971 was the year the Nixon administration formally rolled out its war on drugs, its roots are clear in Nixon’s law-and-order message during the campaign of 1968, and in the growing confrontation between the president and the antiwar movement that had helped bring down his predecessor. Few in that turbulent period marked by high-level assassinations of political leaders and lethal conflict between police and citizens in the center of some of the best known cities in America would have questioned that the US was facing a crisis of governance. Strikes, demonstrations, and violence between citizens were reaching unprecedented highs for the century as the '60s ended (Parenti 1998). In Nixon’s first term, his administration looked for opportunities (limited in retrospect) developed through an expansion of federal antidrug efforts and a continuation of his harsh campaign rhetoric against the liberal criminal procedure decisions of the Warren Court (Parenti 1999; Baum 1996). The war on drugs offered great political

^g Add to biblio.

^j Industrialist Armand Hammer was head of the National Cancer Society board sometime during this period. Not just the same industries—the same corporations made the carcinogens *and* the drugs.

potential to Nixon because it linked the New Left political base to its broader youth culture penumbra and, through that, to classic themes of organized crime and corruption.

Drugs would also offer a striking metaphoric bridge between the growing political clout of environmentalism and Nixon's center-right majority. Drugs were easily analogized to other "toxic" chemicals placed in water and airways. Building on the Johnson administration's strategy of funding local law enforcement (see chapter 3), Nixon also used the war on drugs to build a new political network, linking the highest levels of national government with local government through law enforcement. By investing federal money in local criminal justice agencies, Nixon was establishing links that bypassed the traditional structures of congressional representation and party machines.²

The "war on cancer," a term produced not by Nixon but by the public discussion of Nixon's announcement in his 1971 State of the Union address that he would launch "an intensive campaign against cancer," seems at first glance to be a variation on the welfarist themes most associated with the New Deal and its 1960s spin-off "the war on poverty." The earliest federal government interest in cancer was, in fact, spurred by concern with carcinogenic exposure in war-time industrial work places,. This concern fed directly into the expanding federal regulatory concern with carcinogenic chemicals manifest in the Delaney Amendment of 1958, which was perhaps the first piece of modern environmental legislation. A war on cancer along these lines would have meant federal support for workers, consumers, and communities against industrial chemistry.

The war on cancer also has genealogical links with the science-warfare side of the New Deal state, especially the Roosevelt administration's Manhattan Project and, later, the Kennedy administration's race to the moon. Indeed, these were precisely the markers Nixon laid down in his speech to the Ninety-Second Congress. "The time has come in America when the same kind

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of concentrated effort that split the atom and took man to the moon should be turned toward conquering this dread disease. Let us make a total national commitment to achieve this goal.” Rather than dispersing money through a broad political network as did much of the New Deal and the war on poverty, and much as the war on drugs would later do, the Manhattan Project, space program, and war on cancer pumped money into highly centralized research establishments (like the Los Alamos, Berkeley, and Chicago laboratories during the 1940s; NASA in the 1960s. and the National Cancer Institute in the 1970s). Though the war on drugs created a new federal local network around law enforcement, the war on cancer presupposed and reinforced one that had already become an important component of government since the New Deal: media science and government. Coverage of moon shots, missiles, and presidents was displacing more traditional political circuits that ran vertically through local political machines and news outlets.³ Rather than threatening industry, this kind of war on cancer would ultimately invest in many of these very same industries as producers of anticancer drugs.^j

Cancer and crime share a rich metaphoric tradition of trading images. Crime has often been described as a cancer eating away at the integrity of institutions, communities, and whole nations.⁴ Cancer is often characterized as a predatory killer that is physically assaulting its victim. Both, in turn, furnish natural metaphors for governance. They provide comprehensive platforms for governance precisely because both are constituted as threats through their lack of control. Crime and cancer are in a sense “antigovernments.” Criminal acts are those acts taken in defiance of rules with the greatest social sanction behind them. Cancers are unregulated cells that will neither die nor confine their growth to the functional pathways governed through the body’s complex electrochemical guidance systems. As cancers grow, they also act to subvert the functional order of the body’s systems in ways that often prove fatal. Although crimes are

generally talked about as caused by individual bad actors, especially by conservatives, the same discourse acknowledges a collective climate in which crime may be out of control.

Cancer in the twentieth century has also shared with crime an agonizing proximity to scientific progress. At the end of the nineteenth century, major improvements in medicine – especially bacteriology and the new surgical antiseptic measures it brought with it -- generated great optimism that medicine would soon understand and treat cancer with some effectiveness despite long being viewed as beyond the reach of medical science).⁵ In the same time period, advances in new “social sciences” including criminology, evolutionary biology, and psychology led to a revival of optimism that crime would soon be understood and subjected to therapies, or at least preventive measures.⁶ In both cases, the confidence in scientific progress was linked with faith that problems were traceable to specific causes in individual human beings that could be prevented and arrested. In both cases, however, scientists and their new audience of politicians and the public were to be disappointed, through a repeated series of supposed “breakthroughs,” rapid escalation of hopes, and disturbingly widespread failure. Although cancer was undeniably an objective physiological disorder, its causes and treatment remained so profoundly mysterious that, like crime and other social maladies, it had an essentially indeterminate nature for much of the twentieth century. As with those social maladies, cancer discourse could not easily exclude moralists and “populist countercultures” who saw in the disease primary lessons about the virtues and vices of our culture rather than specific causal events.

<1>FROM THE WAR ON CRIME TO THE WAR ON TERROR: BUSH, 9/11, AND ABU GHRAIB </1>

The war on crime as a panoply of political technologies and mentalities has profoundly shaped the strategic context of the war on terror. The Bush administration has made a political theme of claiming that a war on terror is an alternative to a law enforcement approach, a tag it tried, with

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some success, to hang on Democratic candidate John Kerry during the 2004 election campaign.

Yet the administration's approach to that war has been in large part a continuation of the war on crime, as seen in the arrest of suspected militants, both citizens and aliens; the use of harsh methods to extract confessions; and mass incarceration of a class defined by race and religion as "dangerous" in a global archipelago of prisons. . Many of the deformations in American institutions produced by the war on crime, developments that have made our society less democratic, are being publicly rejustified as responses to the threat of terror.

This metaphoric transfer between the war on crime and the war on terror has remained beneath the radar for the most part, emerging only obliquely during the 2004 presidential campaign between President George W. Bush and Senator John Kerry in the form of a subdued debate over whether the war on terror could be handled through criminal justice strategies or needed to be handled exclusively at the level of military strategy and foreign relations. President Bush and his supporters argued that Kerry—a former prosecutor and proponent in the 1990s of greater federal attention to global criminal organizations -- was locked into a law enforcement model of how to fight terrorism, a strategy they denounced as unrealistic and undesirable for, among other reasons, the fact that it might involve too much deference to international law and cooperation. Senator Kerry likewise attacked the President for being locked into an overreliance on unilateral U.S. military power. Kerry embraced the organized crime model, stating at the height of the campaign that he expected that terrorism would not be eliminated but rather reduced like organized crime to a tolerable problem. Bush supporters leaped to criticize Kerry for accepting something far less than total victory in the war on terror.

These rather tepid exchanges between the candidates revealed more about how porous the boundaries between war and crime control have become than about any difference in principles

between the candidates. Having criticized Kerry's law enforcement strategies for fighting terror, Bush moved after his reelection to appoint Michael Chertoff, a veteran federal prosecutor and former deputy attorney general for criminal prosecutions, to lead the Department of Homeland Security. Indeed, other than the short weeks of direct military campaigning in Afghanistan and Iraq, much of both wars and the global pursuit of Al Qaeda has come to look much like a particularly grim war on crime: heavy reliance on a strategy of arrest, incarcerate, or kill, in which the dominant symbols have become not huge tank battles but prisons, including Guantanamo Bay in Cuba and Abu Ghraib in Iraq. For Kerry, the argument that Al Qaeda be pursued as an international cartel of criminals emerged from his earlier focus on international criminal organizations as the growing international threat to U.S. security in a post-Cold War world.

<2>THE EXECUTIVE AS PROSECUTOR IN CHIEF</2>

One of the most prominent features of the war on terrorism has been the unprecedented assertion of executive authority that it has sanctioned and justified. Particularly notable has been the President's ability to indefinitely incarcerate someone and subject him to harsh and degrading interrogation techniques as based on a presidential finding that a particular detainee is an "enemy combatant," a classification legal scholar David Cole (2003, 39) has described as the "ultimate move in the government's preventive detention arsenal":

<EXT> Attaching that label takes an individual out of the civilian justice system altogether and places him in military custody, potentially for the duration of the "war on terrorism." The government claims that this power authorizes it to arrest

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and hold anyone, foreign national or US citizen, for an indefinite period, without charges, without a hearing, without access to a lawyer, and, for all practical purposes, incommunicado, simply on the assertion that he is an “enemy combatant.”</EXT>

In the war on terror, the label “enemy combatant” may exempt the case from the normal rights of the criminal process, but all too familiar from the “war on crime” is the assertion of primacy for the executive in representing the public’s interest in security which, as we have noted, has led to a shift in power to the prosecutor over pretrial detention, juvenile court jurisdiction, and the length of prison sentences. The claims of executive autonomy made in the war on terror track closely with the power assumed by prosecutors in the criminal justice system and by chief executives asserting prosecutorial prerogatives.

Though criminal law enforcement is by definition not an emergency power, the expansive role of the prosecutor in it has been justified with reference to the severity of the harm that violence poses to the public. In claiming to speak for the public’s needs for prevention and retribution, the prosecutor has claimed a direct public trust that requires no review and little guidance from lawmakers. It is precisely this logic that President Bush and Attorney General Ashcroft have invoked to defend the most controversial aspects of the “war on terror,” including the harsh interrogation techniques and prolonged detention of prisoners. President Bush has routinely referred to the persons detained at Guantanamo Bay, Cuba, as “killers” (quoted in Cole 2003, 42). The term is a highly charged one, and claims more than would be required to detain them as terrorists if that’s what they are. In implying nothing less than murder, the President draws upon the crime that tends to condense and intensify the whole complex of public fears that

have supported the war on crime, especially the vulnerability of one's family to the proximity of violent, racially marked subjects. Vice President Cheney has invoked the same constellation of meanings in describing the detainees held in the prisons at Guantanamo Bay Cuba as "the worst of a very bad lot." The death penalty and incarceration in a supermax lockdown prison, the two harshest punishments in the United States, are routinely justified as focusing only on the "worst of the worst."

Both Bush and Ashcroft made crime central to their respective political careers prior to their current positions, so it is not surprising to see them turn to these narratives, strategies, and rationalities when faced with the challenge of terrorism. Bush invokes his "solemn obligation to protect the people" in rejecting charges of civil rights violations in American detention centers. This continues to find acceptance to a truly sobered public opinion after 9/11 that was and is prepared to overlook serious mistakes made by the administration in its execution of the war on terror.

<2>9/11 AND THE CITIZEN VICTIM</2>

, Since 9/11 the nation has had little difficulty applying the logic of trauma experienced by victims of violent crime to the American people as a whole and to our national leaders. For example, the Patriot Act, adopted on October 26, 2001, was widely acknowledged, even at the time of its passage, to have not been read by the vast majority and possibly all of the members of Congress who voted for it (Priester ⁿ2005, 13). This presumably embarrassing fact has been largely explained by noting that the act was passed only weeks after September 11, 2001, by politicians who had themselves been witnesses and near victims of the attacks themselves.

ⁿ Add to biblio.

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The same sense of trauma has been offered to explain the relative lack of interest of the American people or Congress in the scandals at Abu Ghraib and Guantanamo. But whether these explanations make sense empirically or normatively, it is clear that the war on terror as a legislative matter has largely followed the pattern laid down by the role of Congress and state legislatures in the war on crime. In that war, crime victims emerged as idealized citizens whom lawmakers could invoke to expand governmental powers freely without serious political risk, as long as they respond to the twin calls for safety and vengeance that victims are idealized as making.⁷

The core of the Patriot Act, its definition of terrorism, expresses this link between victims and criminal in limiting the crime to “acts dangerous to human life that are a violations of the criminal laws . . . [and] appear to be intended to influence the policy of the government.” In anchoring a broad expansion of law enforcement powers in the name of human life, Congress was following a pattern well marked in crime legislation: evaluating the reasonableness of policies not by their outcomes but by how well they match the severity of the harm against which they promise to respond. They also follow the path of investing more discretion in the hands of the executive on the premise that due process considerations harm victims in a zero-sum game between victims and offenders. In this respect, the Patriot Act has much in common with the Anti-Terrorism and Effective Death Penalty Act of 1996, adopted after the Oklahoma City bombing, with the express purpose of making it more difficult for death row inmates to raise more legal delays to their executions.

<2>MISTRUSTED COURTS</2>

Three Supreme Court decisions in June of 2004 concerning the detentions of both aliens and citizens under military custody as enemy combatants were widely read as a repudiation of Bush

administration's position in the war on terror. While that may be accurate, such a result merely reflects how extreme a view of executive authority the Bush Administration relied upon, one in which federal courts were to have essentially no jurisdiction to question the custody of even citizens when held by the United States under a presidential finding that the detainee is an "enemy combatant." All three rulings, however, were remarkably narrow.

Rasul v. Bush raised the status of a large group of detainees who claimed to be innocent of fighting with Al Qaeda or the Taliban, and who had been held at Guantanamo without access to lawyers or an opportunity to challenge their status as enemy combatants. The Supreme Court, in a 6-3 decision, held that the statutory writ of habeas corpus applies outside the political space of the United States, and sent the cases back for further proceedings in the habeas actions at the district courts.

In *Hamdi v. Rumsfeld*, the Court was faced with a U.S. citizen held under similar circumstances at a Navy brig in South Carolina. Here the Court divided as to the legal grounds for reversing the denial of the writ. The plurality opinion by Justice O'Connor held that the federal antidetention statute vests citizens with rights against executive confinement that require examination by a federal court. Two other justices, Scalia and Stevens, would have required that the government proceed against a citizen such as Hamdi through a prosecution for treason.

The final case, *Padilla v. Rumsfeld* involved another U.S. citizen, this one detained at the airport in Chicago first as a material witness and then as an enemy combatant in the same Navy brig as Yasser Hamdi. A 5-4 majority sent the case back because it had been filed in the incorrect district court -- under the habeas statute, it should be filed in the home district of the defendant, in this case Donald Rumsfeld's district -- an outcome that most commentators predicted would

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have little consequence other than to place Padilla on the same footing as Hamdi once he refiled his complaint in the district court in Virginia.

These decisions may have rejected an extraordinarily broad argument for executive authority, but they did so on statutory grounds that epitomize the judicial craft of parsimony or narrowness. As Michael Reisman^r (2004) has commented, this kind of parsimony is attractive if a court is seeking to “limit the prescriptive force of its decision,” but in these decisions by the Supreme Court, narrowness achieves an extreme in which “the technique closes the aperture of observation to the point where critical facts and law must be ignored”

This self-limiting narrowness is not a new pattern on the late Rehnquist Court, one that follows a theme most widely developed in that Court’s criminal justice decisions from the late 1980s through the late 1990s, particularly in the area of capital punishment. This pattern is characterized by a self-conscious effort to narrow in advance the ability of federal courts to reopen state final convictions by raising the bar of error and prejudice. In these decisions, the Supreme Court essentially barred lawyers for state inmates, mostly on death row, from raising more than one collateral challenge in federal court unless they were actually innocent, and from raising legal claims not adequately preserved in state court. As a result, the Court has essentially endorsed the execution of prisoners who would not have died had they been tried under correct law.

<2>MASS IMPRISONMENT</2>

Beyond the military campaigns in Afghanistan and Iraq, the most significant component of the U.S. war on terror is the use of long-term detention centers to hold enemy combatants. These

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prisons' use of torture and sexual-cultural humiliation, as captured in photographs from the Abu Ghraib prison in Iraq, has drawn criticism globally (Weisselberg¹ 2005). Three years or more have elapsed since most of these alleged militants were seized in Afghanistan and Pakistan.

This new emphasis on incarceration based on group association rather than individual guilt represents perhaps the most striking departure from the traditional models of U.S. military action. The military has, always run an elaborate and high-quality penal justice system for its own personnel, and has maintained prisoner-of-war facilities for enemy soldiers captured in the Gulf, Vietnam, and Korean wars.

A different and darker precedent is the practice of mass preventive detention against domestic populations who, in the minds of government officials, were associated with foreign enemies of the United States. These include the roundup and detention of several thousand foreign nationals in the Palmer raids in 1919 and the internment of more than 100,000 persons of Japanese ancestry, both citizen and immigrant, during World War II. As David Cole has observed, these past incidents of preventive detention and the current war on terror "all resulted in the mass incarceration of people who turned out not to pose the national security threat that purportedly justified their detention in the first place" (2003, 1753).

What is new today is not only the ambiguous legal status of the detainees held by the United States, but the implication that the incapacitation of available terrorists through long-term, perhaps permanent, incarceration can make a difference for the security of America and her allies.

In this respect, the highly publicized difficulty the military has had producing effective and humane penal control in Iraq, and even under far more secure custody in Cuba is not surprising. And yet it is in this function that the global war on terror most closely tracks the course of the war on crime, which early on committed itself to mass imprisonment of whole

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categories of people engaged in the underground economies rampant in the United States in the 1980s and 1990s. Then, the race and perceived cultural pathologies of young minority males in the inner cities made them the prime focus of new, harsh laws and surplus police attention. Now, nationality and perceived religious pathologies of young Muslim men, mostly of Middle Eastern or Arab descent, are driving a harsh and explicit strategy by the Department of Justice to use criminal and immigration laws to isolate and confine terror suspects. This use of pre-textual law enforcement as a tool of preventing terrorism is an example of the most literal and instrumental kind of “governing through crime”: using crime as an excuse to accomplish another objective, one that is harder to achieve or perhaps forbidden (Cole 2003).

Domestically, the war on crime in the form of a sustained effort to incarcerate certain racial classes of dangerous lawbreakers has produced only marginal drops in crime rates, in the view of most criminologists, and no real gains in the sense of security in society. Still it remains deeply embedded in the current structure of American politics and policy making, with only incremental signs for reform. The impact of a similar global military enterprise in security through mass incarceration is not promising.

Another parallel to the war on crime is the considerable attention the Bush administration, especially the Department of Justice, has paid to the death penalty. The administration has vigorously sought the death penalty against Zacarias Moussaoui, the only prisoner brought to trial thus far, notwithstanding the fact that security requires denying Moussaoui access to information that would normally be vital to capital cases and very substantial questions about Moussaoui’s mental state at the time of 9/11 and during the course of his federal trial.⁸

<2>TERRORISM AND THE MEDIUM SECURITY SOCIETY</2>

My dissertation advisor and a great student of the twentieth-century prison, the late Sheldon Messinger, used to talk about the “minimum security society.” By this, he meant the tendency in late-twentieth-century American society toward raising the security profile of everyday life, and using technology to disperse the mechanisms of surveillance and control associated with the prison throughout social space. Messinger originally thought this would go along with a *diminution* of the direct practice of incarceration. This was a model in which the absolute dictatorship over a few would help guarantee the freedom of the many – was being replaced by a model of low-level control over all. The release of the mentally retarded and mentally ill from institutions in the 1970s was one social trend that fit this thesis. In the 1980s, Messinger helped document the endurance and growth of incarceration in California. The minimum security society has turned out to be part of a trend toward more control over *everyone* and quite a bit more control for some. By the end of the century, it would have been more accurate to speak of a “medium security” society, as gated communities replaced reliance on good lights and door locks.

The war on terror has thus far encouraged only deeper entrenchment of this lockdown strategy in the home, schools, and workplace. More globally, the major legislative and administrative responses to 9/11 have been to heighten the power of law enforcement and prosecutors to do much of what they were doing before with even fewer avenues for legal challenge. This has been particularly true in the treatment of noncitizens, for whom the already harsh and mandatory reach of criminal alien exclusions has been expanded even further (Cole 2003). It is also true for every American with a criminal conviction or even arrest record. In response to 9/11, new state and federal laws have expanded the already significant pool of jobs for which criminal records checks are now required by law, including, in many states, personal

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health care attendants, school employees, and truck drivers (Emsellem 2005). New laws have also opened more government data on individuals to security screening firms serving the growing market for prescreening job applicants for crime and drugs, as we discussed in chapter 8.

<1>DISASTER: WHY THE WAR ON CRIME IS A BAD MODEL FOR CONFRONTING TERRORISM</1>

If we look through the window of the losses in New York, Washington, and Pennsylvania on September 11, 2001, we can raise a different kind of question about the way the war on crime has prepared the way for the war on terror: Was it a good security strategy? The answer seems to be no. Indeed, the terrorists highlighted massive vulnerabilities in American security. We were vulnerable not simply because we had no surveillance of a great deal of international and intranational commerce, but because our crime-built culture of control ignores certain kinds of risk while selecting others for investment.

Instead of focusing on aberrational behavior around technical systems with the greatest potential for harm -- civilian aeronautics, the chemical industry, trucking and ports -- American domestic security in the 1990s was colored by a traditional criminological bias. The argument there says dangerous acts arise from dangerous people whom you know by their character, to be read in their minor conduct. This has led to a proliferation of strategies, like the ubiquitous “broken windows” model, which emphasize attending to even the most minor misbehavior of those we fear, especially minority youth in public places.

The “war on crime” has also created vulnerabilities in the very accumulations it produces on subjects and their institutions. This includes the massive concentration of black and Latino

young men and, increasingly, women in the criminal justice system, and the attendance impact on their communities, dependents, families, and neighbors. It also includes a white middle class increasingly taxed by the weight of a private security apparatus that includes gated private police communities, long commutes to safe suburbs in high-polluting, gas-guzzling SUVs, and the high cost of keeping one's children in a state of organized supervision until the parents get home from work.

<2>THE PROBLEM WITH PROFILING</2>

Regardless of whether an unambiguous piece of evidence arises proving that our security and law enforcement communities could have discovered and stopped the Al Qaeda plot executed on September 11, 2001, it is clear that the great bulk of our system was not ever remotely interested in these men or their plot. Our institutions, our technologies, and our narratives were all trained elsewhere. After all, the plotters who murdered three thousand were not born addicted to crack; they did not grow up in single-parent, female-dominated homes; nor did they blow off school, do drugs, or fall into repeated low level conflicts with the police. In fact, they didn't have any of the risk factors that dominate selection and exclusion practices across our society.⁹

Unfortunately, I do not think the answer lies in developing better risk predictors. Nor should we put huge resources into redirecting the New York Police Department from its endless sorties of street confrontation of single young black and Latino men towards scrutiny of young men from the Arabian Peninsula -- although we should recall that Giuliani was credited in the 1990s with making New York safer by directing police resources at derelicts seeking to wipe car windows at stop lights for donations (known in New York as "squeegee men") and low-level drug, alcohol, and sex consumers.

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The focus on minor criminality has kept our police focused on minority youths and their mostly minor criminality. When Mohammed Atta and his colleague stalled their plane on the tarmac at Miami International Airport, they may have panicked, because they left the plane on the field and rented a car. But it took weeks for regulators to respond -- and even then, their response was only a letter demanding better behavior from flight school students in the future. In short, we were not afraid of the kind of people who go to flight schools.

Perhaps the greatest contribution that reflection on 9/11 could make to the American governmental imaginary is to shatter its faith in the criminological doctrine that violence and disorder are related in some predictable and continuous way to a set of variables, be they sociological, psychological, or even biological. This doctrine, through its manifold different substantive theories, has encouraged a pursuit of minor criminal acts as a logical precursor to more serious crime and profiles of the dangerous that are highly correlated with economic, social, and political disadvantage.

The war on crime has increased dramatically the percentage of minorities in our prisons and jails, many of them through the accumulation of nonviolent offenses. This concentration has done substantial damage to American society. It has replaced discredited racist narratives of exclusion with new and seemingly ethical narratives of crime or terrorism. We must carefully monitor the people arrested, punished, or deported in any war on terrorism to make sure the government is targeting people who act like terrorists and not people who just look, talk, or pray like someone's idea of terrorists. The fact that the Bush administration has thus far fought to maintain maximum secrecy over even who it holds in custody is a bad sign.

In the war on crime, major initiatives were frequently launched in the name of preventing children from being kidnapped and murdered but which ended up resulting the more imprisonment for drug and property offenders (Ziming, Hawkins, and Kamin 2001). We should

be careful that terrorism does not get defined down in ways that make it easier for law enforcement to score points but which may have little impact on the real terrorism problem. . We should make clear that September 11 is not a license to stomp out future demonstrations by mostly nonviolent dissidents, such as those who demonstrated against the World Trade Organization in several cities. The prosecutions brought by the federal government against terrorism suspects have thus far (as of 2006) suggests just such a shift from those plotting terrorism to those whose rhetoric or ideologies seem compatible with terrorism...

<2>LOCKED-DOWN GOVERNMENT</2>

Even with better screens, the protection of the American public from concerted terrorists is hampered by the limitations of human labor power and administrative resources that government can direct to the effort. Managing 3 percent of the adult population of the United States through the criminal justice system is an extraordinarily costly endeavor. The resource squeeze on all other forms of government spending is widely recognized, as should be the fact that we cannot realistically finance and staff the kind of effort that would be necessary to counter terrorism inside the United States operationally – say, on the scale of Israel during the second *intifada*, or even Italy at the height of the Red Brigades terror of the 1970s – without substantially redirecting resources from criminal justice, medical care, or retirement income, let alone re-funding public education levels back up to those baby boomers enjoyed. .

Jose Padilla, best known today for his peculiar legal status as a native-born enemy combatant of the United States, was once a more conventional prisoner of the war on crime, serving a term in prison during the early 1990s, during which time he apparently converted to Islam, like many other prisoners. The conventional wisdom that – whatever advantages Al

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Qaeda may have, it has no domestic base on which its appeals could possibly be persuasive¹⁰ -- should be reexamined, if Padilla turns out to be anywhere near as dangerous as Ashcroft apparently believed him to be when he went on live television from Moscow on June 10, 2002, to announce Padilla's arrest.¹¹

The imposition during the last two decades of extraordinarily long prison sentences means that among our 2 million incarcerated Americans are a large and growing body who have no reason to ever hope for normal life in the United States, even if they manage to wait out their prison sentences. American prisons once produced revolutionaries like George Jackson and Malcolm X, whose exposure to the deep contradictions of modernist reform-oriented penalty led them to envision radical change for American society with the aim of making it live up to its own ideology of freedom and democracy. Jose Padilla reminds us that our increasingly zero-tolerance attitude toward criminals has created a large class of individuals with no reason to work for anything but the destruction of our society.

The Bush administration's strategy in the war on terror has called for deliberate maximum use of the criminal code, as well as penal provisions of immigration law, to obtain control over terror suspects in ways that are likely to exacerbate the isolating effects of the war on crime on young minority men. Even those not targeted on suspicion of terrorism run into the wider net being cast by laws opening up criminal record checks to the private sector in the name of tightening controls.

The criminalization of drugs maintains high profits for supranational drug cartels that Ashcroft said play a role in funding terrorism. When combined with the enormous cost of maintaining a correctional population that is, nation-wide, close to 40 percent drug-based, it becomes clear that if our political leadership seriously believed we were faced with a war on terrorism, they would negotiate a peace with honor in the war on drugs.

The war on crime encouraged a lazy reliance by law enforcement on a large pool of usual suspects that could easily be rounded up and detained while a case was made against them, sometimes while the real criminals kept killing. The campaign to do DNA tests on residual biological evidence in already adjudicated murder and rape cases is disclosing scores of cases around the country where the police focused on criminal suspects who fit the preferred portrait of violent criminals, black and young, even while clear signs pointed to other suspects who went on raping and killing.¹² In the name of controlling crime in the 1980s and 1990s, laws were drafted to make it easier for police to operate on their own hunches and harder for defense lawyers to subject the facts of a case to scrutiny. Vehicles like unreviewable deportation of suspected immigrants can easily be used to cover up sloppy investigation and worse.

<2>RAISING THE COSTS OF CIVIL SOCIETY</2>

The war on crime has reshaped “private” life in America by placing it in spaces and procedures self-consciously aimed at security from crime and a sense of that security (see chapter 6). Compared with how we lived a generation ago, the lives of virtually all Americans are today more embedded in security technology such as locks of all sorts, alarms, private security, and procedures of stopping, questioning, and searching. But all too often, these technologies, like gated communities and giant SUVs, increase the security of some only by reducing the security of others.

In doing so, they constitute a kind of provocation that generates a certain potential threat to security. Both crime and the fortresslike strategies adopted by many Americans who can afford to invest in their personal and family security erode trust and lead to more reliance on both criminal self-help (e.g., vandalism) and on state coercion to work out social accommodation.

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They also intensify historic patterns of racial segregation in urban areas, especially in the Northeast and Midwest, which lacked a historic ideology of racial separation (unlike the South).

As captured in political cartoons showing Americans “hunkering down” after 9/11, the war on terrorism is imprinting its own logics on this fortress mentality. We can expect it to retroactively ratify much of this security buildup while justifying a further hardening of the segregation of American society. Though crime rates made government at least somewhat accountable, the threat of terror cannot easily be measured or tracked over time. That makes it possible to deploy the possibility of terror as a political tactic in domestic politics. At the same time, it is unclear whether the American public will tolerate the kind of protracted stalemate that marked the war on crime until at least the late 1990s.

<1>RELAUNCH THE WAR ON CANCER</1>

There are, to be sure, different ways that one could imagine “governing through crime” than the American model as it has developed since the 1960s. At the start of the twentieth century, reformers created in the juvenile court a powerful new form of judicial agency targeted at addressing a broad swath of presumably pathological governance by families and communities, especially immigrant families in the high-population-density working-class precincts of the great cities. Under the auspices of addressing crime, new forms of knowledge and new strategies of governance were explored. By the time the Supreme Court decided that due process required a greater measure of adversary protections for those accused of juvenile delinquency, the ambitions of reinventing community governance had long given way to the needs of the larger criminal justice establishment (Rothman 1980).

The war on crime invested the federal government in a relationship with a criminal justice establishment that ultimately “blew back” and made criminal justice a kind of reigning metaphor for how to govern, first in Washington, and then in the states and in private institutions. The “governing through crime” we now experience must be rejected because the narratives it leaves us through which to do the work of governance in an increasingly complex multicultural democratic society are unsustainable, and threaten the alleged principal values of both conservatives and liberals in contemporary American politics.

To mix metaphors, “governing through crime” produces cancer, or more accurately, cancers: it produces subjects who do not respond to the regulatory signals that allow for effective social coordination and who remain outside any meaningful circuits of democratic will formation.

Consider two examples, the prison population and crime victims.

The prison population, now at around 2 million, represents a staggering challenge to the governability of American cities. The war on crime has increased substantially the numbers of people in prison and in legal jeopardy of being sent to prison with minimal effort. Today, large cities throughout the nation— many already stretched to the governmentallimits by poverty, AIDS, and the necessity of dealing with children of immigrants — face the prospect of thousands of returning prisoners.

These reentering prisoners, sometimes designated parolees, face and pose extraordinary challenges to governability. As a group, they face strong discrimination in the job market only exacerbated by a lack of skills prior to prison and no serious job training in prison. Often, they have burned through local networks of support before committing the crimes that sent them to prison, so that on return they are homeless or soon to be. The experience of prison has only exacerbated many of the very real cognitive and sociability problems suffered by this population.

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Many have problems with aggression, paranoia, depression, and violence. In a lesser way, the same problem is created by every institution that re-create the model of exile and exclusion that prison now represents, including zero-tolerance rules removing students from classes, residents from housing, and employees from jobs.

The tendency of “governing through crime” to produce more victims – and to heighten the potentiality of victimization to others – produces a different kind of social pathology. Crime victims, especially those of violence, are encouraged to view themselves as facing long-term or permanent damage. In overcoming this damage, they are encouraged to consider the prosecution and punishment of the criminal the primary collective contribution to their healing. They are discouraged from expecting the state to address their medical bills, job losses, or family poverty. At the same time, victims have been empowered by the sense that their experience of this damage is a source of truth unchallengeable by others.

The difficulty posed by this dynamic to institutions was exemplified by the problems faced by governing agencies in dealing with the victims of the 9/11 terrorist attacks. Whether facing off with the mayor of New York over the management of the World Trade Center disaster site – or with President Bush over the composition of an independent commission – victims’ families have succeeded in insisting on having their own sensibilities accepted as generating the criteria of truth, resulting in otherwise feared politicians backing down from them.

For the vast majority of subjects in contemporary America, the status of victims is experienced mainly as a feared future rather than a present status. It is for them that prisons and the death penalty operate, as much as for the immediate victims. In making the reduction of crime threats such a major objective of family and company governance, “governing through crime” has exacerbated a whole range of urban problems, including sprawl, the increasing

segregation of American residential communities, and traffic gridlock caused by significant commutes between work and home.

Governing through crime produces subjects who are likely to place large demands on governance at all institutional levels. At the same time, it seems to encourage a relatively narrow range of governmental technologies and strategies. As these agents respond to greater demands for governance by a population whose demands on governance are shaped by crime, they find themselves imposing a limited and self-defeating set of strategies. Exclusion strategies—whether putting people in prison, terminating their employment, or suspending them from school—end up raising governance costs somewhere else by placing the threatening subject in an environment with potentially even fewer ways to obtain cooperation from their targets.

It is essential that we question the reliance of the war on terror on models from the war on crime. Though Americans may regard the current state of mass incarceration coexisting with violence-producing criminal markets for narcotics as an acceptable price to be paid for a sense of security in the suburbs, we cannot afford this kind of stalemate with terrorism. Here the undeveloped war on cancer may offer important resources for forming alternative questions.

In the war on crime model, the “Why do they hate us?” question is irrelevant. “They” are a pathological or evil force whose motivation is exogenous to the political problem of coping. In the war on cancer model, prevention is always primary. The cancer-causing behavior or exposure must stop, even as we try to search out and destroy every malignant cell.

The war on crime model focuses on willing offenders rather than on conditions that encourage criminal behavior. The emphasis is on tracking known offenders and seeking to reincarcerate them. The war on cancer model is more concerned with identifying risk factors that are correlated with cancer and that can be acted on.

The war on crime model has focused heavily on victims as passive subjects of government. In the war on cancer model, cancer victims are active subjects who must be mobilized to fight their cancer.

Governing through a renewed war on the sources of cancer offers more promising material for restructuring governance than does crime. The current war on cancer, focused on diagnosing and treating individuals with cancer, has been criticized for not achieving up to expectations, but its products do not challenge its operations. It has created institutions, especially large cancer centers and teaching hospitals devoted to treating cancer and training cancer surgeons and specialized care coordinators known as oncologists. The biggest problem associated with this sector has been its rapidly inflating costs. A less inflationary strategy might aim at lifestyle choices that can prevent cancer but might generate resistance from large consumer industries like fast food, alcohol, and automobile producers.

Cancer victims have experienced a significant enhancement as a result of the war on cancer. Once seen as repugnant objects of pity, cancer patients have benefited from the rising prestige of the disease. This is in part a collateral effect of the rising status of their doctors, just as students and teachers may effect each others' prestige. It is also in part a result of a cultural campaign to transform cancer patients from subjects best kept protected from the truth to people encouraged to view themselves as essential partners in the treatment and research process.

The new subject position of the cancer patient is shaped in large part by the creation of extensive knowledge and action networks. One crucial nexus is the National Cancer Institute's patient referral service and its Web page (www.cancer.gov), which provides comprehensive databases for cancer patients and their families to access information on the latest research results, descriptions and protocols for current clinical trials, and a host of self-diagnosis information and links to other resources and cancer organizations. The information helps track

patients and their doctors into sponsored cancer research studies. Different aspects of the new cancer patient subject position are the target of a growing set of support groups and self-help expertise – disturbingly portrayed in the novel and movie *Fight Club* – all of which grow from the primary recognition of the national status of the cancer population by the National Cancer Act.

By identifying the size of the cancer population and giving patients tangible reasons to seek out such an identity, either by seeking a diagnosis or acting on their diagnoses, the war on cancer has invited the growth of a whole series of markets. There has been tremendous growth in the market for books and articles concerning living with cancer and with people who have cancer. This discourse, much of which valorizes the experience of being a cancer victim, has helped tremendously to promote the vision of the cancer patient as a rights-bearing subject.

<1> CONCLUSION </1>

Since the beginning of the new millennium, a number of factors converge to make such a shift easier than it might appear. Foremost among them is the demographic fact of an aging population, feeling increasingly vulnerable to disease, above all cancer, as they felt to violent crime in the early 1980s. As the baby-boomer generation prepares to consider its own mortality, cancer looms large on the horizon indeed, and will only get larger as they and their children age out of the years where exposure to crime is serious. Interestingly, for the first time in many election cycles, promises for major improvements in health care for those already insured, including specific boosts in spending on cancer research, were made in the 2000 campaign by both President Bush and Al Gore, resulting in a rare piece of cancer legislation, the National Cancer Act of 2003.

The experience of mass terrorism itself is a powerful counterbalance to the inertia of governmental ideas. It is doubtful that Americans will settle for the kinds of symbolic solidarity-reinforcing gestures that have marked the war on crime. This is already suggested by the success of the September 11 Commission in pushing for far more access to sensitive intelligence information from the Bush administration than any similar commission has ever enjoyed, much of it because of the panel's alliance with the victim families. The recent disaster in New Orleans after Hurricane Katrina – and the echo disaster in the evacuation of Houston during the approach of Hurricane Rita – underscored the vulnerability of urban America to failures of critical infrastructure, whether or not pressed by human forces bent on destruction.

The new urbanism and the rediscovery of the structural value of urban neighborhoods have also contributed to the formation of a politically engaged public with a far more real stake in the effects of mass incarceration than is true for those already committed to the gated-community approach. The boom in urban real estate means influential people have a much more direct exposure to the results of mass incarceration. This new public is emerging conveniently at a time when the awakening of American journalism and social science to the extraordinary levels of imprisonment in American society is beginning to force a broader public discussion of how well the war on crime has secured America.

These conditions will mean little in the absence of social movements and political leaders ready to break the hold of crime on American governance and animated by the conviction that the American people are being exposed to risks that are largely ignored by institutions laboring under a burdensome set of formal and informal mandates to manage crime and its risks. That conviction will not spread from the major political institutions of the United States, which have been largely made over by the war on crime. If it grows, it will spread from person to person and institution to institution as a discussion breaks out on how crime risks rule our lives. This book

was written with the sole aspiration of starting just such discussions. If its interpretation of American institutions, communities, and lives resonates with your experiences, please start a discussion among your friends and colleagues about “governing through crime” and its consequences.

<N-1>Notes</N-1>

<N>1. Perhaps the most striking evidence of this was Nixon's contemplation in the middle of his first term of abandoning the Republican Party and founding a new political party.

2. In this respect, it closely paralleled what the Kennedy and Johnson administrations attempted to do with the war on poverty, which provided federal legitimacy, expertise, and money to local community development agencies at the expense of traditional political party machines like that of Mayor Richard J. Daley in Chicago.

3. Political assassinations became an important aspect of this circuit in 1963 and 1968.

4. One of the most famous instances was John Dean's statement to his client Richard Nixon that Watergate constituted a "cancer on the presidency."

5. As late as 1909, general hospitals in the City of New York would not admit cancer patients (or those with tuberculosis and other chronic or incurable diseases). Cancer was so feared that the one hospital in New York in the early twentieth century that was devoted to its care avoided the name altogether, calling itself "Memorial Hospital" (Patterson 1987, 416 n. 52).

6. In the case of crime, this followed a period of pessimism over the perceived long-term failure of the penitentiary as a mechanism of self-improvement by criminals. See Rothman 1980.

7. Thus when victims get off script and make demands that do not fit these calls, the response of government is much less automatic. The group of 9/11 widows who became known as the Jersey girls are an example of victims who have extended their calls beyond issues of penal justice in ways that have challenged the political system. They have had remarkable success in getting the 9/11 Commission through its investigation and report against the resistance of the Bush administration.

8. These extraordinary circumstances might have resulted in a court order not to seek the death penalty were the case being reviewed by any court of appeals other than the ultraconservative U.S. Court of Appeals for the Fourth Circuit.

9. And its not because they were visitors, since our immigration control laws and practices have tended to exercise the same kinds of screens.

10. The thinking is that Al Qaeda will not be attractive even to immigrants from countries where Bin Laden's views have currency because most will be people who have sacrificed mightily to get to the United States to take advantage of its unorthodox social rules.

11. U.S. Authorities Capture Dirty Bomb Suspect, Associated Press, June 10, 2002, available at <http://archives.cnn.com/2002/US/06/10/dirty.bomb.suspect/>

12. The case of serial killer/rapist Eddie Lee Moseley has been thus far most substantially told in the Frontline documentary *Requiem for Frank Lee Smith* (Ophra Bikel producer, 2001). Moseley preyed on literally hundreds of women mostly in predominantly black neighborhoods of Fort Lauderdale and Miami during the 1970s and 1980s while authorities prosecuted at least two other men for Moseley's crimes (like Moseley, both were black). Authorities knew about Moseley but for a variety of reasons were disinclined to focus on him.</N>