Crime and Warfare in the U.S.: American Narratives of Violence, Terrorism, and Retribution

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In the wake of the attacks on the World Trade Center of September 11th, 2001, the Bush Administration quickly declared that the violence perpetrated against the United States was an act of war which would be responded to in kind. In apparent contrast, many on the Left (particularly in academia) tried to read the attacks as *crimes*, offering a narrative of criminality that would allow the attacks to be dealt with through the pursuit, arrest, and fair trial of those responsible, either domestically or in international courts. No one should be "smoked out" and killed, but rather they should be dealt with justly, as perpetrators of crimes. In itself this response would seem to be wholly appropriate, offering a course that recognizes the horror of the attacks and the necessity of a response, but is an alternative to the opportunistic war-mongering of the political parties and, in particular, the American Right. Many of us today still have "justice, not vengeance" bumper stickers on our cars. The latter narrative, however, has so far failed to make a significant impact on the national debate. In late 2001 the burning question was simply when the war on terrorism would start, and who would be targeted; if today the war has been problematized, it is because the burning question is, "are we winning?" The *fact* of the war, and its purported necessity, is still taken for granted except on the political margins and in some parts of academia. Put another way, the narrative of crime, or at least of crime being in any way distinct from war, just isn't playing in the heartland.

Why, then, has this approach remained sidelined, and generally ignored by the broader public whose hearts and minds we seem to be trying in vain to reach?

Perhaps we could claim that people aren't listening, or that our voice isn't loud enough, or that maybe we're not being clear enough. (In fact, this paper was conceived at a roundtable discussion closing a cultural studies conference in March 2002 when most of the speakers suggested one of these three possibilities.) But I think that the problem is

rather with the narrative itself. In suggesting that the attacks should be treated (and punished) as crimes, one must presuppose a disjuncture between the pursuit of criminals and the waging of war, and assume that those listening to or otherwise encountering the narrative also understand such a disjuncture. Yet no such differentiation is apparent. I would argue that from the militarization of policing and the successive political "wars on crime" to racist "reality-based" crime dramas, the American cultural imagination has become one in which all crime is intrinsically violent, it's committed by people "not like us," all the nation is collectively victimized by it, and the appropriate response is a war of retribution -- which makes alternative readings of (and responses to) actual violence nearly impossible.

A note in the *Harvard Law Review* in early 2002, titled "Responding to Terrorism: Crime, Punishment, and War," attempted to tease out the apparent shift in US policy toward terrorism after 9/11.[1] Noting that many scholars had indeed called for the September 11 attacks to be dealt with inside a national or international criminal justice system, rather than through unilateral warfare, the article examined what it perceived to be the gradual conversion in US policy from a crime approach to dealing with terrorist acts to a war approach. Although it finds that the United States "traditionally treated terrorism as a crime," using as examples the Pan Am 103 bombing and the first WTC attack, and that a criminal justice response to 9/11 was certainly *possible* within existing legal frameworks, the government had spent much of the 1990s shifting from a "reactive to a proactive posture vis-a-vis terrorism" (as evidenced in part by the limited use of military force to respond to the embassy bombings in Kenya and Tanzania). Further, it notes that the political and legal shift has been taking place within a growing *cultural* shift in this country with regard to popular theories of punishment. Although the article is purely descriptive and isn't interested in *why* there's been a cultural sea-change, it does note that theories of deterrence and rehabilitation have been largely pushed aside, in favor of the more *popular* "incapacitation" (we might also call this "pre-emption") and "retribution" theories of punishment for all sorts of crimes. From the perspective of either retribution or incapacitation, all-out war is then quite a logical, and normatively appropriate, response to crime, whether terrorist or otherwise -- and begs a closer look at perceptions of crime generally, and how they overlap with the discourse of war. My purpose here isn't to *prove* that the conflation between crime and war exists -- others have done so in much more detailed ways -- but merely to highlight the extent to which this is a very significant problem for those of us trying to push different narratives of terrorism, and one which the broader Left has ignored and will continue to ignore at the price of its own irrelevance in this still-one-sided debate.

Politics

It is not, of course, new to decry the ways in which the Right has spent the last 35 years militarizing (and colonising the rhetoric of) the criminal justice system, though such voices seem to have been kept in the periphery of national debates about crime. Yet scholars, and particularly those on the Left, don't always seem to realize just to what extent *any* discourse about crime today that doesn't call the categories of crime and punishment into question is really a matter of our jumping into the Right's sandbox and playing on their terms. When we say that terrorist attacks need to be treated as crimes, our discourse even endorses a narrative of punishment that is not conceptually different from the right-wing approach to crime; there's no substantive distinction between our concept of punishment and that of *Cops* and *America's Most Wanted*. I haven't heard anyone suggest that the perpetrators of 9/11 be rehabilitated or redeemed to become productive members of global society; rather, the punishment would be just that: *punishing*. Retributive and incapacitating. That such justice might be in the context of

crimes against humanity and be meted out by international tribunals has little to no bearing on the *domestic* discourse, no matter how well it plays in European capitals.

War and crime have been rhetorically entangled explicitly for at least eighty years; implicitly, for much longer than that. Although our military *does* have some experience in domestic policing (the cavalry was of course enlisted to subdue the "lawless" frontier, we've had our share of martial law during civil unrest, and so on), the most significant entanglement has been the recasting of policing as war. The first mention in the *New York Times* of a "war on crime" seems to have been in the 1920s; during the Great Depression, not surprisingly, the number blossomed -- to 240 appearances of the term, up from 34 in the previous decade. The use of the term dropped precipitously after the second World War, but of course picked up again in the late 1960s and early 1970s. Nixon's war on crime, which was also the beginning of the "war on drugs," served as the beginning of a vast domestic effort to militarize police forces, ramp up use of the death penalty, and pour funding into pre-emptive law enforcement and prison construction.[2] Politicians and pundits fueled what Ruth Gilmore calls the "moral panic over 'crime,'" spreading fears of "civil disorder, idle youth on the streets, people of colour out of control, women and children without husbands and fathers,"[3] etc. -- creating the impression of a social crisis in order to then profit from its control. As this process accelerated through the Reagan era, even liberals like Jesse Jackson jumped on the bandwagon; Christian Parenti quotes Jackson, in 1988, "calling for the creation of a 'drug czar' and more funding for local police," saying, "'We have to convince [kids] that drug pushers are terrorists.'"[4]

We ought not to forget the "war on immigration" either. A longer version of this paper would have to address the militarization of the border in much greater detail, but of course Mike Davis, Christian Parenti, Critical Resistance, and others have done an excellent job drawing attention to this problem. In my state, California, the border is a perennial political and social issue; the rest of the country is presumably familiar, for example, with proposition 187 -- an "America-First" anti-immigrant campaign against what was explicitly termed "the invasion of California" (omitting, conveniently, that California was first invaded by the United States and seized from Mexico). Proposition 187 passed, of course, further legitimizing and institutionalizing the discourse that immigration is both a criminal and a wartime offense.

Popular culture, racism, and retribution

The invocation of war to talk about crime (imagined or otherwise) has shaped Americans in much deeper ways than through political campaigns, however. Popular culture has long been the province of right-wing and racist conceptions of crime, and it has contributed greatly to the *retributive* notion of how to fight it. Victims' rights discourse -- that which lends itself most prominently toward a conception of punishment based in violent retribution -- is nowhere more pervasive than in such TV programs as *Cops* and *America's Most Wanted* -- two of the most-watched television shows in the United States in the 1990s. As Margaret DeRosia has noted in a study of *America's Most Wanted*, the burgeoning of a "national climate of unwarranted fear and paranoia" -- a climate that very much predates 9/11 -- has everything to do with the "conflation of law enforcement and entertainment" and "false, racist conceptions of criminality" that the entertainment provides.[5]

It goes without saying that the entire history of conceptions of criminality in this country has been at least marred by racism, if not outright constructed by it: the frontier was "lawless" largely due to the alleged "Indian" threat, or, in the southwest, also the Mexican threat. In the 19th-century west, laws were enacted against Chinese cultural practices explicitly in order to criminalize the Chinese as a group; anti-Irish laws existed in many eastern cities; and of course the legacy of slavery, segregation, and lynching, a legacy very much still alive today, has made a deep mark on American conceptions of crime. Yet it perhaps takes the pervasiveness and repetitiveness of mass media to wipe away so completely the rehabilitative and reformist conceptions of punishment (which, though problematic, at least perpetuated a distinction between the person and the crime), and collapse all crime into shocking acts perpetrated by non-white "career criminals" of whom we must always live in fear.

As DeRosia and others have indicated, the popular television programs on crime throughout the 1980s and 1990s (as well as the purportedly more "objective" newspaper images, TV and news reports, etc.) have gone to great lengths to conflate all crime with *violent* crime, with people of color usually the perpetrators, and explicitly reinforce the notion that police (and *viewers*) are fighting a war -- that viewers need to not leave crime-fighting up to the police, but join in the effort to be "America fighting back".6 Like a good first-person thriller, the entertainment creates first the sense of terror, followed by the self-satisfaction of being part of a story in which the "good guys" win -- or the dread at the prospect of the "good guys" losing. The 1980s and 1990s saw crime bill after crime bill, all purportedly to "get tough on crime" (making the odd inference that laws *weren't* "tough" already) -- though for reasons already mentioned it looked a lot more like getting tough on people of color, those who are invariably portrayed as the "bad guys." (This in fact is necessary for the success of the war rhetoric -- you can't fight a war against an enemy that hasn't been made into the "other".)

DeRosia notes that "the 1995 crime bill [also] rendered law enforcement and more broadly the criminal justice system better equipped legally, financially, and materially, in terms of personnel and technology, than any other period in the nation's history" -- and yet there was still a popular perception, pushed by politicians and the pundits of *America's Most Wanted* and *Cops* alike -- that this wasn't enough.7 This rhetoric still shapes our discourse: police are ostensibly being outgunned in the streets and outmaneuvered in the courts, and victims aren't able to achieve justice. (The *Harvard Law Review* notes that such rhetoric has been the main engine driving tougher and tougher legislation, leading toward a Victims' Rights Amendment to the Constitution.)8 We've thus been caught in an accelerating loop of more firepower, more lockups, longer sentences, vindictive justice, more influence by victims and victims' families in the media and in the courts, more racial scapegoating, and more fear.

Technologies of war

The naturalization of war rhetoric to talk about crime has made it all the easier for the military industrial complex and the prison industrial complex to develop what Angela Davis calls a "symbiotic" relationship with each other. The two complexes "mutually support and promote each other," she notes, "and, in fact, often share technologies."9 And why not? If prisons are holding people captured in the "war on crime" or the "war on drugs," aren't they prisoners of war? (This is even more literal than it sounds: Cassandra Shaylor has noted that the recent wave of solitary confinement strategies in prisons can even be traced to US research on the repressive treatment of American POWs during the Korean War.)10 Shaylor, Davis, and others have researched the myriad ways in which, particularly in the 1990s, the military budget -- facing a shortage of international enemies

after the collapse of the Cold War -- was expanded to include everything from prison construction to police equipment to the training of police and prison officers in high-tech weapons of destruction. Davis cites the *Wall Street Journal*, which noted in 1994

> "Parts of the defense establishment are cashing in . . . sensing a logical new line of business to help them offset military cutbacks. Westinghouse Electric Corp., Minnesota Mining and Manufacturing Co., GDE Systems . . . and Alliant Techsystems Inc., for instance, are pushing crime fighting equipment and have created special divisions to retool their defense technology for America's streets."[11]

Shaylor also notes that "In 1997, law enforcement agencies purchased 1.2 million pieces of military hardware from the Department of Defense. Communities as small as 75,000 people are policed by officers in full riot gear riding in armored personnel carriers. Black urban neighborhoods are the most frequently targeted areas for this paramilitary activity."[12]

Of course, paramilitarism may not need to remain "para-" during the war on terrorism. In the *Harvard Journal of Law and Public Policy*, Noah Feldman argues that "the laws that bar the military from fighting crime do not operate on the basis of geographic provenance, but rather on the basis of categorizing the action to be opposed *as* crime."[13] So once you can break down that distinction far enough -- which we're seeing not only rhetorically but also statutorily in terms of the Patriot Act and the ability of domestic and military intelligence agencies to share information -- one *could* simply put the army itself on the streets. Feldman suggests repeal of the Posse Comitatus Act, or at least a new law circumventing it, might be an appropriate way to clarify this possibility.[14]

Crime discourse comes back to warmongering

The conflation between crime and war discourse works *both* ways, however, and not suprisingly we see the crime rhetoric coming *back* to warmongering through its justification as international crimefighting. (I could go on forever with examples of this -- from Viet Nam being a "police action" to contemporary "rogue states" and "outlaw regimes".) Such discourse was at its most explicit though in the invasion of Panama -- when a sovereign nation was invaded and thousands killed ostensibly to simply arrest its President, who had been indicted in the United States. (The more recent indictment of several leaders of the FARC will no doubt be the most vocal justification for U.S. involvement in Colombia's civil war, should the Bush administration decide to pursue a more active military role there.)

So just as the criminal justice system has spent the last several decades borrowing its language from warfare, the "war on terrorism" is now borrowing it back -- invoking war as the legitimate pursuit of first retributive, then preventative, justice. "Not surprisingly," the *Harvard Law Review* notes, "the rhetoric of the current military action in Afghanistan" -- we could add the war against Iraq -- "draws largely on the rhetoric of the criminal law." But in this regard, it's not so much that the government response to terrorism *shifted* from crime to war (as the *Law Review* suggests), so much as that the rhetoric of the criminal law had already collapsed into war. When crime discourse *is* war discourse, justification of war becomes self-referential.

When we claim that terrorism is a crime, not an act of war, sure -- we lay claim to traditional distinctions between the two, for instance that only Congress can declare war,

that wars are fought between states, that the pursuit of perpetrators of crime results in justice rather than vengeance, etc. But given the inaccuracy of these presumptions at this historical moment (however technically correct they may be in the statutes), it's the position of the Left and the academics that is illogical. On terms understood by most Americans, war is a logical response to international crime affecting the U.S., and *this* war is a logical response to terrorism. Killing thousands of people in response to the thousands of deaths in 9/11 is an example of retributive "justice." Similarly, the incarcerations at occupied Guantanamo and the disappearing of thousands of immigrants may or may not be *constitutionally* legal, but they directly follow the incapacitative logic of crime prevention popularized by the war on drugs and the pre-emptive logic of everyday INS detentions that have long since become the paradigmatic norm.

And what of another claim popular in the Left before the war on Afghanistan -- that, even though we all think Bin Laden was responsible, there should at least be evidence of his participation, or that the Taliban (however reprehensible) should be proven to be an Al Qaeda front, before destroying the country? Does calling the 9/11 attacks a "crime" mean that the government has to amass evidence before acting? Or, even better, would it require that once the masterminds are found, they would be picked up by Interpol, and then extradited after a hearing in which evidence was submitted in due fashion? This would be wishful thinking. Evidence is not a particularly relevant piece to the puzzle of determining guilt in the "court of public opinion," which rests far more on associations, images, skin color, and general othering: if you're not with us (by and large Anglo picket-fence Christians), you're automatically a criminal. "You're with us or you're with the terrorists" was about war, certainly, but it was lifted straight out of a populist tough-on-crime mantra. In the popular film and television imagery of policing, the police are always right; they're just frequently hamstrung by things like courts and warrants and regulations.

Conclusion

18. So what is the difference between the "war narrative" of vengeance and retributive punishment, and the "crime narrative" of justice? To the American consciousness, very little.

When George W. Bush famously asserted that we have to "smoke out" the terrorists, he was speaking less of an operation of war than an operation of crime-fighting that had long-since appropriated metaphors of combat to use in policing the "war on crime" and the "war on drugs." It is a perception of crime that rests on finding ("smoking out") and incapacitating or punishing evil people. They were evil, and will always be evil: there's no need to prove any of it, nor is there a need to address the causes of evil, for evil has no earthly cause: these are not people like you and me, and they simply need to be stopped before they do evil again.

This is how we fight crime. *And it's how we wage war.* The war on terrorism *is* fighting crime on these terms -- and the extent to which many on the Left are still shouting in the wilderness about terrorism being crime, not war shows just how out of touch we are with the discourses we think we're invoking.

There's much more that could be said on this subject, many more ways in which crime and war have collapsed into each other, much more detail to be offered as regards 3-strikes laws, repeals of retributive justice bans, SWAT teams, boot camps for juveniles, pre-emptive incarceration of young black men, extrajudicial executions, etc. But my point

here is that in order to take the initiative from the Right -- in order to back the country off of a warfooting while sharpening our focus on the achievement of justice -- it is necessary that we not only argue that terrorism is a crime, but *substantially* -- by which I mean *discursively* and *materially* -- *disentangle crime and justice from war.*

In a country that already responds to crime with pre-emptive strikes, criminalization of race, collective punishment, and retribution, our attempts to make just interventions in the international arena will fail unless we simultaneously direct our attentions to the discourse of crime at home. We who want to make a difference in foreign policy have to stop approaching "local" issues of crime and criminality in a half-baked, discursively-muddled way. We *can't* talk about dealing with terrorism outside of war unless we also, for example, foreground the racist politics of "reality-based" crime dramas, work with the prison abolition movement, end retributive justice, and fight for nonviolent responses to crime. We need to amplify debate about what justice is, and fundamentally rethink how we conceive of crime and punishment; it's a necessary precondition for getting the nation out of a permanent state of domestic and international war.

Notes

1 "Responding to Terrorism: Crime, Punishment, and War," *Harvard Law Review* 115 (2002): 1217-1238.

2 cf. Christian Parenti, *Lockdown America* (New York: Verso, 1999); Ruth Wilson Gilmore, "Globalisation and US prision growth: from military Keynesianism to post-Keynesian militarism," *Race and Class* 40:2/3, 1998-1999; etc.

3 Gilmore, 177.

4 Parenti, 61. More recently, as the Critical Resistance organization has noted, the California prison guards' union has taken to referring to both prisoners and opponents of prison construction as "enemies" (<http://www.criticalresistance.org/index.php?name=mil_prisons_facts>); though it's unclear how literally they can act on this proposition as regards the non-incarcerated, one can be sure that those inside the prison are treated in precisely that way.

5 Margaret DeRosia, "The Court of Last Resort: Making Race, Crime, and Nation on *America's Most Wanted*," in James Friedman, ed., *Reality Squared: Televisual Discourse on the Real* (New Brunswick: Rutgers U. Press, 2002), 238.

6 DeRosia, "The Court of Last Resort."

7 DeRosia, 238.

8 *Harvard Law Review*, 1234.

9 Angela Davis, *Are Prisons Obsolete?* (new York: Seven Stories Press, 2003), 86.

10 Cassandra Shaylor, "'It's Like Living in a Black Hole'": Women of Color and Solitary Confinement in the Prison Industrial Complex," *New England Journal on Criminal and Civil Confinement* (24:1998), 400-401.

11 *Wall Street Journal*, cited in Davis, 86.

12 Shaylor, 405-406.

13 Noah Feldman, "Choices of Law, Choices of War," *Harvard Journal of Law and Public Policy* (25:2), 482.

14 Feldman, 484-5.