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## Representing War as Punishment in the War on Terror

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Teresa Degenhardt\*

### Abstract

This paper shows how the notion of punishment has been invoked by former US President George W. Bush, and ex UK Prime Minister Tony Blair to represent war. It is suggested that in this context, the notion of punishment serves different objectives: legitimizing violence, suggesting the sovereign role taken by the US and highlighting the emergence of new sensibilities. Building on previous literature in criminology and international relations it examines points of contact between two previously distinct security mechanisms - war and punishment- and suggests possible effects of this discursive blurring. It highlights not only the need for criminologists to engage with international relations literature but also the need to evaluate closely the different nature of the international context.

### Introduction

At a time of great institutional transformation and a blurring of the borders between notions of war and law enforcement and the merging of policing and military operations (Kraska 1993; 2001; 2007; Bigo 2005; Sparks 2006; Krasmann 2007), this article looks at forms of punishment that overlap with defence mechanisms. Complementing the literature on war (see recent issues of *BJC* (2009) and *Crime, Law and Social Change* (2008)) and the use of crime in governance (Simon 2007; Findlay 2008), it shows how war is represented as punishment by some political leaders in a desperate attempt to grant legitimacy to their military actions, especially after 9/11. Both former US President George W. Bush and ex UK Prime Minister Tony Blair, for example, saw war as a way to “bring terrorists to justice” and “eliminate the threat that they pose.” Stressing the tragedy of 9/11 or speaking of the ongoing threat of terrorism, they encouraged punitive sentiments and sought retributive forms of justice (Mythen and Walklate 2006: 389; Melossi 2005). Their rhetoric highlights the relationship between two security systems, the military and the police, or war and law enforcement. Using a double frame of war and terrorism (McMillan 2004), their simplistic language of good and evil (Welch 2006) defines terrorists as “guilty” or “responsible,” dictators as “murderous tyrants” or “homicidal dictators,” and military campaigns as way to “achieve justice” and “enforce UN resolutions.” Where once “war on crime” was waged within the criminal justice system, we now see the language of criminal justice applied in the context of war and vice versa.

Although modernity has taught us to view punishment and war as two different security systems, their relationship is more complex, as the current dismantling of the rigid boundaries of criminology and international relations show. Engaging with literature from international relations and war studies, this article looks at how the wars in Iraq and Afghanistan have been represented by the US and UK administrations as punitive reactions to 9/11, and suggests interconnections between war and the criminal justice system.

This phenomenon is not new, as the language of justice has been used to justify military operations elsewhere. The 1991 Gulf War was a response to the illegal occupation of Iraq, and the Kosovo action, despite being mostly portrayed as an humanitarian war, endorsed some punitive instances – for example, becoming a mechanism to punish Slobodan Milosevic for violations of human rights. However, since 9/11, and the launching of war against international terrorism the representation of war as punitive practice has become increasingly common: the Israel campaign

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against Lebanon in July 2006 was portrayed as a response to Hezbollah's actions; the US bombardment of Somalia in January 2007 was a way to combat Al Qaeda; and recent strikes in Pakistan were directed against Al Qaeda militants. Thus, while the article is mostly concerned with the wars in Afghanistan and Iraq, the analysis has wide-ranging implications.

The analysis follows a social constructivist approach, assuming that changes in punitive discourses and practices may reveal changes in social organizations (Foucault 1977). The paper begins by briefly considering the ways in which war has been understood and analysed in the criminological field. It then explores how the understanding of war has changed in relation to changes in the institution of punishment, using Bush and Blair's discourses on the wars in Afghanistan and Iraq as case studies.

### **War in Criminology**

Many studies have followed Ruth Jamieson's exhortation to study war within criminology (1998; 2003), and two general paradigms have evolved in the field: war as a state crime and war as transnational policing.

The former approach argues for a criminalization of war as a state crime (Hagan, and Greer 2002; Mandel 2004; Ruggiero 2005; 2007; Kramer and Michalowski 2005; Green and Ward 2000; 2004; Whyte 2007; Welch 2007). Such studies have the merit of expanding the notion of crime to include actions carried out by the state and the powerful on the basis of the amount of harm, suffering, and destruction. However, when it calls for states to be brought to account, it devolves the issue to a supra-national institution, pushing the distinctions between legitimate and illegitimate violence to another level. Instead of solving the problem of illegitimate violence by liberal regimes, it creates the conditions for super institutions to intervene and thus for new "exceptional practices" to emerge. Moreover, it conceives the state as a source of power, at a time when power can no longer be constrained within the limits of state institutions – private agencies and international organizations are taking on state functions, for example, private military firms in combat operations. Third, it tends to apply criminological knowledge about the individual to state institutions, thereby downplaying the differences between a person (criminal) and an organization (state) which has various individuals and powers participating in decision making. Finally, this perspective does not take into account that war is also a normative instrument, increasingly used to halt human rights violations, prevent harm, and produce order. Thus, the criminalization of war, despite its idealism, is a normative analysis, making the point that war causes widespread harm and crime, but denying how war can also be understood as a mechanism to control illegal behaviour and end violence. As John Lea puts it: "War is both 'crime' and 'criminal justice,' merged into a single process" (Lea 2007).

The second perspective characterises military operations as part of the internationalization of policing (Loader and Walker 2005; Dal Lago 2003; Andreas and Nadelmann 2006; Deflem 2006), noting the overlapping of internal and external forms of security, military and counter insurgency operations, and acknowledging the role of these missions in enforcing law and a specific order. While such studies highlight the instrumental function of military operations, they have a strong symbolic normative and moral aspect. The call for war after 9/11 served to exhibit strength and showed an ability to face shocking events. A call for the global population to unite against such acts, it implicitly signalled the existence of global norms – reminiscent of the function of punishment in uniting a community and reinforcing specific moral laws (Durkheim 1983/1902). In other words, military operations have a symbolic and moral function: they suggest the existence of a global legal system and its ability to censure criminal behaviours, thus constructing authority and norms (Nietzsche 1995/1887) and preparing the terrain for global governance (Findlay 2008; Hogg 2002).

### **Early Signs of Blurring**

The blurring of the borders between the criminal justice system and the military, and domestic and foreign domains, was evident long before the current war against international terrorism and its conflation of the discourses of war and crime. In the US, there has been “war” on crime and “war” on drugs, and a perception of the criminal as the enemy since the early 1960s (Beckett 1997; Parenti 1999). The danger of such rhetoric on institutional structures and its use by sovereign states has been noted by many commentators (Parenti 1999; Garland 2001; Simon 2007; Kraska 1993; 2001). Even before the current “war on terror,” the use of fear and the politicization of crime to authorize an increasingly incapacitating violence, the rejection of due process, and the increase in the power of the governmental executive were all already seen within the criminal justice system (Delmas Marty 2007; Huq and Muller 2008; Simon 2007).

The reverse is also true: for some time in the United States, there has been an external dimension to crime control, related to the lost legitimacy of armed forces at the end of the Cold War, and the emergence of the US as the only superpower (Kraska 2001: 16; Kraska 2007; Andreas, and Nadelmann 2006). Especially since the end of the Cold War, American armed forces performed law enforcement roles abroad for drug trafficking and transnational crime. Beginning in the early 1980s, military forces were sent outside national borders in policing operations, and inside national borders, police forces were increasingly militarised, despite the traditional prohibition of such an overlap between the two security regimes (Kraska 1993; 2001; 2007; Fitzpatrick 2003; Dunlap 2001; Dunn 2001; Andreas and Nadelmann 2006). By the 1990s, international crime control defined US foreign policy, especially in South America. (Andreas and Nadelmann 2006: 158)

Crucial to this process was the “war on drugs” which legitimised the militarization of crime control and led to the expedition of military forces to Andean countries to carry out law enforcement operations (Kraska 1993; 2001; 2007; Astorga 2001; Moloznik 2003; Andreas and Nadelmann 2006). The martial language and the categorization of the trade in targeted substances, such as marijuana and cocaine, as an issue of “national security” allowed military technology to be utilised to deter transnational criminals, and permitted the CIA’s involvement in anti-drug activities (Andreas and Nadelmann 2006: 158-162). This blurring of boundaries was evident in the fact that US military were sent to the Andean region not only to eradicate drug crops, but to train and advise foreign civilian police in crime fighting and counter-insurgency operations. Inside the US, meanwhile, the militarization of crime control allowed paramilitary units to assist police operations, and police personnel to use special weapons and tactics to fight drug trafficking and transnational crime (Kraska 1993; 1997; 2007; Astorga 2001: 428; Andreas and Price 2001).

Despite earlier manifestations of overlap, Peter Kraska says, “The ongoing war on terrorism is accelerating dramatically the blurring distinction between the police and the military, between internal and external security and between war and law enforcement” (2007: 511). Indeed, the specific blurring in the context of the war on terror is played out in a non state context and against individuals and groups who are not linked with a particular territory, making increasingly visible the continuum between the two distinct forms of defence- war and punishment- and between two distinct figures -criminal and enemy. This suggests that a momentous historical transformation is taking place (Kraska 2001).

### **The Changing Form of War**

Wright says war is “a form of conflict involving a high degree of legal equality, of hostility, and of violence in relation to organized human groups, or, more simply, the legal condition which equally permits two or more hostile groups to carry on a conflict by armed force”

(Wright 1994: 7). Like punishment, war is a social practice and as such our understanding of it assumes particular forms at specific times (Walzer 1977; Vasquez 1993; Shaw 2003). Evolving definitions have reflected the changing nature of military conflict resulting from institutional arrangements and technological advancements. Cicero conceived of war as “contending by force” (quoted in Wright 1994:10), while Clausewitz called it “an act of force to compel our enemy to do our will” (Clausewitz 1989/1832: 75).

Since the end of the Cold War, with the emergence of the US as superpower, military conflict has been transformed: it used to be considered the prerogative of the sovereign state, but the focus is now on criminals and bandits (van Creveld 1991; Kaldor 1999; Freedman 2002; 2006; Shaw 2003; Terriff Karp and Karp 2005; Hammes 2005). Martin von Creveld talks about “non-trinitarian war” by which he means a form of war where the state loses its monopoly of force to mercenaries and bandits (van Creveld 1991). Mary Kaldor says that new conflicts are characterised by the process of state disintegration rather than state formation; mobilization is based on ethnic identity, and territory becomes a way to control people rather than the objective of war (Kaldor 1999). Other scholars talk about a “revolution in military affairs” (RMA), predicting, after the spectacular victory in the 1991 war in Iraq, a move towards a de-centralised and dispersed form of warfare in which technological advancement will prevail over physical contact (Terriff Karp and Karp 2005; Freedman 2006).

Americans are seen as unbeatable in terms of technological advancement, capable of winning at virtually no human cost. But danger comes from groups of limited capacity, not established states, and RMA scholars talk of “asymmetrical war.” Some military analysts criticise this vision of a bloodless war, maintaining that military conflict will always involve contact on the ground. They claim that war is evolving towards a fourth-generation warfare where the standard division between civilians and combatants is losing centrality, and counter-insurgency techniques and guerrilla tactics predominate. Threat comes from criminals and bandits of limited military capacity (Bunker 2003; Lind 2004; Hammes 2005). Despite their differences, all these analysis suggest a move towards a conception of war that is more related to changing people’s minds and their political will than defeating/conquering other states or acquiring their resources.

Sociologist Martin Shaw underlines how, after 1989, war has increasingly been used in relation to issues of violation, and enforcement of global norms as expressed in international law (Shaw 2003). He says that, paradoxically, war is now accepted as necessary to “halt genocide and punish the perpetrators of slaughter” (Shaw 2003: 4). Indeed, even international relations and legal scholars have started debating the legitimacy of humanitarian wars, meaning the possibility of using wars to enforce human rights, and some have even gone as far as stating that military intervention should be a form of enforcement of international law (Robertson 2006). This new legitimacy must indeed be related to the emergence of an international criminal justice system and the recent establishment of the International Criminal Court. War has not only reached a new legitimacy as a way to enforce norms and order against global criminals and rogue states, but it is also increasingly being perceived in relation to individuals. Consider, for example, current thinking about conflict in relation to human rights violations, or the increased interest in civilians’ death and suffering. Humanitarian wars are considered a way to save lives. The legitimacy of military conflict is now dependent on the state’s ability to manage the number of deaths, with a concomitant difficulty mobilising citizens to fight for their country (Shaw 2003). The death of soldiers in combat has become so crucial an issue in relation to the legitimacy of war that many mothers of dead soldiers have become leading figures in the anti-war movement (see Cindy Sheenan or Rose Gentle). For this reason, states are resorting to private companies (Privatised Military Firms) to pursue their military objectives. This has implications for the concept of the state monopoly of violence which we will not explore here, and strong implications for our understanding of war.

If the single human being is increasingly at the centre of the definition of war, one could say that there is an element of “individualisation” at play in the conception of military

conflict. And if the individual is the unit of reference, it is easier to understand how institutional violence can be represented as punishment. In this sense, the association between war and punishment could be a symptom of the current de-structuring of the relationship between individual and institutions, and the change in sense of belonging to a nation. Interestingly, as the next section makes clear, this is the reverse of what has been happening in the criminal justice system in relation to penal practices where punitive measures have focused on groups of individuals or sections of populations (Feeley and Simon 1992; Garland 2001).

### **Recent Trajectories of Punitive Practices**

Recently, the ways in which we punish have changed (Garland 2001; Feeley and Simon 1992). There is a general tendency towards harsher penalties, even though inclusive practices are also encouraged (O'Malley 1999). Importantly, and conversely to what has happened in our understanding of war, penal practices now focus on groups and populations who are determined dangerous on the basis of risk profiles. Further, they are related to increased fear directed towards specific sections of the population, suitable enemies who are perceived as monsters (Melossi 2000) and for whom there is no compassion or political will of inclusion. Current penalty practices have become extremely exclusive, a change related to social and institutional transformations and the need of the state to re-affirm its sovereignty (Garland 1996; Simon 1997).

Some scholars claim the war on terror is the logical consequence of the launch of the war on crime and this form of penology (Delmas-Marty 2007; Huq and Muller 2008). Others say these policies are related to sovereign power and the role of the US in the global sphere (Findlay 2008; Welch 2007). At any rate, the general consensus is that there has been an evolution in the perception of war and punishment. The next section of the article explores some of these changes by analysing how the two notions overlap rhetorically in the context of the military interventions in Afghanistan and Iraq.

### **The Representation of War as a Form of Punishment**

The war in Afghanistan was described as a response to Ground Zero by both former US President George W. Bush and ex-UK Prime Minister Tony Blair. However, even before it was launched, the US President and his administration frequently referred to the tragedy of 9/11, making it clear that a strong response was required, invoking anger, and re-enforcing fear of future attacks. According to Welch, violent responses were the logical consequences of the language of good and evil in which the events were described and the production of fear upon which they were based (Welch 2006). However, the response was also portrayed as a way to achieve justice. Bush justified war by saying, "Whether we bring our enemies to justice or bring justice to our enemies, justice will be done" (Bush 2001a); or "Our military action is designed to drive terrorists out and bring them to justice" (Bush 2001b), referring implicitly to the retributive function of penal policies to ultimately restore justice. Similarly, when Tony Blair announced, "We must bring bin Laden and Al Qaeda leaders to justice and eliminate the terrorist threat that they pose" (Blair 2001a), he was indicating the need to "eliminate" those responsible, in a way reminiscent of the incapacitative rationale of the new penology.

After the war began, Blair called Osama bin Laden "wicked" and of "murderous intent" (Blair 2001b), thus constructing him as a criminal. As for the Taliban, they were criminals in their harbouring of terrorists. Blair said, "They are guilty and they will face justice" (Blair 2001c). Here, reference is made to the notion of responsibility – essential for the adjudication of punishment, something also apparent in Bush's rhetoric

The evidence we have gathered all points to a collection of loosely affiliated terrorist organizations known as Al Qaeda. They are the same murderers indicted for bombing American embassies in Tanzania and Kenya, and responsible for bombing the USS Cole. (2001a)

And again, “The men on the wall here have put themselves on the list because of great acts of evil. They plan, promote and commit murder...They must be found, they will be stopped; and they will be punished” (Bush 2001c). Thus, those who launched the campaign (and acted as judges) contributed to the blurring of the boundaries between war and punishment in their construction of Osama and Al Qaeda as the global criminals who can attack anywhere (in the US, in Tanzania, in Kenya) and in their adjudication of responsibility and guilt.

In the following speech, Tony Blair refers to criminal procedures

We must bring to justice those responsible. Rightly, President Bush and the US Government have proceeded with care. They did not lash out. They did not strike first and think afterwards. Their very deliberation is a measure of the seriousness of their intent. They, together with allies, will want to identify, with care, those responsible. That is a judgment that must be based on hard evidence. Once that judgment is made, the appropriate action can be taken. It will be determined, it will take time, it will continue over time until this menace is properly dealt with and its machinery of terror destroyed. (Blair 2001d)

He evokes notions of evidence, responsibility, and guilt, thereby framing the military response as an adjudication of responsibility for a specific act. Thus, the objective of the war is to capture, imprison and punish the individuals responsible. In this way, the delivery of violence not only relates to an individual or general group, but constructs the Coalition as a global authority and establishes a specific notion of responsibility and guilt.

The blurring is also based on the connection established between these groups and the states who allow criminal actions to be planned in their territory. These states are labelled as “rogue” in the US National Security Strategy, issued in September 2002.<sup>7</sup> The Strategy transposes the label of criminality onto entire nation states, enabling the criminalization of whole populations, whereas previously it had attached the notion of the enemy to individuals and groups. It refers to international law, but it also establishes that other norms and rules can be used to define entire nations as “foes,” thereby allowing those who make the rules to represent themselves as superior and to construct those who have to accept them as inferior. Further, the National Security Strategy states that the US will block terrorists and “those who support them... identifying and destroying the threat before it reaches our borders” (National Security Strategy 2002: 6). Terrorists and rogue states are linked as the threat. The notion of imminent threat produces fear and demands the authorization of violent practices, thus showing the connection between the new penology and the rationale for a preventative war. The concept of deterrence traditionally used within the international sphere is abandoned in favour of preventive self-defence, linking the need to control risk with the incapacitative rationale: “We know from experience that some enemies cannot be deterred” (National Security Strategy 2002: 30).

In short, after 9/11, the US seized the opportunity to act against global criminals and rogue states in the name of national and global security, claiming US sovereignty/authority in the international sphere by “governing through crime” (Findlay 2008). In subjecting other nations to their rules as if they were established international laws, they shaped global relations in a hierarchical way.

The war in Iraq was initially framed as a reaction to 9/11 and the threat of terrorism. In a Presidential letter to Congress, 19 March 2003, President George W Bush called the war in Iraq a “necessary action against international terrorists and terrorist organizations, including those nations, organizations or persons who planned authorised, committed or aided

the terrorist attack that occurred on September, 11, 2001” (Bush 2003a). Later, the US President made the now usual connection between terrorism and rogue countries: “We are opposing the greatest danger in the ‘war on terror’: outlaw regimes arming with weapons of mass destruction” (Bush 2003b), again criminalizing a specific regime. In this war, the notion of danger/in the form of weapons of mass destruction was the main rationale for criminalization.

In many instances, Bush defined Iraq as a “threat,” obviously referring to the UN Charter and the notion of “threat of the peace” as an element that could justify military action, but also referring to the risk of harmful events: “We have no ambition in Iraq except to remove a threat and restore control” (Bush 2003c). This again follows the scheme of contemporary penalty, as it uses risk to authorize violence. In this process of criminalization, Saddam Hussein is a “murderous tyrant” and a “homicidal dictator” much like Hitler who “killed his own people” (Bush 2002). Such statements work together to construct a “monster.” Reiterating that Hussein was in violation of international law in relation to UN Resolution 1441, Bush argued: “Saddam Hussein has a long history of reckless aggression and terrible crimes” (Bush 2003d) and “should be held accountable” (Bush 2002); and again, “[The] Iraq regime has violated all...obligations” (Bush 2002). In an address to the UN Security Council, Colin Powell backed him up: “Iraq had already been found guilty of material breach of its obligations, stretching back over previous resolutions and 12 years” (Powell 2003).

Echoing his American colleagues, UK Prime Minister Tony Blair noted the need to “act within the terms set out in resolution 1441” and to enforce international norms: “To pass resolution 1441 and then refuse to enforce it would do the most deadly damage to the UN’s future strength, confirming it as an instrument of diplomacy and not of action” (Blair 2003a). Blair asked: “Who will believe us [next]? What price our credibility with the next tyrant?” (Blair 2003a).

In these statements, war is portrayed as a mechanism of law enforcement, reacting against Saddam’s defiance of UN Resolutions. However, this was done selectively, as we know that the campaign was launched without following the appropriate procedures. War appears to function as a punitive action, implicitly referring to international norms, but in reality affirming the US and UK authority to intervene against unruly states.

In the cases of both Afghanistan and Iraq, criminal justice discourse was used to legitimate violence, constructing the figure of the global criminal who posits a danger to the whole globe, and criminalizing specific states as “rogue” and defining them as dangerous for all. Invoking concepts of responsibility and guilt, the American and British leaders argued that evidence had been found, and the evil/criminal natures of Osama bin Laden, and Saddam Hussein were condemned before a global audience, thus mimicking a criminal trial (see Megret 2002). Further, nations were warned not to act against US rules, making them US subjects in an international sphere. Entire categories of people were criminalised on the basis of belonging to a specific nation.

These examples illustrate some of the factors that contribute to the representation of war as punishment. On the one hand, we see the emergence of the figure of the “global criminal” (Slaughter and White 2002), the definition of some states as rogue, and the acceptance of the logic of prevention to intervene militarily. On the other hand, we note a focus on risky groups and dangerous populations and the emergence of incapacitation as the main rationale for punishment. Clearly, some of the elements of the new penology are mirrored by changes in the war on terrorism logic, and these two now overlap. Interestingly, this blurring has been followed to some extent by blurring at the level of strategies, such as surveillance, ethnic profiling, and mass incarceration (Lyon 2001; Welch 2006; Harcourt 2007; Deflem 2005; Huq and Muller 2008).

Admittedly, these are not the only justifications of the military campaigns to appear. We hear talk of bringing democracy and freedom to oppressed people (possibly a reference to rehabilitating rogue countries), freeing women from sexism, and allowing the delivery of



humanitarian aid. However, it is difficult to deny the overlapping of the two systems in these discourses – or the influence of elements that are typical of contemporary penalty.

### **Constructive Effects**

At this point we should consider the effects of this use of language. Central to the present argument is the assumption that changes in discourses are matched by changes in forms of power and social organization (Foucault 1977) and by changes in sensibilities (Spierenburg 1984; Garland 1990). Punishment is a central institution of governance, the symptom and cause of particular social relations, a social and cultural artefact which embodies the social need and cultural meanings of a particular time and specific place.

In principle, framing acts of war as punishment means projecting the structure of the national sphere onto an international level. In particular, it tries to establish a defined relationship between the authority and the community/audience before which action is taken, thereby stating the existence of specific norms. Although punishment may have different group norms, it is reasonable to think that in this case, action is cast in institutional terms as a state reacting to the violation of its norms. In this fashion, legitimacy is assigned to the use of force (on the illegality of it see Mandel 2004; Sands 2005). Staging war as a form of punishment is portrayed as a legitimate tool to deal with a criminal event. It legitimizes the political reaction and delegitimizes the original act. Additionally, it affirms the authority of some institutions to deliver pain and to state that this is done in the name of existing norms and by following specific rules. Thus, the US and the UK (and presumably their allies) are cast as the sovereign or just institutions to deal with crime in the global sphere. Further, the use of the notion of punishment suggests the existence of common norms but the inadequacy of current institutions to enforce them.

However, if this expresses a sentiment that all human beings are of equal value, it is also an attempt to restructure social relations. By calling for solidarity in the international sphere, this representation claims the existence of shared values and the existence of a relatively pacified community (Morrison 2005), thereby denying conflict. And yet, as punishment is also a way to construct hierarchical relations, it denies the equality of subjects which emerges from our analysis: those who deliver violence are implicitly defined as superior and those who receive it as inferior and subordinated. As Agamben claims, sovereignty is established by the exclusion of some and the inclusion/disciplining of others (Agamben 1998). Therefore, this representation constructs specific populations as criminals in the international sphere, and aims at controlling and excluding them to create a manageable instability against which to govern globally. At the same time, the public is required to adopt a subjectivity defined by determining who is excluded. This process aims at creating a disciplined community in a global sphere.

In short, understanding war as a form of punishment in the international sphere highlights the attempt to construct a specific form of international order by implying that norms and values are already consensually established by the world population, establishing a specific form of authority, and defining the excluded and the included.

### **Destructive Effects**

Claiming that war is a means of punishment is an attempt to create governance in the global sphere by following a nation-state's form of order. It projects specific relationships into the international sphere, allowing a specific authority to establish itself as a sovereign power who enforces specific rules and governs the community against a manageable instability, determining the excluded and including/controlling populations by imposing specific

subjectivities. But can there be a common notion of good, a unique form of order and a shared system of norms in the global sphere (Huysmans 2006)?

First of all, material lives and cultural beliefs are so different, how can we agree on what *ought to be*? Further, the international sphere is based on a plurality of sovereignties and communities, the identities of which are built on their differences (Walker 1993). It is not possible to model the international sphere on that of the domestic, as the latter is constructed almost in opposition to, and certainly in strict dependence on, the existence of other distinct sovereignties and pacified communities. So constructed, the international sphere can hardly offer the possibility of a single sovereign power establishing what is right and what is wrong without violating the order on which it is based.

For this reason, the notion of the global criminal becomes useful as the means by which to create a global order to “govern” (Simon 2007; Findlay 2008). The “criminal/terrorist” becomes the “suitable enemy,” thus guaranteeing the bonding of communities and the possibility of governance. In this context, the image of the criminal performs the function of the *border* of the community, of the limit against which the community can be shaped. This coincides with images of the enemy and images of the foreigner/non citizen who is at the basis of the political construction of the nation-state. The three figures tend to overlap in this transposition of order: the criminal, the enemy, and the foreigner act as borders upon which the community is designed (Galli 2001 see also Bosworth 2007; Sanchez 2007).

Today, war is waged outside the spatial and political parameters of the nation, in the international sphere, but is constructed as punitive action – as if it were directed in the context of a state constituency. However, if calling for punishment is aimed at managing people, constructing them as disciplined subjects, shaping them as a community sharing a common bond of norms/authority, then counting war among the punitive options could disrupt the very relationship it aims to achieve. As war operates both inside and outside the defined political space of the state, the use of war as punishment represents an attempt to transpose order outside the state while at the same time disrupting the order and form of belonging upon which nation states are based.

Finally, punishment is a central institution of governance and if our current world is a global community, we need to study the political structure and the changing landscape of the international sphere. Scholars of punishment should engage more with the international field to contribute to international debates and to investigate new ways of dealing with deviance/difference in this peculiar space.

### **Concluding Remarks**

Many scholars have criticised the political use of international law by the US and UK (Mandel 2004; Zolo 2000; Findlay 2008), but global policing actions have to rely on sovereign states to render norms effective, making enforcement of law dependent on the good will of the most powerful nations. One might well wonder whether an international legal system exists (Glennon 2005; Franck 2006), as it has so seldom and selectively been enforced. One could point to the inadequacy of current international legal arrangements in the face of an emerging understanding of the globe as a community where people should be equally protected by common institutions. The crime-punishment dialectic highlights how three main elements are linked in this overlapping of war and punishment: an authority, a community, and a specific form of order based on practices of inclusion/exclusion.

George W. Bush and Tony Blair have used the notion of punishment to represent violence. The overlapping between punishment and war in the discourses analysed here suggest a problem with governance in the international sphere, namely, in the structure of

institutions. They suggest the need to legitimize violence and the authority delivering it, but point to a growing sense that the globe is a political community and an ongoing attempt to construct this community on the basis of a national form of order. The two mechanisms of defence – war and punishment – are not polar opposites. Rather, they are set on a continuum and are based on similar elements: a community, an authority, and an order based on forms of inclusion and exclusion. However, differences exist: while war negotiates power between equal subjects, punishment imposes power on inferior subjects. The representation of war as punishment creates governance by projecting the current system of order to a global level, creating a sovereign power in the global sphere by determining the excluded and disciplining the rest, shaping the community to come in hierarchical fashion. And yet, as the two systems are fundamentally different, this representation may provoke disorder rather than order and may disrupt the international sphere as we know it.

### Endnotes

- 1 This overlapping has been apparent since the end of World War II (Kraska, 2007; 1993; Andreas and Nadelmann 2006).
- 2 Of course, interests in the control of oil resources and economic and geopolitical motivations are operational as well, but it is not within the scope of this piece to determine *why* a war takes place. Rather, this work shows some of the processes that contribute to the overlap and discusses some possible consequences.
- 3 Similar blurring occurred in relation to the British management of “terrorism” in Northern Ireland (McEvoy 2001). In this case, the deployment of British armed forces to restore order and support civilian power evolved into a counter insurgency, further aggravating the relations between populations (Hillyard 1993; NI Aolain 2000; McEvoy 2001; Hegarty 2003). The Northern Ireland experience illustrates the inadequacy of the military for policing operations and the strengthening of conflict by the use of violence (See CAJ 2008).
- 4 After the tragedies of the two World Wars, people began to question the legitimacy of military conflicts as a way to solve controversies.
- 5 In terms of control and accountability, there is less control by the population and its representatives on operations undertaken by private contractors. Furthermore, the public aim of security and the private goal of the firms do not necessarily coincide: one seeks to maximize effort; the other seeks to maximize profit and minimize effort (Singer 2001).
- 6 Can punitive violence re-structure social groups? Consider, for example, the “penal law of the enemy,” a concept developed by the German scholar of law, Gunter Jackobs. It argues that we should have different criminal laws to protect the rights of the accused in relation to how much a person can be considered an “adequate citizen.” Those who are considered “enemies” cannot be granted the same guarantees of those who are law abiding citizens. (See Krasmann 2007)
- 7 Rogue states brutalize their own people and squander their national resources for the personal gain of the rulers; display no regard for international law, threaten their neighbours, and callously violate international treaties to which they are party; are determined to acquire weapons of mass destruction, along with other advanced military technology, to be used as threats or offensively to achieve the aggressive designs of these regimes; sponsor terrorism around the globe; and reject basic human values and hate the United States and everything for which they stand. (National Security Strategy 2002: 14)
- 8 Derrida calls this labelling of states a verdict that calls for some sort of sanction (Derrida 2005: 79).
- 9 Indeed, people were captured on the basis of their nationality and were treated differently on the basis of their country of origin. See Denbeaux and Denbeaux, 2006; or Rasul Iqbal and Ahmed 2004. Reference here is to the illegality of the wars in Iraq and Kosovo, also to Israel’s lack of compliance with international law.
- 10 Osama bin Laden has referred to the notion of punishment and crime to legitimise his actions against the US, calling 9/11 a “reaction to the injustices” suffered by Muslims. Not only is violence explained in terms of punitive reaction and re-establishment of just norms, but the subject against

whom this violence is directed is portrayed as criminal. He defines the American government, Israel, the UN and Kofi Annan as criminals, and claims that those who died in the World Trade Centre were not “innocent” (Hamud 2005). This is the reverse of what has been shown in the previous section. Here, Osama bin Laden claims the authority to determine who is criminal/evil and the US and UN are portrayed as criminals. In support of his arguments, Osama bin Laden frequently refers to fundamental norms on the prohibition of killing innocent children. He highlights how many Palestinian children have been killed, not to mention Iraqis, Somalis, Sudanese, and Kashmiris. He cites religious authority and the Qur’an; accordingly, punitive actions are inflicted by God rather than human beings. However, sometimes the normative system to which he refers is that of international law: “By what right do they exterminate foreign nations that do not submit to America?” (Hamud 2005: 89). In a similar vein, he contests: “You claim the right to punish anyone who violates the policies and conventions of international law, yet you are the last to respect them” (Hamud 2005: 101). He asks, “Is defending oneself and punishing the aggressor in kind objectionable terrorism?” (Hamud 2005: 162).

The invocation of punishment suggests the existence of a system of norms, but bin Laden makes the point that this should also protect Muslims, Palestinians, Sudanese, etc. Here, the association between war and punishment is based on the existence of an idea what *ought to be*. It highlights who has to be taken into account as part of the community and who has violated this order. At the same time, it highlights the need for mechanisms of international criminal justice, underlying that the current ones are not delivering that order, at least in part: they are not equal or just. Thus, this invocation of punishment suggests that Al Qaeda’s actions are meant to enforce norms at a time when no other legitimate option is available, they are mechanisms of “informal justice” which contests the nature of our current institutions, and project the actors as the right authority to determine who the criminals are and act against them. Evidently, current legal institutions and procedures are not perceived as fair, and there is a desire for change.

The problem is that tends to conflate the outsider as the “foreign/enemy” who is defined in terms of specific sets of characteristics based on identity and that of the “deviant” who is such in relation to her violation of a particular set of agreed norms.

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