

# American nightmare: how forty years of governing through crime have reshaped American democracy

Jonathan Simon links the war on crime to the war on terror and considers if President Obama will chart a new course.

It has become part of the common sense of our time that since the terror attacks on New York City and the Pentagon, American government, law and society have undergone a paradigm shift around the problem of terror. The Bush administration's (2001–2009) 'war on terror' is widely seen as introducing a dramatic change in how government pursues security, both by those who insist that terrorism represents a new threat that justifies such a change, and by those who criticise the Bush strategy.

Of course, the war on terror does mark a significant intensification (and more ominously, ratification) of a national obsession with security against personal violence that dates back four decades to the Omnibus Crime Control and Safe Streets Act of 1968, that effectively launched the US 'war on crime'. Then, amidst a panoply of politically charged violence, including urban riots/insurrections, political assassinations and police brutality against political demonstrators, the problem of violent crime was declared by a Democratic Party dominated Congress and an incoming Republican president, to be the primary domestic challenge, requiring a profound reshaping of American governance.

All of the central distortions of government, commonly attributed to the influence of 9/11 and the war on terror, have their clear precedent in

the transformations that followed the war on crime. Starting from the central institutions of US constitutional democracy – executive, legislative and judicial – we can see a direct line between the modes of governing encouraged by the war on crime, what I call 'governing through crime' for shorthand, and the major features of the war on terror.

President Bush, and his legal theorists, like my Berkeley colleague John Yoo, speak of a 'unitary presidency' to describe an enhanced governing role for the chief executive that becomes operational in the face of war. President Nixon, elected in November 1968, built an 'imperial presidency' largely on the need to protect ordinary Americans from violent deviants that threatened public order. Since then, with the exception of the Ford and Carter presidencies, which to some extent were in retrenchment following the Watergate scandal and its problematisation of executive authority, every US president has embraced the war on crime and used it as a platform to extend the role of

the federal executive over state and local law enforcement.

The claim that terrorism has produced a profound rupture in American governance, and not a mere change in rhetoric, finds support in the degree to which terror seems to have altered the way ordinary citizens experience ordinary life. The routine but still chilling ritual of passing through airport security is perhaps the most common example. Americans, in the aftermath of the attack, were said to be 'hunkering down' close to home and family (a theme taken up by the administration in its oddly named Department of Homeland Security), and to be placing a new emphasis on the value of security in all of their consumption choices.

Yet it is here above all that the derivative character of the war on terror to the war on crime is clearest. We were already a society anchored in the fear of violent crime and the desire to physically separate ones self and family from danger. The possibility of violent crime shattering the well-being of a family, a community, a nation, has become part of the common sense of our age reflected tangibly in massive transformations of territory and demography. Vast penal complexes were built in rural parts of states into which tens of thousands of mostly young men (and now women) from certain urban neighbourhoods are transferred. At the same time the new

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normal middle-class subdivision has become a space of security, openly marketing close surveillance and exclusion of strangers as the basic goods of suburban life.

If Americans have rather quickly assented to a war on

terror in which long-standing norms of international law and human rights have been shunted aside, it is through decades of practise in assuming the role of the violent crime victim as one establishing the

strongest claims on government and the least responsibility. This role is one now fed continuously by both media and government. Rather than episodic moral panics, media and government operate in a continuous circuit of information flows about violent crimes (especially those against the most vulnerable targets like children), a kind of social neural network that makes the relatively rare occurrence of sudden and unexpected violence against children a hovering and constant menace. Even after a substantial decline in actual violent crime during the 1990s, that media government neural network ensures that violent crime remains a key site for reflection and political mobilisation.

Finally, the war on terror has been marked, and shamefully, by the revelations that the United States has operated lawless prisons where detainees have been subjected to torture, or at least cruel and degrading conduct. Abu Ghraib and Guantanamo have become global images of American lawlessness. Yet the national shame about these prisons reflects little appreciation for how excessive our domestic prisons for criminals have become by constitutional and international standards.

With nearly 1 out of 100 men in the United States in prison, mass incarceration has become the most significant public policy of our time. Over the course of the last 30 years, state and federal prison populations have risen between five and six times

the average for the previous three-quarters of a century. In the 1970s, the US was already a good deal more punitive than the average for Europe,

but with considerable overlap and signs of convergence (as US incarceration rates fell through the 1960s and early 1970s). Today, the US incarcerates six or seven times the number of its residents as even the most punitive European state. Indeed, the US actually incarcerates a higher proportion of its population than any other nation in the world (a staggering fact).

Behind this project of imprisonment is a commitment to social peace through exiling large numbers of disproportionately minority young men to confinement in human warehouses where little is attempted in the way of rehabilitation, job training or education. While there is much that is distinctive about the penal expressions of the war on terror (particularly the emphasis on information extraction), they share with US domestic mass imprisonment the premise that confining a significant portion of those presumed dangerous can by itself make our society safer.

Mass imprisonment in the United States has garnered increasing attention from sociologists and social critics who have offered a range of social explanations for American exceptionalism in the field of punishment. Most dismiss crime itself as a driving factor (although the emergence of high crime rates in the 1960s may be seen as a crucial trigger for the growth of a 'culture of

control'). Instead, mass imprisonment is seen as a response to changes in American society, either the breakdown of the previous system of racial control or the rise of neo-liberalism and the retrenchment of welfare (Wacquant, 2007; Western, 2007; Gilmore, 2007). No doubt, once we recognise that mass incarceration constitutes a socio-demographic event of major significance (something which Sociology for a long while ignored), it is tempting to seek an equally significant social cause.

But mass imprisonment, in its distinctive forms, is better explained by the political transformations of the American state around the problem of crime (Scheingold, 1992; Simon, 2007). Mass imprisonment is not so much a response to crime as to a mode of governing that places the control of crime as a central value. That is why prison rates began to grow significantly a decade after the crime boom of the 1960s had levelled off and, for most categories of crime, had descended. It took that time for new practices of power to spread from federal to state government and across the states, and for the parallel roles of executives, lawmakers and courts to create a broad rationality of governing around crime (Foucault, 1991; Rose, 1999).

Compared to the sociological accounts of American penal excess, my focus on political institutions has good and bad news for other societies around the globe that wish to avoid this fate. If American-style governing through crime is not simply a response to the problems of creating order under neo-liberalism, or an expression of continuing demand for racial domination through state power, but a development of political choices, there is no reason for other societies entering the stream of the global economy to assume that fear of crime and mass imprisonment are inevitable consequences. However, in my larger study of the development of governing through crime in the United States, I argue that governing through crime was a response to the long observed weaknesses in the American

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constitutional system, with divided government and significant governance authority for the states under the federalism principle, which made it very difficult to address the other sources of risk afflicting advanced post-industrial economies. To the extent that the evolution of new super-state and transnational entities, like the European Union, produce a weaker capacity to govern and more democratic deficits, governing through crime may be available as an attractive American model.

The commitment to secure communities from the threat of violence by building and filling large carceral institutions has become a social compact cutting across the political order, binding Democrat and Republican, liberals and conservatives. In the 2008 election there were virtually no salient differences between Barack Obama and John McCain on crime issues, and while crime did not present itself as a major theme in the election, both responded to themes that have long proven to have deep resonance with voters. Both expressed outrage at a Supreme Court decision barring states from seeking the death penalty for persons convicted of raping (but not killing) a child. Both expressed support for another Supreme Court decision favouring an individual right to possess a handgun. While Barack Obama's decisive victory may mark a major change of course in many policy areas, crime is not one of them.

It will be more interesting to see whether Obama follows the lead of Bush and other recent presidents in

viewing crime as a template for understanding and addressing other pressing problems, like educational failure and immigration. Crime as a model of government promotes concern about what might be called 'stranger danger'. The governable problems of the modern citizen are reduced to protection from ill-intentioned strangers. The template can be spread to many policy fields. Perhaps the stranger is the avaricious trial lawyer whose skill at producing huge jury verdicts in civil cases is hurting jobs and competitiveness. Perhaps the strangers are immigrants whose children are in the public schools, requiring higher property taxes.

By casting one's fellow citizens as opportunistic strangers, governing through crime erodes the capacity of the polity to support reproduction of its vital collective infrastructures. Not only has spending on prisons dramatically shrunk available funds for infrastructure investment but the relentless promotion of the threat posed by opportunism undermines trust in government and willingness to support sufficient taxes to maintain existing infrastructure.

Perhaps the most interesting signal that real change might emerge from President Obama with respect to governing through crime, is his promise to make investment in new energy efficient and environmentally sound infrastructure a major initiative, one aimed at economic recovery and energy independence. The resources and attention to such a major investment project would require the federal government to continue disinvesting its war on

drugs and crime. It would also draw state and local government into the project of reimagining the collective infrastructure of our towns and cities. Persuading the American people that infrastructure decline poses a substantial danger to American security will not be easy, but any advance in this direction will come directly from the resources and knowledge environment centred around crime and the fear of stranger danger. ■

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