

# **The Violence of Incarceration**

**Edited by Phil Scraton  
and Jude McCulloch**

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# 9 The United States Military Prison

## The Normalcy of Exceptional Brutality<sup>1</sup>

*Avery F. Gordon*

### IN THE SHADOW OF THE 'WAR ON TERROR'

*If you're African or Native American how central torture is to the American way of life is hardly a new idea.*

Mumia Abu-Jamal (2006)

*The tradition of the oppressed teaches us that the state of emergency in which we live is not the exception but the rule.*

Walter Benjamin (1969: 257)

In May 2006, when the Bush Administration appeared before the United Nations Committee Against Torture to answer queries about the secret detention, treatment and illegal rendition of prisoners in the 'war on terror,' hundreds of United States non-governmental organisations and grassroots groups filed over twenty shadow reports to the UN Committee (Amnesty International 2006), including one 456 pages long, coauthored by the American Friends Service Committee (2006) and entitled *In the Shadows of the War on Terror: Persistent Police Brutality and Abuse in the United States*. At the same time, the Vera Institute of Justice's (2006) Commission on Safety and Abuse in America's Prisons had quietly finished holding national hearings into violence, sexual abuse, degradation and 'other serious safety failures' in United States prisons and jails. A year earlier in March 2005, when the *Washington Post* first exposed the CIA's rendition programme and the existence of secret CIA-run prisons in Europe, Channel 4 aired Deborah Davies's graphic documentary on brutality in stateside prisons, *Torture: America's Brutal Prisons*, a film all but unknown in the United States (*Channel 4*, 2 March 2005). Virtually simultaneously with the now infamous photographs of the torture of Iraqi prisoners at Abu Ghraib, Mark Dow (2004) published his detailed exposé of the secret, indefinite and repressive imprisonment of immigrants, *American Gulag: Inside U.S. Immigration Prisons*.

The ongoing news of torture, abuse and legal disablement of prisoners of war and so-called enemy combatants in Afghanistan, Iraq, Cuba and elsewhere has given the United States military prison unprecedented public attention. Rarely do any prisons, much less the especially secretive military prison, emerge from the edge of geo-social consciousness where they reside, and thus our ability today to name some of their locations—Abu Ghraib, Guantánamo Bay, Diego Garcia, Bagram, Sherbarghan—is significant. The growing reach of the United States military into countries not its own, often with coerced or blackmailed permission, and the expansion of its corollary carceral complex is an extremely important and dangerous phenomenon. Secretive and closed, with expulsion and discredit the penalty for whistleblowing, we know little about this vast military machine. The ongoing attention to prisoners of the ‘war on terror’ and to the normally hidden United States military prison is thus significant and laudable. However, the routine treatment of the conditions at Abu-Ghraib and Guantánamo Bay as exceptional or isolated instances of the abuse of state power has obscured the relationship between United States military prisons abroad and territorial United States civilian prisons. In this chapter, I briefly address this relationship, which I believe must be understood to ensure immediate redress and release for prisoners of war, to avoid the future isolation and dehumanisation of all prisoners held by the United States, and to grapple with the larger socio-political issues at stake. I begin with two presumptions or starting points.

First, while there is abundant cause for moral outrage and disgust, there is no warrant for being surprised or shocked that citizens of the United States tortured, abused and ritually humiliated other human beings and that the State’s political and military leaders covered up their authorisation of it. There is no cause whatsoever for either angry or startled or presidential assertions that abuse and torture are not ‘American,’ not things that American citizens do or condone. In fact, while President Bush claimed that the Abu Ghraib photographs ‘do not represent America’ (see Danner 2004b: 74), neither Schlesinger nor Fay could sustain the ‘bad apples’ theory in their reports. Again and again, they provide the very evidence of its inadequacy (see Danner 2004a; Puar 2004: 522–34). American exceptionalism—the assertion that the United States is an inherently more democratic, egalitarian and just society than all others—has always been a lie. The current George W. Bush government has indeed formulated a policy of exceptionalism, claiming as a sovereign God-given Christian nation its right to exempt itself from the same laws that govern the conduct of other nations, but this policy is closer to the government’s own definition of a rogue state than it is to a model democracy.

You do not need to believe in ‘the evidence of things not seen,’ as I do, to acknowledge the truth of this lie (Baldwin 1985; Gordon 1997). Certainly, since the invention of photography, the visual evidence is usually available. Often, it is an artifact or a souvenir of the presumed normalcy and legitimacy of the actions it shows. In this, the amateur photographs of Abu-Ghraib

most closely resemble the photographs of lynchings in the United States between the 1880s and the 1930s, resemble them not only in their images of White women and men smiling and grinning at the mutilated bodies of Black women and men hanging from trees and posts, but also in the extent to which they were openly distributed and sold as keepsakes of an afternoon well-spent (see Allen et al. 2000; Solomon-Godeau unpublished). I note, as an important aside, that though they have been demanded, there has been no state acknowledgement or press interest in the *official* videotapes and photographs, those from the CCTV surveillance cameras ubiquitous in all prisons. As Shafiq Rasul and Asif Iqbal, two former Guantánamo Bay prisoners stated:

We should point out that there were—and no doubt still are—cameras everywhere in the interrogation areas. We are aware that evidence that could contradict what is being said officially is in existence. We know that CCTV cameras, videotapes, and photographs exist since we were regularly filmed and photographed during interrogations and at other times, as well. (Rasul and Iqbal 2005: 28)<sup>2</sup>

Second presumption: Torture and cruelty towards prisoners, which is a general effect of the larger pattern, historically ancient, of criminalising and capturing vanquished, threatening or unwanted populations, is by no means an American or national phenomenon. The United States is certainly a global leader in both the use of punitive and extra-legal long-term imprisonment for achieving a variety of social and economic control objectives and a leader in developing and exporting specific techniques and portable technologies for securing unpopular terms of order. But it is not unique, and as Eduardo Galeano (1978: 305) said many years ago of the authoritarian regimes which dominated Latin America in the post-World War II period: 'it would be unjust not to credit [their] ruling classes with a certain creative capacity in this field.' In this case, credit belongs especially to France who pioneered and taught the United States, Israel, and many Latin American countries current standard operating procedures for urban warfare/ counterinsurgency wars of occupation.

Not surprisingly, France's former Foreign Legion and paratroopers, veterans of the Congo, Madagascar, Ivory Coast and other postcolonial wars, provide an experienced cadre of mercenaries and private security guards to the estimated 400 private security companies, almost exclusively Anglo-American, operating in Iraq today (see Claude 2005; Macmaster 2004). It is fitting to credit also the occupying British Army in Northern Ireland for, among other things, modelling advanced techniques for criminalising political opposition and the security uses to which the name terrorist could be put. In fact, it is the memory of Bobby Sands and the Irish Republican prisoners, who refused the mantle of prisoner of war, that has been most consistently evoked by the Guantánamo Bay hunger strikers today.<sup>3</sup>

## PERSONNEL

The connection between the United States military prison and the United States civilian prison can be seen at four overlapping levels: personnel, punishment regime, law and geopolitics. At the most basic level, the connection begins with the literal sharing of personnel and occurs through two conduits, the assignment of Army Reserves and National Guard members and the appointment of United States prison managers and directors.

The modern military prison system began in 1875, in collaboration with the forerunner to the American Correctional Association (the American Prison Association) when the United States Military Prison—known now as the maximum security United States Disciplinary Barracks—at Fort Leavenworth, Kansas was established. The military correctional system, as it is known currently, is primarily oriented to confining soldiers and historically has done so mostly for desertion, mutiny, and treason. Each branch of the military service—Air Force, Navy, Marine Corps and Army—operates prisons, but only the Army and Marine Corps, responsible for operating prisoner of war camps and detention facilities for captives in the ‘war on terror,’ permit a career military occupation as prison guard (see Haasenritter 2003).

The United States Army maintains an active duty force of about 500,000 soldiers, but only approximately 1,000 to 2,000 of these are certified for prison guard duty after completing a four-week course at the mock prison at Fort Leonard Wood in Missouri. These military police (MP) are, according to Col. George Millan, director for training at the United States Military Police School, mainly stationed in United States territorial military prisons, creating a demand for military prison guards overseas. As the ‘war on terror’ expands and the number of United States military bases increases, the Army and the Marine Corps have gained custodial responsibility not only for a small but growing number of soldiers who refuse to fight or who desert but also for a large number of prisoners of war, enemy combatants and civilian security threats (see Laufer 2006).

It is difficult to acquire an exact and accurate number of United States military prisons and the number of prisoners held in them. Though clearly most have been released, the BBC estimated that 60,000 individuals have been taken prisoner in the United States-led wars, starting in 2001 in Afghanistan and in 2003 in Iraq (*BBC News*, 2005). At last count in 2005, the United States officially reported a total of 2,322 prisoners in fifty-eight military prisons in the United States and eleven detention centres in Europe and Asia (U.S. Department of Justice 2006). These figures are obvious undercounts. They do not include prisons in the ‘war on terror’ theaters, secret CIA or intelligence prisons or ‘ghost detainees,’ prisoners secretly held without record, information the United States military will not release.<sup>4</sup> And as Paglen and Thompson (2006: 147) learned:

Questions specifically about CIA black sites . . . were attempting to make distinctions where none seemed in order . . . [B]lack sites were indistinguishable from military prisons, which were in turn indistinguishable from informal prisons run by the United States' warlord allies, which were in turn indistinguishable from the American occupation itself.

To the best of our knowledge, the 'one' prison on the vast military base in Guantánamo Bay, Cuba, consists of six facilities or 'camps,' now holding approximately 460 to 480 out of an original 800 or so prisoners. In Iraq, approximately 13,000 people are imprisoned in United States-run detention centres, the number of which varies from four to ten and, like at Guantánamo, one prison may itself consist of several distinct facilities (see Human Rights Watch 2005). Recent reports indicate that since June 2004, almost 18,700 Iraqi prisoners have been released, suggesting very high rates of imprisonment. The working estimate of the number of prisoners held by the United States military in Afghanistan is 500; it has been estimated that as many as 3,000 prisoners have been held in the north, at Sherbarghan (see Golden and Schmitt 2006; Smith 2004). What is notable is the presumption of continued growth. In Iraq, the sheer number of prisoners continually expands as occupation and civil war intensify. In August 2006, a new \$60 million super-maximum facility was opened at Camp Cropper, near Baghdad's airport (see Graham 2005: A15; *CBS News*, 17 September 2006).

At Guantánamo Bay, despite consistent calls to close it, a new \$38 million super-maximum prison opened in October 2006 to permanently house the 114 'most dangerous' and to confine what's expected to be an influx of prisoners in newly opened theaters in the 'war on terror' (Iran, North Korea, parts of Africa). The large complex at Bagram in Afghanistan, once a processing facility for captives transferred elsewhere, has become an expanding permanent facility, replacing or supplementing the estimated two dozen military and unknown number of secret CIA prisons (such as the 'Salt Pit' near Kabul or the 'Dark Prison') in the country. If Chalmers Johnson is correct that an 'honest count' (including Royal Air Force bases in Britain which he claims are more properly United States military and espionage installations) of 'our military empire would probably top 1,000 different bases in other people's countries,' and if we make the reasonable assumption that every military base has at least one prison or detention facility, in popular parlance, a brig, then the scope of military imprisonment is potentially staggering.<sup>5</sup>

This demand has been largely filled by the Army Reserve and by civilian prison guards in the Reserve (Moniz and Eisler 2004). In general, the 1.2 million members of the United States Reserve Forces and National Guard are crucial to the ability of the United States Defense Department to wage multiple front wars with a 'volunteer' army, and the increasingly

conscripted nature of their service has emerged as a major source of dissatisfaction and disobedience. A survey conducted by the American Correctional Association indicated that since April 2003, over 5,000 civilian prison guards have been called up to active military duty and the potential exists for that number to rise by as much as 9,000. The United States Army publishes no information on the specific jobs to which these civilian prison guards are assigned. However, according to Lt. Col. Mark S. Inch, Corrections and Internment Branch Chief in the Office of the Provost Marshal General,

. . . the military personnel who are more likely to perform enemy prisoner of war and detention operations during war reside almost *exclusively* in the Army Reserve and Army National Guard. Therefore, the synergy between the reservist's civilian employment in the corrections field and his or her duty to confine enemy combatants in Afghanistan . . . Guantánamo Bay, Cuba, and Iraq . . . could not be more evident and essential to mission success. (Inch 2003, emphasis added)

This 'synergy,' or as Maj. Gen. Ryder (2003) calls it, 'professional bond,' is quite extensive. For example, the 300<sup>th</sup> Military Police Brigade, the majority of whom are Michigan prison guards, designed Camp Delta at Guantánamo Bay. The senior non-commissioned officer of the Brigade, Command Sgt. Major John Vannatta, is the superintendent of the Miami Correctional Facility in Indiana and now 'replicate[s] many of his familiar civilian responsibilities as . . . Camp Delta's "superintendent."' Sixty other 'professional correctional officers' are in 'key administrative and leadership positions' in Cuba. In Afghanistan, members of the 327<sup>th</sup> Military Police Battalion, many of whom are Chicago area prison guards and police, currently run detention operations there. Capt. Michael McIntyre and Master Sgt. Don Bowen, 'designers of the emerging Iraqi prison system,' both work at the United States Penitentiary at Terre Haute, Indiana. The best-known Army Reserve and National Guard unit, the 800<sup>th</sup> Military Police Brigade, was put in charge of 're-establishing Iraq's jail and prison system' as well as staffing and managing the Army's prisons for enemy combatants and prisoners of war. This unit produced the two most famous reserve soldiers—Army Reserve Staff Sergeant Ivan L. 'Chip' Frederick II and Corporal Charles A. Graner Jr.

Frederick, convicted and sentenced in October 2004, was a prison guard in Virginia. He confessed, as part of a plea deal, 'to beating and humiliating Iraqi prisoners while taking souvenir pictures of the deeds.' . . . Frederick said he wrapped loose wires around a prisoner's finger and threatened to electrocute him if he fell off a narrow box. He confessed also to punching a prisoner and ordering him to masturbate in front of others 'just to humiliate him' (Morin 2004: A4). His defence was that the environment was 'stressful' and 'chaotic' and that he was poorly trained, notwithstanding that he was



identified in the Psychological Assessment of the Taguba Report (Annex 1) as a 'ringleader' by virtue of his expertise in what is known euphemistically as the 'field of corrections.'

Until the moment in January 2005 when he was sentenced to ten years in federal prison, Graner, Lynndie England's boyfriend and the soldier famously shown smiling behind a pyramid of naked Iraqi prisoners, had been employed by State Correctional Institute at Greene (SCI-Greene). Graner was familiar to prison activists, particularly the Pennsylvania Abolitionists, since he had been implicated repeatedly in violence against prisoners at the super maximum security prison in western Pennsylvania, best known to those outside the state as the prison on whose death row Mumia Abu-Jamal sits. Prison activists and the Pennsylvania Department of Corrections documented many instances of prisoner abuse at SCI-Greene, starting in 1988, and reaching a peak in 1998. This was two years after Graner arrived, with 'good riddance' according to his former warden, from a six-year stint as a prison guard at Fayette County prison. At that time, guards were accused of routinely beating and humiliating prisoners, including 'through a sadistic game of Simon Says in which guards struck prisoners who failed to comply with barked instructions.' According to Army reports, Graner, like many others, was called up for active duty in May 2003 and given supervisory positions at Abu Ghraib precisely because of his experience as a prison guard (see: Pennsylvania Abolitionists 2004; Pierce 2004).

Graner was not the only individual given command responsibilities despite a known history of abuse accusations. Much attention has been rightly paid to the role General Geoffrey Miller's transfer from Guantánamo Bay to Abu Ghraib played in establishing norms and standards at the prison. His recommendation to 'GTMO-ise' Iraqi prisons was in part what prompted General Taguba to hold Miller responsible for the abuse of prisoners (see Center for Constitutional Rights 2006). But as Leah Caldwell points out, this should not obscure the important role a group of lesser non-military officials played. As she details, in May 2003, before Miller's arrival, Attorney General Ashcroft appointed a group of American prison managers to oversee the preparation and transformation of Iraqi prisons for United States military use. These officials worked through the International Criminal Investigative Training Program (ICITAP), which trains, consults and assists in the development of other countries' police forces and prison systems.

ICITAP is 'a successor to the police training program run by the Agency for International Development' that was terminated 'in the mid-70s . . . when it became public knowledge that U.S. AID officials were training police and prison officials around the world in techniques of . . . torture' and counterinsurgency tactics against leftists and popular movements (Caldwell 2004; see also Call 1998). The new ICITAP—begun in 1986 to oversee elections in El Salvador—is supposed to have put its past behind it,

but was subject to a major Congressional investigation in 2000 for criminal misconduct and serious mismanagement. Through ICITAP, Ashcroft appointed a team of four executives, each of whom had, on their watch, a documented record of human rights violations, prisoner deaths or severe injury, and a record of transferring prisoners to other state prisons, a type of internal rendition programme. Of the four, all were taken to court and two were forced to resign.

John J. Armstrong, in 2004 the assistant director of operations of American prisons in Iraq, was the head of Connecticut's Commission of Corrections from 1995–2003. He opened Connecticut's first super-maximum prison, was the featured subject of a 2001 Amnesty International report on abuse of women in prisons and was forced to resign after settling lawsuits brought by the families of two of the 200 Connecticut prisoners who died after being transferred to Wallens Ridge, a super-maximum security prison in Virginia. Gary DeLand, former director of the Utah Department of Corrections in the 1980s, was the subject of many complaints, legal and otherwise, by prisoners of inadequate medical care and cruel and unusual punishment, according to attorney Brian Barnard. Terry Stewart, a consultant for a private prison company, Advanced Correctional Management, formerly directed the Arizona Department of Corrections from 1995 to 2002 where he 'accumulated many accusations of human rights violations' (Caldwell 2004; see also Butterfield 2004; Butterfield and Lichtblau 2004). Although he was found not guilty in court, under his command, among other things, 600 prisoners who had revolted over unacceptable prison conditions were left outside for four days in the heat, without food, water or toilets. Finally, Lane McCotter, former director of three prison systems (Texas 1985–1987), New Mexico (1987–1991) and Utah (1992–1997), is now an executive with a private prison company, Management and Training Corporation, that operates sixteen prisons. McCotter was forced to resign as director of the Utah Department of Corrections when a prisoner, shackled naked to a chair for sixteen hours, died. Abu Ghraib was apparently his choice as 'best site for America's main prison' and he worked closely with DeLand to refurbish the prison for use by the United States military. In the month before the Justice Department sent him to Iraq, it issued a report, following the death of a prisoner, criticising the lack of medical and mental health care at one of Management and Training Corporation's jails.

## **PUNISHMENT REGIME**

No one working in the United States-run military or civilian prisons in Iraq, Cuba, Afghanistan or elsewhere has been charged with torture, inflicting cruel and unusual punishment or war crimes. Soldiers of the lowest rank have been charged with lesser offences, such as dereliction of duty, indecency, assault. Since 2002, at least 111 prisoners have died in custody

in Iraq and Afghanistan. According to Human Rights First (Shamsi and Pearlstein 2006), only twelve prisoner deaths have resulted in punishment of any kind for any United States official, and the steepest sentence for anyone involved in a 'torture-related death' is five months in jail.

One reason is that 'torture and other abuses against detainees in US custody in Iraq were authorized' by commanding MPs and officers even after the conditions and activities at Abu Ghraib prison were made public, as the remarkable report, *No Blood, No Foul: Soldiers' Accounts of Detainee Abuse in Iraq*, demonstrates (Human Rights Watch 2006). This report provides a particularly chilling window into the nature of military imprisonment, and its first-hand accounts highlight how ordinary violence had become in the military prisons in Iraq.

Indeed, civilian and military prison guards and officials take for granted that in United States prisons abuse of power and torture are common, despite the sanctioned ignorance that pretends otherwise (Elsner 2004). Torture, humiliation, degradation, sexual assault, assault with weapons and dogs, extortion, blood sport consistently have been part of United States prison culture and behaviour. Angola, Attica, Marion, Florence, Corcoran—the names of these prisons carry their histories in tow in part because they broke through the invisibility barrier, bringing the images and stories of intolerable violence and deprivation into public view. Prisoners, prisoner rights advocates, human rights organisations such as Amnesty International and Human Rights Watch, civil rights organisations, such as the ACLU and the National Lawyer's Guild, scholars in a number of fields, not to mention various Departments of Corrections and state and federal Departments of Justice have all corroborated that 'racialized sadism,' to use William Pinar's term, is routine and has a history exactly co-extensive with the history of imprisonment in the United States, which is itself co-extensive with the history of the United States (see Christianson 1998; Conroy 2001; Davis 2004; Franklin 1989; Pinar, unpublished manuscript; Williams, K. 2006).

The normalcy of exceptional brutality—a shared punishment regime—is the second point of connection between the military and civilian prison. The presumed normalcy explains why there was, according to the Taguba report, an 'easy . . . collaboration' between the Reservists and the professional Military Police. The comfortable collaboration went approved and unremarked on until photographs of its activities became public and became a 'scandal,' as much for becoming public as for its occurrence. The presumed normalcy also explains why, when asked by the FBI, no-one interviewed reported observing any 'misconduct' or 'mistreatment' of those detained at Abu Ghraib. The guards described what they saw and often what they did: prisoners handcuffed to the wall with nylon bags over their heads being deprived of sleep; prisoners spread-eagled on the floor yelling and flailing; men ordered to strip, placed in isolation and then subjected to deafening music and/or extreme temperatures; the punitive use of electric

shock and stun guns; ritual humiliation and sexual assault; police guards repetitively kicking prisoners in the stomach; intimidation and threats to harm or kill family members; burning and branding. None of it 'rose to the level of mistreatment' in the minds of their observers because they were, to quote the respondents in the report, '*no different from . . . procedures we observed used by guards in US jails.*'<sup>6</sup>

The FBI interviewed most of those involved in policing at Abu Ghraib. Nobody initially claimed they saw any behaviour that could be construed as mistreatment, much less torture as defined in international law. What they witnessed they considered to be acceptable prison guard behaviour. And they were right. The Abu Ghraib photographs did not expose a few 'bad apples,' or an exceptional instance of brutality or perversity. The Abu Ghraib photographs exposed the dehumanisation that is the *modus operandi* of the lawful, modern, state-of-the-art prison.<sup>7</sup>

Nowhere is this more clear than in the growth, over the past two-and-a-half decades, of super-maximum imprisonment, the cutting edge in carceral technology, and arguably the prototype for the retooling of the military prison for the 'war on terror.' For example, the model federal super-maximum penitentiary in Florence, Colorado, where Zacarias Moussaoui was sent as his death sentence, to 'rot' in high-tech solitary confinement, along with Ramzi Ahmed, Theodore Kaczynski, Terry Nichols, Richard Reid and Eric Rudolph, is already effectively a 'war on terror' prison (Serrano 2006: A1). The most recently built prison in Baghdad is a supermax facility. In Afghanistan, under the auspices of a \$10 million prison construction and training programme (for Afghan prison guards), 'American financed contractors' are renovating—to supermax standards—a former Soviet jail near Kabul (Golden and Schmitt 2006). In October 2006, a new supermax prison, Camp 6, was installed at Guantánamo Bay by Halliburton subsidiary Kellogg, Brown & Root, at a cost of \$38 million. Because 'there is no such thing as a medium security terrorist,' according to Rear Admiral Harry Harris commander of the prison network, and because there have been continual uprisings at the prison, Camp 6's 24-hour lockdown regime will replace the other units (Williams, C. 2006).

It is a cruel irony that the 'first step in the development of the modern supermax prison' was the conversion, in 1933, of the former military prison at Alcatraz Island, California, into a fortified 'custody prison,' designed to 'concentrate,' 'isolate,' 'segregate' and control 'the most serious disciplinary problems' in a context dedicated, FBI Director Hoover emphasised, to severe and unremitting punishment (Ward and Werlich 2003: 53–75). The history of the development of the supermax prison is beyond the scope of this chapter, but it is important to reflect on two relevant aspects. First, in many ways, Alcatraz was a public-relations-directed invention masterminded by Hoover to demonstrate publicly that the era's great gangsters, like Al Capone, ever popular as outlaws, were defeated by legitimate forces of law and order. The supermax prison today pretends to

the same delivery of order and public safety in the face of gangsters running underground economies and societies. Second, the modern supermax prison was designed specifically to create a confinement regime that would end resistance to authority. As early as 1973, as Ward and Werlich show, political prisoners were being sent to Marion. The conversion of the federal prison at Marion into the contemporary supermax regime and into what came to be known as the Marion model was the direct result of prisoner strikes against brutal conditions at the prison and the spectre of another Attica. Here, too we find an important precedent for the criminalisation of dissent, a core function of mass imprisonment.

In the United States, there are seven million people, disproportionately Black and Latino, in prison or jail or on probation/ parole, well over half of whom have been convicted of non-violent drug-related and petty economic crimes (U.S. Department of Justice 2006). And yet, two per cent of the prison population is in what is called administrative segregation, without even the restricted due process ordinary prisoners possess. There are fifty-seven designated supermax prisons in forty states, fortified security units, prisons within a prison. As I suggest later, administrative segregation has become a condition and an identity and thus the count of designated facilities is a poor measure of scale (see Mears and Watson 2006 and the website Supermaxed.com). Under conditions of supermax imprisonment, men and women are electronically monitored and locked down twenty-three or twenty-four hours a day in small windowless cells, sealed with solid steel doors, only permitted to leave their cells shackled and handcuffed and supervised by at least two guards, perhaps a few times a week for showers and solitary exercise in a human-size cage. Administratively segregated prisoners are almost always caged.

In general, United States prisons are highly militarised, with vertical command structures, obedience norms and paranoid us/them cultures virtually indistinguishable from soldiering. The increasingly unfettered permission to use lethal force and the presence *inside* the prison of technologically sophisticated weaponry and surveillance equipment (metal detectors, x-ray machines, leg irons, waist chains, handcuffs, 'black boxes,' holding cages, 'violent prisoner restraint chairs,' psychiatric screens, chain-link fences, tasers, stun guns, pepper spray, tear gas canisters, gas grenades . . . mini-14- and 9- millimetre rifles, 12-gauge shotguns) has intensified the militaristic aspects of policing (Haney 2006). As Craig Haney points out, prisoners today are always, as if in war, under 'gun cover,' even while sleeping. Particularly in security housing units, where prisoners are in solitary confinement, 'excessive' force is not only permitted, it is routine: forced cell extractions, discharge of electronic stun devices, chemical sprays, shotguns with rubber and real bullets, the use of psychotropic drugs for pacification, sensory deprivation and sensory overload are the *normal punishment regime*. The convergence is striking: waging war looks more and more like a high security prison; prison looks more and more like waging a security war.

## THE LAW

These practices violate the International Covenant on Civil and Political Rights and the United Nations Standard Minimum Rules for the Treatment of Prisoners, but the United States does not recognise the latter and its reservations to the former are sufficiently extensive to constitute effective non-recognition. In fact, the United States has established different standards, the third point of connection between the military and civilian prison: the laws governing them. I can only briefly touch on the complex and developing legal questions, and my point is this limited one. While the recently enacted Military Commissions Act makes sweeping changes in a number of areas, including to federal *habeas corpus* law and to the laws governing military trials, there is ample precedent in United States civil rights and constitutional case law for its treatment of prisoners of the ‘war on terror.’

Over the past ten years, through a variety of means and given impetus by the 1996 Prisoners’ Litigation Reform Act, the United States has severely disabled prisoners’ political and civil rights, not only as voters, but as subjects with standing to access the law itself (see Mauer and Chesney-Lind 2002). The prisoner—with restricted access to independent legal counsel, held incommunicado in secretive locations inaccessible to the public, charged with violating internal bureaucratic rules, promised trials adjudicated by the very authorities who hold him/her, legally limited in his right to stand before the law independent of his/her captors—this prisoner is as readily found in United States maximum and super-maximum prisons as he or she is found in Iraq, Cuba or Afghanistan. Civil death, especially when accompanied by total isolation in extreme conditions of dehumanisation, has become pre-emptive, an intimidating and effective means for preventing the exercise of political and social will by destroying at its source, the socially and legally recognised person, and replacing that person with war’s familiar figure: the enemy.

Indeed, in addition to intensifying prisoners’ civil disabilities, the courts have eroded, if not effectively ended, the Eighth Amendment protection against cruel and unusual punishment in a series of cases centred on establishing the legality of super-maximum regimes of confinement, the combination of isolation and force described earlier. The courts have consistently authorised super-maximum imprisonment *sui generis* and they have done so by treating it not as punishment, but as a set of *administrative* procedures for managing high-security populations (Dayan 2003: 99). These procedures, formerly understood as punishments, are now treated as *security* measures whose need, nature and scope is the prison authority’s, not the court’s, right to determine. As security measures, these procedures and practices are not subject to the Eighth Amendment prohibition against cruel and unusual punishment because they are not considered punishments. Rather, procedures that were once treated as violations of the Eighth Amendment, as cruel and unusual punishments,

are now sanctioned as 'ordinary' or acceptable practices required for the maintenance of security.

Legal permission to treat what was once considered cruel and unusual punishment as 'ordinary incidents' of prison life entered the prison environment with its embedded classification logics, profound distrust of educated and politicised resistance, and powerful will to institutionally reproduce, stretching what constitutes a special disciplinary problem or an urgent threat to the physical safety of persons to the distinctive point, utterly characteristic of the criminal justice *mentalité* and prison culture, where the arbitrary and the paranoid meet. Consequently, administrative segregation is neither a temporary nor an exceptional response to situational security or disciplinary needs. Rather, it is a portable regime applicable anywhere, and once it is applied to you, in effect, it becomes you. The supermax prison is thus not merely a place. It is a condition and an identity, increasingly a type of prisoner who belongs *permanently*, because it is in his or her enemy nature to permanently pose a threat to 'our' security and who is classified as such in corrupt and demeaning administrative hearings where senior police officers act as legal counsel for the prisoner.

As Joan Dayan has brilliantly shown, the Supreme Court's Eighth Amendment cases are precisely the legal and linguistic basis for the 'detainee interrogation' memos prepared for the 'war on terror' (Dayan 2004). The recently declassified Pentagon *Working Group Report on Detainee Interrogations* (2003) asserts that 'illegal alien enemy combatants' possess neither the international rights conveyed to war captives by the Geneva Convention nor United States constitutional rights, which was, of course, the purpose of inventing the category in the first place. The report's treatment of complex questions of legal applicability and notably the applicability of international law is particularly obfuscating. Most relevant here is the claim that 'detainees' are not 'convicts' and thus since the proscription against cruel and unusual punishment was 'designed to protect those convicted of crimes,' even if a 'detainee could establish standing to challenge his treatment, the claim would not lie under the 8<sup>th</sup> Amendment' (Pentagon 2003: 36). The question of when conviction is necessary for imprisonment is particularly serious since in the United States slavery remains constitutionally enabled under one circumstance—conviction of a felony. The Bush government seeks imprisonment without trial and legal conviction, via administrative fiat, when conviction by United States judicial authority confers criminality and disables international law. To affirm that the prisoner is not a convict, however, is precisely to affirm his or her status under international law. The prisoner of war is emphatically not a convicted criminal.

To deal with the legalistic contortions, the working group argued that if enemy combatants were, in the end, 'mistakenly' found to hold constitutional rights for being held by the United States, only the Eighth Amendment, the prohibition against cruel and unusual punishment, not the right to due process, would apply (Pentagon 2003: 40). However, as their survey

of Eighth Amendment cases shows, legal proof of constitutional violation has become all but impossible today. As the Report notes, the ‘maintenance of order in the prison’—and ‘it follows . . . obtaining intelligence vital to the protection of untold thousands of American citizens’—provides a legitimate state interest in ‘various deprivations’ that might otherwise be considered cruel and unusual. Moreover, to be considered cruel and unusual, such deprivations must be more than ‘restrictive’ or ‘harsh’; they must exceed the normal conditions that are ‘simply part of the penalty’ itself. Yet deprivations cannot be ‘assessed under a totality of the circumstances approach.’

Whether in terms of conditions of confinement or intensity of violence, Eighth Amendment violation requires demonstration of *intentional*, explicitly motivated, and *unusual cruelty*, meted out as *punishment*. Each qualification must be present together: explicit intent, unusual cruelty, punishment. However, recall that ‘the necessities of prison security and discipline’ are grounds for superceding all legally recognised rights of prisoners and grounds for redefining the very definition of penalty, punishment itself. Thus, the *administration* of individuals or groups who threaten *security* and who refuse to *comply* with orders by any means the prison deems necessary becomes the penalty for being the enemy by no longer being rendered as a punishment to which limit standards can be applied.

The intent of the Working Group Report was to legally justify a major change in the status and treatment of a new category of prisoner of war. Yet, its narrow apportioning of what constitutes *torture* and what is only *abuse*, or what is *prolonged harm* versus *lasting* or *permanent damage* and its insistence that Eighth Amendment violation requires demonstration of *specific, deliberate intent to inflict cruelty or excessive punishment* (not outcome) under conditions in which ‘evolving standards of decency’ are determined by (‘with great deference given to’) prison authorities are echoes of a social reality already settled, in law and in practice, in the civilian prison where the state’s power to civilly disable and to maintain compliance and order is absolute.

## GEOPOLITICAL TERMS OF ORDER

Long-term exposure to super-maximum imprisonment leads to madness and death. Yet, military and civilian prisoners spend more and more time in it, while the number of people in prison for life also escalates dramatically, up eighty-three per cent from 1992 to 2003 (see Haney 2003; Haney and Lynch 1997; Mauer et al. 2004; Rhodes 2004). Ward and Werlich (2003: 53–75) estimate that between 1984 and 2000 the average term in supermax control units increased from thirty-six to sixty months. Their estimate is based on prisoner stay in Florence, Arizona, the most notorious security housing unit in the United States, but the general pattern is confirmed in



California and elsewhere. It is difficult to convey what happens to someone confined indefinitely in conditions designed to break down all resistance to authority, self or another's, in twenty-four to forty-eight hours. Those who beat it have a worn and dignified strength that nevertheless shows the cost of the battle. The others become shadows, mournful spectres. Under such deficient and deadly conditions, the prisoner is no longer (and the extent to which they were before is questionable) conceived as human in any meaningful sense at all. Today, more than ever, the original impulse behind the specific wording of the United States Constitution's Thirteenth Amendment, that which abolished chattel slavery, is clear: *[N]either slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.*

The increasing erosion of the distinction enshrined in the Eighth Amendment between cruelty and decency and between the humane and the barbaric is tied to the production of a permanent prison population. Permanent not only in the sense of always available but permanent also in the sense of perpetuity, of assigning to certain groups of people—in the United States, Blacks, Indians and Latinos—the caste and stigmata of the perpetual prisoner. The modern transatlantic slave system, which captured millions of Africans, inventively introduced permanent or hereditary enslavement, thereby making being a slave no longer a temporary social status, however despised or dishonoured, but rather a constitutive condition of one's social and juridical being. The significance of slavery to the historical development of the United States prison system and to who became and still today most frequently becomes a prisoner is well-known (see, for example, Davis 2003; Davis and James 1998; Lichtenstein 1996; Mancini 1996; Oshinsky 1996; Rodríguez 2006). But racism, by which I mean 'group vulnerability to premature death' (Gilmore 2002), explains not just who becomes a prisoner but also *what the prisoner becomes*. In the United States, where slavery was most elaborated and remained essential to national development, the fundamental racial ontology of permanent slavery was transferred, after the formal abolition of slavery, to the prisoner who became, with the scientific legitimacy of criminal anthropology, and bearing always the double burden of racialist ontology, an inferior race in and of themselves. 'The captive,' Orlando Patterson (1982: 38) has written, 'always appears . . . as marked by an original indelible defect which weighs endlessly upon his destiny.'

And what is the destiny of the captive today? In two words, permanent abandonment. As Ruth Wilson Gilmore has argued, abandonment is the 'rigorously coordinated and organised setting aside of people and resources' (Gilmore, unpublished; see also Gilmore 2006; Leyshon and Thrift 1995: 312–41). Abandonment by the state to the state is a core feature of the expansion of a parasitic security/war economy rooted in mass imprisonment. A means of socio-economic and political dispossession, mass imprisonment

warehouses surplus labour, that is people, the majority of whom are Black, for whom no room will be made in the legal capitalist economy. It removes from civil society, potentially active, angry and demanding political subjects, to a remote and closed place where they are civilly disabled and socially dead. Penal management of social and economic inequality effectively abandons individuals and communities to a vast system of repressive and deadly social control whose reach extends well beyond its seemingly targeted population while leaving the so-called free society also abandoned, bereft of these individuals' and communities' company and contributions.

From the vantage point of the United States, where mass imprisonment and its constituent role in what passes for economic development has advanced to unprecedented and alarmingly taken-for-granted levels, and, where African-American communities in particular are staggering under the historical weight of what Gilmore aptly describes as 'rounds and rounds' of regimes of abandonment, the tendency towards permanent captivity is perhaps more evident than elsewhere.<sup>8</sup> As suggested earlier, the expansion of supermax imprisonment is one important indicator and means. Another is the extension of civil disability. The collateral consequences of felony conviction in the United States include loss of civil rights and citizenship rights while imprisoned (or while paroled or on probation) and now increasingly upon final release, that is to say, indefinitely: loss of access to the law, to the right to vote, to serve on a jury, to hold public office, to live in certain neighbourhoods, to live in public housing, to associate with certain individuals, to hold certain jobs.

Perpetual civil disability requires, in effect, treating the prisoner and the former prisoner as socially dead, as having lost the right to belong, a condition of liminal social existence (a living dead person) lacking public worth, social standing and honour. Upon application, social death is always permanent, a condition or a taint which appears to belong to the captive (or slave), his or her essential mark so to speak. And in this it is a powerful legitimising and racialising tool for justifying indefinitely imprisoning people who might otherwise be your neighbours or fellow citizens/residents or friendly or even utterly strange strangers. Orlando Patterson rightly called social death an 'idiom of power.' And, he strikingly described how a society's outsiders (foreigners, infidels, prisoners of war) and a society's insiders (criminals, the destitute) could be conceived as people who did not and could never belong: 'The one fell because he was the enemy, the other became the enemy because he had fallen' (Patterson 1982: 44).

Being or becoming the enemy returns us to the complicated imbrication of imprisonment and war. An increasingly permanent captive population in the United States has been created out of the spoils of Indian wars, Civil wars, anti-communist cold wars, 'wars on crime,' 'wars on drugs,' and now a 'war on terror.' While war has always been the handmaiden of captivity and imprisonment, what is distinctive in the post-World War II period is

the invention of perpetual wars, general wars without end, making false promises of security, waged against ever-shifting spectral enemies, driven by ideologies of order and counter-insurgency and by policies to contain and quarantine the effects of global poverty (see Davis 2006; Wilkin 2002).<sup>9</sup> Endless war, endless captivity. Permanent war, perpetual prisoners of war.

In the early history of warfare, there was no recognition of a status of prisoner of war. The defeated enemy, considered the property of the victor, was either killed or enslaved. Despite the Geneva Conventions and international laws governing the conduct of warfare, the United States has retained, as befits its imperial power, the ancient right of the strong and the conqueror to enslave their fallen enemies. Thus, in the 'war on terror,' there are no longer prisoners of war in the modern, post-Westphalian sense, only 'enemy combatants,' fallen captives. Here, in the new permanent security war, the 'foreign' enemy captured, tortured, ritually humiliated, detained indefinitely, often secretly, tragically finds his/her complement in the 'internal' enemy. They are both raw material of an organised abandonment in the service of a parasitical war economy; both subjects of a corrupt, malleable law that indicts without substantive representation; both subject to a crushing punishment renamed administration; both of whose social death and dishonour is presented as the necessary price for 'our' safety and security. Sometimes, of course, the external and the internal enemy are one and the same.

These are the terms of the 'war on terror' the United States is waging and soliciting in every part of the world. It does not act alone, however: Europe's xeno-racist carceral complex for refugees, asylum seekers and the economically precarious (see Fekete 2004; 2005); Israel's genocidal occupation and enclosure of the Palestinians in a concentration camp state; South Africa's adoption of a United States-style war on crime and its consequent imprisonment of ever larger numbers of Black youth, sadly the Soweto generation and their children (Samara 2005); soaring rates of imprisonment—the second highest in the world—in Russia and its previously or presently occupied territories (Turkmenistan, Ukraine, Kazakhstan, Latvia, Lithuania, Estonia, Kyrgyzstan, Moldova and Chechnya); the transformation of the Caribbean Basin into an off-shore-banking-tourist-prison archipelago and so on.<sup>10</sup> Increasingly, long-term captive populations worldwide are created by a 'global state security apparatus' (Wilkin 2002: 634) with many participating nation states, facilitating the fastest growing business sector in the world.

Bloated militarism in a crushing world economy dependent on the 'productive' destruction of places, communities, social wealth, shared intelligence, and the systematic abandonment of entire peoples is the road to ruin upon which the United States and its allies travel. This way of life is not sustainable, despite the imperial announcements of victory and invincibility. In the meantime, it is necessary to raise the call and the movements for the abolition of permanent war and the captivity and negation that accompany it. Worldwide, most individuals do not favour and many actively

oppose the occupation war in Iraq. Even in the United States, where majorities have supported it, these have significantly declined. This presents an opportunity to transform strong sentiment against one war in Iraq and its estimated \$700 billion price tag into a stronger movement for what Seymour Melman (1961; 1970; 1984; 1988; 2001), after a lifetime fighting for it, calls conversion: the transition from a militaristic or war social-economy to a peace social-economy. This will involve, as a first step, understanding the broader patterns underlying the behaviour of soldiers and police in Iraq and the larger context in which the military prison operates and bringing these understandings as necessities into the political mobilisations against the war in Iraq and the ongoing 'war on terror.'

Mass imprisonment and organised abandonment play a central role today in the perpetuation and expansion of a 'secure' or security-centred world economy and in its extreme and untenable social costs, one of which is our young people and their right to a future, to a destiny determined by them. One of the ugliest and most suppressed facts about the expansion of imprisonment in the world today, whether in the United States or France or the United Kingdom or South Africa or Brazil or Turkey or Nigeria, is that the vast majority of the world's prisoners are young, as are its soldiers. Thus, our young men and women, our most vulnerable young, those in need of the greatest care and protection, are increasingly faced with the choice—rendered starkly in the photographs taken at Abu Ghraib and in United States insistence that Iraqi independence be contingent on its possessing a United States-approved militarised police force—of being prisoner or police/soldier. The Mothers of the Plaza de Mayo would call this state of affairs military civil authoritarianism. It is a contraction of possibility for living—a captive destiny—that is a cruel patrimony and a shameful inheritance. Peace is never just the absence of a war. It is, as Melman described it, the 'moving peacefully' towards the elimination of institutions and decision-making powers that plan, make, support and love war. It is necessary today, and it is inconceivable without the abolition of its handmaiden—mass imprisonment.

## NOTES

1. This essay draws on ideas and research presented in Gordon, A. (2006a) 'Abu Ghraib: Imprisonment and the War on Terror,' *Race & Class*, 48, 1: 42–59 and Gordon, A. (2006b) 'D'où viennent les tortionnaires d'Abou Ghraib?', *Le Monde Diplomatique*, November 2006.
2. No doubt, these were one source for Secretary Rumsfeld's original warning that should all the unreleased photographs be made public, 'it's going to make matters worse' and for the Defense Department's refusal to release 'secret' photographs and videotapes following a federal judge's order; see 'Rumsfeld: Unreleased Images 'Cruel and Inhuman', [www.cnn.com](http://www.cnn.com) (8 May 2004); and Zernike (2005).
3. 'I do not plan to stop until either I die or we are respected. People will definitely die. Bobby Sands petitioned the British government to stop the

illegitimate internment of Irishmen without trial. He had the courage of his convictions and he starved himself to death. Nobody should believe for one moment that my brothers here have less courage,' said Binyan Mohammed, quoted in Gillan (2005). On the Guantánamo hunger strikers, see Gordon (2006b).

4. On CIA-run secret prisons in the Middle East and Europe, see the breakout story by the *Washington Post's* Dana Priest, 2 November 2005: A01, and subsequent reports; Grey (2006); Paglen and Thompson (2006). Human Rights Watch also issued a number of independent studies on rendition and secret prisons. On the Pentagon's failure to investigate 'ghost detainees,' see Benjamin and Scherer (2006).
5. Johnson (2004a and b) argues that the Defense Department official figures for 2003 of 702 overseas military bases in about 130 countries and 6,000 bases in the United States and its territories significantly undercounts the actual number of bases the United States occupies globally because bases in Kosovo, Afghanistan, Iraq, Israel, Kuwait, Kyrgyzstan, Qatar and Uzbekistan are omitted. Official figures list only one Marine base at Okinawa Japan, failing to capture the size and scope of the American military colony there; see also Singer (2003).
6. The ACLU successfully sued for documents related to overseas detention facilities under the Freedom of Information Act and the extensive archive, heavily redacted, is online at: [www.aclu.org](http://www.aclu.org).
7. The photographs certainly did not expose the relative merits of using torture to secure needed information, as some have suggested. As Elaine Scarry (1985: 28–9) pointed out some time ago, 'The idea that the need for information is the motive for the physical cruelty arises from the tone and form of the questioning rather than from its content: the questions, no matter how contemptuously irrelevant their content, are announced, delivered, *as though* they motivated the cruelty, *as if* the answers to them were crucial.' United States military officials have admitted that eighty-five to ninety per cent of the detainees at Abu Ghraib (and at Guantánamo Bay) were of no intelligence value (see Danner 2004a).
8. It is certainly what is at stake in the 2005 and 2007 revolts by French *banlieu* and inner-city youth against then Interior Minister and now President Nicolas Sarkozy's law and order policies. Though charged with lacking political awareness, the youth seem to understand the link between the government's promotion of neo-liberal market policies, the erosion of the social state, and the building of a security policing complex in which they are the raw material for precisely the kind of development abandonment involves.
9. In Immanuel Kant's famous 1795 essay, 'Perpetual Peace: A Philosophical Sketch,' he makes a rather convincing case that perpetual war is the norm, in fact has been characteristically what states do. Given that the presence or absence of monarchical rule has made little difference in the ongoing history of omnipresent warfare, we may be mistaken in claiming that permanent war is a post-World War II invention.
10. Hélène Châtelain, the director, with René Lefort of the celebrated documentary on the 1971 prisoner revolts in France *Les Prisons aussi*, has made a recent film, *Goulag* (2005), about the extensive Soviet prison system that forms the infrastructure for its current system. The International Centre for Prison Studies, King's College, University of London has an online data base of world prison rates at [www.kcl.ac.uk/depsta/rel/icps/worldbrief](http://www.kcl.ac.uk/depsta/rel/icps/worldbrief). The United States and Russia have the largest prison population rates in the world. St. Kitts and Nevis are third (559), Bermuda is fourth (532), Virgin Islands is

sixth (521), Cuba is eighth (487), Belize and Suriname, the Cayman Islands, Bahamas, and Dominica are eleventh through fifteenth. Puerto Rico, Barbados, Netherland Antilles, Panama, St. Vincent, Aruba, Trinidad and Tobago, French Guyane, St. Lucia, Antigua—are all in the top thirty-five.

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