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CHAPTER 7. Punishment and the Spiral of Disorder

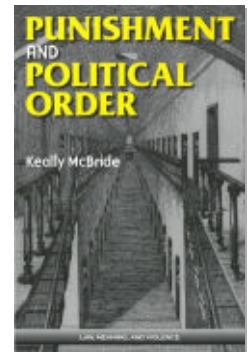
Published by

McBride, Keally.

Punishment and Political Order.

University of Michigan Press, 2010.

Project MUSE. <https://doi.org/10.1353/book.6440>.



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Punishment and the Spiral of Disorder

We have previously shown, and histories everywhere teach, that wars are usually begun for the purpose of exacting punishment.

—Hugo Grotius, *De Jure Belli ac Pacis*

The season is changing.
Return me my freedom!
Oppressive government and cruel treatment—
One day there will be revenge.

—Poem written on a wall of Angel Island Internment Center

The focus of this book has been punishment and the birth, development, or reconsolidation of political orders. Correct deployment of punishment helps to establish the guiding principles of a regime and establish legitimacy for an authority in a given populace. It can also help shape the political economy of a regime, playing an integral role in the material support of political order. But I would not want to perpetuate the idea that punishment only serves to bolster the power of the state. Too frequently punishment has been understood as the expression of inviolable power, and naturally, this perception serves the power of the state, as I argued in my discussion of sovereignty. Therefore, I want to conclude with a case study of how punishment can also be a catalyst in the unraveling of regimes, and how it can at times demonstrate the state's powerlessness.

Like all the other dynamics this book describes, the role that punishment plays in the creation of political disorder cannot be pinned down. Definitive statements such as “whenever practices of punishment contradict a regime’s political ideals, political instability occurs” are impossible. After all, at times practices of punishment do contradict a regime’s stated ideals, and it causes no interest, critique, or disruption whatsoever. Nor does the severity of punishment seem to play any decisive role in whether a regime is stable, so it cannot be argued that

the specific form of punishment particularly matters. Instead, the *perception* of unjust punishment as emblematic of political power creates instability. It is impossible to explain public perception in its totality, but it is the key to the other elements of this argument. What transforms punishment into an injustice is perception. Once an instance of punishment is perceived as an expression of the state's power, rather than the criminality of the person being punished, a fundamental shift has occurred. Punishment has ceased being an unquestioned and given activity and become an opportunity to judge the state's exercise of its given authority.

In conclusion to this book, I am going to discuss recent practices of punishment by the United States in Iraq and Guantánamo Bay. As established in chapter 5, domestic penal practices are leniently viewed as an exception to limited state power, and even the incarceration explosion has not served the same generally catalyzing role as events in these prisons located abroad. U.S. penal practices have come to be emblematic of the U.S. government in the international arena in a dynamic remarkably similar to the horror recounted by the travelers in More and Kafka. The reverberations are also felt at home of course, but the horror over Abu Ghraib largely results from the fact that U.S. citizens know that people all around the world are scrutinizing these actions so closely. Nothing brings on self-examination like the view of an outsider.

Transcripts of prisoners in Abu Ghraib and Guantánamo Bay demonstrate that they experience their abuse as a form of punishment. Indeed, it is clear that Americans are asserting a command and control over others through confinement. If the ability to punish could be simply equated to the power of command, then the extreme actions taken in these confinement facilities would mark an ascendance in American power. But this is not at all the case. In fact, I argue the exact reverse; these instances of power reveal ill-conceived attempts to reassert American control and reassert a clear causality within an ever deeper spiral of disorder. The more vigorously American soldiers, commanders, agents, and guards try to construct a logic of American supremacy in their prisoners and in the international arena as a whole through punishment, the more powerless the country becomes.

Toward a Paradigm of Punishment and Political Disorder

Practices of punishment, and people's responses to them, are an indicator of the authority and legitimacy, hence stability, of a regime. Punish-

ment reveals people's perceptions about their political order and at times can galvanize sentiment in opposition to that regime. This is because punishment offers a clear vision of how ideas of justice and the exercise of power intermingle: punishment offers an opportunity for everyone to see to what end a regime exercises its power. At times, practices of punishment, as in the theories of Locke, reveal a ruler to be a tyrant—it is no accident that the Soviet gulags, Saddam Hussein's torture chambers, and Chinese prisons are often cited as evidence of the corrupt nature of these regimes. When punishment belies ideals, practices of punishment can undermine the stated principles of the state and result in political disorder. Admittedly, this is not always the case. Sometimes practices of punishment betray, for example, the doctrine of equality, and yet the inequality reflected in practices of punishment raises nary an eyebrow.

Therefore we cannot say that punishment simply demonstrates whether a state has the power of command. Nor can we say that the way a state punishes will determine whether it is perceived as legitimate. We need a more complex analytical paradigm that takes into account three different dynamics in the relationship between authority and punishment. First, authority and legitimacy are the result of a relationship rather than a unidirectional expression of force. As I established in my discussion of sovereignty, political power is contingent upon relationships between the authorities and those subject to it.

Second, we also need to take into account the theatrical elements in this relationship. Political authority needs to be presented as such and cultivated as such; this is an insight central to political philosophy. This is a more complex matter than first appears because any authority that must pointedly assert itself is already weakened. Therefore the presence of authority needs to be perceptible, but without an overinsistence upon itself. For example, if a parent needs to point out that he has authority over his child, he has already lost his authority even though stating his authority may appear to be an assertion of an existing hierarchy.

In the case of punishment, it may be tempting to use penal systems to assert control that is lacking in other arenas. This logic is inherent in all state punishment since crime is a lapse of legality, therefore punishment is a reassertion of the rule of law. Protesters who refuse the legitimacy of the government in general or some of its specific actions will be met with punishment that reasserts the exclusive power of the law. As we saw during the civil rights movement, if policemen assert the

power of the state and go beyond the rule of law, for example, by beating generally peaceful protesters, punishment can actually catalyze opinion against the state in favor of the protesters. Punishment as an expression of authority can be counterproductive in given contexts.

This instance is related to my final point. In the case of state punishment, authorities need to demonstrate that they deserve their unique privileges because they serve the larger interests of justice (or at least have a presentation that they serve justice that convinces most people). As soon as punishment is entirely about the power of command it becomes counterproductive. Punishing to demonstrate a disparity of power will quickly destroy the tenuous connection between power and justice cultivated by all regimes.

Hannah Arendt's essay "On Violence" can provide some assistance in elaborating this model. In this essay, Arendt complicates the common assumption that the state's capacity for violence serves as the source of its authority. Like sovereignty, authority is relational and can be undermined by those subject to it. Interestingly, Arendt argues that the real source of authority comes from those subject to it, not those holding it. If those subject to an authority cease to view it as such, authority withers. She distinguishes between power and authority by arguing that power comes only from the ability of people to act together. It is the power of the people to grant authority to the state; the state can never command authority through the gun, whip, or jail.

"Power and violence are opposites, where one rules absolutely, the other is absent."¹ In situations of extreme violence there is no ability to act together to assert collective power, and order is disrupted. Violence may generate obedience, but according to Arendt, it cannot create power. A battalion running through a village shooting guns may separate the inhabitants and send them running—but not until the battalion comes together and starts to organize itself can we say that power has changed hands. When the people rule absolutely there is little opportunity for violence. This is the principle behind town watch organizations and mass demonstrations. "The extreme form of power is the rule of all against one, the extreme form of violence is one against all."

Two valuable aspects of Arendt's essay are her insights about the relational aspects of authority and the self-defeating impulse to use violence to maintain power. First, a person who has the power of command can lose it if her relationship with her audience changes. Authority's "hallmark is unquestioning recognition by those who are asked to

obey; neither coercion nor persuasion is needed."² If you have to explain why, for example, the state is allowed to punish criminals while angry mobs are not, the state does not have exclusive political authority. "To remain in authority requires respect for the person or the office. The greatest enemy of authority, therefore, is contempt, and the surest way to undermine it is laughter."³ If a policeman hands you a speeding ticket and you laugh and rip it up, or if a person on trial giggles during sentencing, authority is put into question.

How authorities react in such a situation is revealing. If the policeman then handcuffs and kicks the driver, his own authority becomes further undermined. "To substitute violence for power can bring victory, but the price is very high; for it is not only paid by the vanquished, it is also paid by the victor in terms of his own power."⁴ Every instance of criminality provokes this dilemma. An infraction of the law is a provocation to political authority. The punishment will work to reinforce that authority or it could undermine it. In some instances it is conceivable that the state, feeling absolute certainty of its authority, would barely respond to those that challenge it. As Nietzsche observed, "As the power and self-confidence of a community increase, the penal law always becomes more moderate . . . it is not unthinkable that a society might attain such a consciousness of power that it could allow itself the noblest luxury possible to it—letting those who harm it go unpunished."⁵ Imagine a social structure so strong that there was no need to punish to prove might, right, or law. The giant has no need to swat at the gnat. On the other hand, a state could respond vehemently, insisting upon order for even the slightest infraction. The now popular "broken windows theory" comes to mind here: if you let small things slide, then the larger ones are sure to follow. If you draw a line in the sand refusing to tolerate *any* asocial behavior, then accordance with the larger issues will come even more naturally. Such vehement policing demonstrates political power remarkably unsure of itself.

But these are the extreme examples, and most of the likely instances of punishment fall between these two poles of vigilance and laxity. Arendt also equivocates from her original position: though power and violence are distinct they "usually appear together."⁶ Punishment is a combination of authority and violence; the state's authority, bestowed by others, allows its representatives to inflict pain and to commit acts of violence *that are not perceived as such*.

One can think of instances of punishment as a sort of Rorschach

test—incidents that reveal different people's relationship to a given political authority. Punishment is seen as violence if the state is not recognized as legitimate. For example, take Emma Goldman's critique of prisons and call for their abolition.⁷ Because in her eyes the state has no legitimacy as an institution of justice, Goldman looks upon confinement as a form of kidnapping, and a constraint of human bodies that goes against natural rights. On the other hand, those who see the state as legitimate beyond question will never perceive punishment as a form of violence.⁸ In both of these scenarios, the given view of the state determines how the punishment is perceived; it does not depend upon the particular practices of punishment.

A third possibility most accurately captures the dynamics of state punishment and the generation of authority, however: instances of punishment can either build up the legitimacy of a regime or undermine it in the eyes of those who are not strongly inclined toward either of these ideological poles. An insecure authority who punishes to demonstrate the power of command seeks to reassure her sense of authority and demonstrate to the world that she has power. Punishment most evidently intended as a demonstration of command will most likely fail to generate authority. So while punishment can reveal a perception of a regime, it can also change one's perception of that regime. If a practice of punishing appears to be too strident, questions emerge as to whether the state uses its entrusted powers wisely. If a state goes out of its way to be particularly humane in practices of punishment, as practiced in Philadelphia in the years immediately following the American Revolution, legitimacy may be accrued.

The necessary element of pain in punishment makes it a dangerous exercise for the state. As political authority has become ever more abstract, decentralized, and bureaucratic, thus lessening any potential resistance to the exercise of political power, state punishment becomes more and more of an anomaly. Because punishment serves to lessen the authority of the person doing it, the distinction between the sovereign and the person who acts in the name of the sovereign becomes crucial. The agency behind punishment today is occluded since there is a representative of the state, rather than the state itself, inflicting pain. Nonetheless, punishment does assert a relationship between the state and the body of a citizen; furthermore, it is the one instance where the state deliberately inflicts pain upon someone subject to it. All of the disciplinary mechanisms in the world do not change these basic realities of

state punishment. For this reason, the authority of the state is most at risk when it exercises the prerogative to punish.

Because punishment generates resistance, we would assume that those who have been punished would have a less than favorable view of the state. Beyond that, systemic instability comes when even those who witness practices of punishment become disturbed by the manifestation of power. Once this happens, the legitimacy of the political order is at stake. A dramatic example of this dynamic is provided by the public response to incidents of prisoner abuse in occupied Iraq and Guantánamo Bay. Here the assertion of U.S. power in the punishment of prisoners and detainees has led to an unraveling of U.S. political power in the world. It currently appears that the effects of prisoner abuse shall remain limited to the international arena and have not led to a delegitimation of the regime domestically, though the scandals caused a significant drop in support for the war in Iraq among civilians in the United States.

Punishment at Abu Ghraib

They took me to the room and they signaled me to get on to the floor. And one of the police he put a part of his stick that he always carries inside my ass and I felt it going inside me about two centimeters approximately. And I started screaming, and he pulled it out and he washed it with water inside the room. And the two American girls that were there when they were beating me, they were hitting me with a ball made of sponge on my dick. And when I was tied up in my room, one of the girls, with blonde hair, she is white, she was playing with my dick. I saw inside this facility a lot of punishment just like what they did to me and more. (Sworn statement provided by Detainee #151365)

The seemingly ever-widening prison abuse scandal in Iraq, Afghanistan, and Guantánamo Bay reveals the importance of perception in maintaining political authority and the danger that punishment can pose to the legitimacy of political power. When Secretary of Defense Donald Rumsfeld traveled to Abu Ghraib only days after the scandal broke in May 2004 he referred to the pictures and reports of sadism and torture and declared, "This does not represent us." The problem for Rumsfeld and the United States is that, very quickly, the

images of prisoner abuse did come to represent America in the minds of many Muslims in the Middle East and around the world. For those who found the power and intentions of the United States already suspect, the photos proved beyond any doubt that the United States is morally corrupt and sexually uncontrolled, and uses power for self-gratification rather than justice. It would have been impossible to imagine a more effective propaganda campaign for recruitment to the resistance. Even two years after the original scandal of prisoner abuse had been made public, in February 2006 Australian news services created another round of outrage around the world and discomfort for the U.S. government when it broadcast additional images from 2003 that had not before been made public.

The prison abuse scandal at Abu Ghraib broke just as I was completing the plans for this book. I vacillated whether a discussion of the events was appropriate in the context of punishment. After all, it was never called "punishment" in our newspapers, but rather "torture" or "interrogation techniques." The United States had captured people, but they had not been sentenced. The United States confined people to fight terrorism, not to punish terrorists. But in most of the sworn affidavits of prisoners from Abu Ghraib that were reproduced in a collection of documents pertaining to the abuse, Karen Greenberg and Joshua Dratel's *The Torture Papers: The Road to Abu Ghraib*, prisoners described the actions taken against them as "punishment." While the terminological difference may be due to the translators, it becomes clear from studying the stories of the prisoners why the framework of punishment fits the patterns of abuse in Iraq and Cuba.

When reading the affidavits of prisoners who were abused in Abu Ghraib, they refer to different episodes during their confinement as "punishment." This is remarkably different from the public discussion of these events in the United States. Those particularly outraged by the abusive practices have labeled them "torture," hoping to shame the U.S. government into reform. Administration officials refer to the practices as "interrogation techniques." These two labels are not as different as they sound since both imply a motive in administering pain outside the logic of reciprocity inherent in punishment. Torture is employed when a state wants to break down resistance, neutralize political opposition, generate obedience, and demonstrate its power in the clearest possible fashion. The state asserts complete control over the body of the subject in custody, demonstrating that the exercise of its political power

is unbounded by anything—including the rule of law or any conception of human, political, or natural rights.

“Interrogation techniques” implies a state of war or emergency when the rule of law is formally suspended—either in a general or highly specific manner—in order to perpetuate sovereignty. In a state of emergency, a state may suspend the normal procedures of law under the assumption that this suspension is necessary to protect the regime. This follows the logic of “sovereign exceptionalism” as described by Schmitt and, more recently, Agamben. In a state of war, the state and the military may violate the rights of others who are suspected of endangering the lives and rights of other citizens because they are considered enemies of the state and therefore enjoy none of the usual political rights. The administration has justified abuse of detainees in Iraq, Afghanistan, and Guantánamo Bay with this rationale. Under pressure from Congress to consider closing Guantánamo facilities in June 2005, Vice President Dick Cheney said that the remaining detainees were “bad people” and also that an untold number of terrorist attacks have been prevented through the detentions and interrogations. However, he also defended interrogation practices at the facility in terms of executive power, claiming that any attempt to regulate treatment of prisoners would be a “restriction” on executive power, making it more difficult to fight the War on Terror.

To see the prisoner abuse as torture or interrogation techniques is actually less disconcerting than to think of it as punishment, precisely because wartime strategies and torture are understood to be outside of the normal political order. Looking at these episodes as punishment assumes that these policies and actions reflect our political order, our method of rule, and our commitment to the rule of law. Referring to an action as punishment implies that it is a more or less sanctioned activity to establish a relationship between a regime and those subject to its punishments. When a state punishes, it does so intending to correct behavior on the part of the person deemed an offender, to send a message to other potential offenders and deter future crimes, or in retribution for the pain caused by the offender. Even though it is done through extralegal channels, what has happened in Abu Ghraib, Guantánamo Bay, Afghanistan, Camp Nama, and most likely other detention facilities that we do not know about reveals a combination of all three of these impulses.⁹ Looking at these activities as punishment helps to establish the pattern and logic, and ultimate danger, of the violence.

One of the more interesting aspects about contemporary prisoner abuse by the United States is how it has come to be managed in relationship to the law. The U.S. administration has done everything in its power to define these activities as extralegal. Doing so will allow the state to plead for the clemency afforded by exceptionalism, and it also helps to make the case for the necessity of these actions. The central claim is that our current political situation is so dangerous that extralegal actions are necessary; however, the relationship can be reversed as well: the fact that we are doing extralegal actions must mean that our current political situation is exceptionally dangerous. Through the establishment of these extralegal channels, the administration simultaneously achieves a *carte blanche* to punish without any boundaries and can claim that these practices do not reflect our interpretation of the law, rights, or justice.

Though we have seen the suspension of the rule of law and the right of habeas corpus before in the United States with President Lincoln's startling assertions of executive war privilege, there are some new elements in this episode. The government has created a special area, Guantánamo Bay, where the United States can exercise sovereignty extraterritorially. The United States can do things to prisoners in these spaces that it would not be able to do on American soil. The government is separating the exercise of sovereignty from its boundaries of the nation-state, and whether this shall be a precedent or an exceptional circumstance remains to be seen. Since the Geneva Convention applies to prisoners of war, and fundamental political rights apply to prisoners within the United States, it would appear that international and domestic law would provide all the necessary protections to individuals. However, the special category "enemy combatant" allows for prison abuse to happen outside of normal legal channels. Through these administrative categories the state can engage in the abuse of prisoners without being in direct conflict with the law.

The legal maneuvers that make it possible to explain in complex detail why no laws have been broken, and why exactly these practices stand outside the United States' human rights record, may be technically correct. U.S. courts may continue to grant exceptional status to these practices, ironically enough, providing legal protection for these extralegal activities. But it is clear that world opinion does not accept that these images and activities are somehow exceptional and necessary. Instead, the detention facilities have come to represent the U.S.

government around the world. Furthermore, it is widely assumed that the abuses have official government sanction and reflect clear intention. In other words, unlawful detainment and prisoner abuse is regarded as state punishment by the world audience, and any state that punishes in such a manner is clearly unjust.

The prison abuse scandal and penal practices have damaged the reputation of the United States and limited its ability to serve as a check on other regimes' abuses. In March 2006, China took the unprecedented step of producing a rebuttal to Washington's annual report on human rights abuses that labeled China as one of the world's most systematic offenders against human rights. In its press release, China urged the United States to spend its energies examining its own problems, including the enormous incarcerated population, discrimination against minorities in the judicial process, and police and prison abuse. The report also mentioned the abuse of human rights by the U.S. government, "both in and outside the U.S.," referring to prisons and confinement centers in Iraq, Afghanistan, and Cuba.¹⁰

In Iraq, a public opinion survey completed in May 2004, just weeks after the photos of detainee abuse in Abu Ghraib were publicized, demonstrates that the scandal caused a rapid deterioration in the perceived legitimacy of American forces in Iraq. Sixty-one percent of those interviewed assumed no one would be punished for the abuse at all. Fifty-four percent of respondents assumed that "all Americans" behaved like the guards in Abu Ghraib who were responsible for the humiliation and deaths of detainees.

Soldiers too were profoundly affected by the scandal. It is important for military morale for soldiers to feel that their mission is just, that their sacrifices and privations are for a greater cause. As soon as the photos became widely circulated, surveys of the troops found that morale had dropped significantly. Soldiers in Iraq quickly recognized that these images of abuse would define the occupation in minds around the world. They fretted that all of the good work that had been done in Iraq was forgotten at the very least and completely undermined in some regard. How could they be confident that they stood for human rights, justice, moderation, and peace? The public's perception was also dramatically changed by the images of prisoner abuse. In a CNN/USA Today poll taken the week after the scandal broke, for the first time a majority of Americans expressed discomfort with our role in Iraq, and the majority felt that our mission was compromised.

World opinion sees the abuse of detainees as sanctioned by the U.S. government and hence perceives this as state punishment. Examining the transcripts of testimony taken from prisoners in Abu Ghraib and Guantánamo Bay, it becomes evident that there is good reason for the prisoners to experience abuse as pursuing both retributive and reformist logic. The prisoners who provided statements about their experiences in Abu Ghraib present them in terms of punishment. When Charles Graner beats, starves, and handcuffs one detainee, he responds by saying, "Then I told him I did not do anything to get punished this way so when I said that he hit me hard on my chest and he cuffed me to the window of the room about 5 hours and did not give me any food that day and I stayed without food for 24 hours."¹¹ Another detainee recounts a series of incidents with his guards as a series of invented punishments. "The first punishment was bringing me to Room #1, where they cuffed me high for 7 or 8 hours . . . And one day in November, they started different type of punishment, where as American Police came into my room and put the bag over my head."¹² They experience the treatment as having a rationale, a cause and effect. At times, even the Americans collecting the affidavits from prisoners and MPs in Abu Ghraib fall into the same terminology, for example asking about activities during "punishment time."

The detainees assume that their treatment is punishment that is administered for a reason. They were on the losing side of the war, the Americans do not like their religion, and their pain is a clear demonstration of the fact that they are now subject to American authority. Remarkably, virtually none of the affidavits mention that the MPs are asking them questions or trying to obtain information from them. Though the appeal for special powers rests upon the need to extract information, the abuse of prisoners does not seem to be consistently related to gathering information.

One striking element of the texts describing the abuse of prisoners at Abu Ghraib is the hostility toward the Islamic religion. Looking at the actions outside of their dubious relationship to the law, you can begin to see an unacknowledged logic at work. Their actions make it clear that religion is perceived as the barrier between these detainees and their acceptance of the power of the United States. In a memo concerning one prisoner in Abu Ghraib, the commanding officer Pappas provides the following assessment.

Detainee is at the point where he is resigned to the hope that Allah will see him through this episode in his life, therefore he sees no need to speak to interrogators. Detainee will not answer open-ended questions, has a smug attitude and is running counter approaches on interrogators. Detainee needs to be put in a position where he will feel that the only option to get out of jail is to speak with interrogators.¹³

Their treatment is meant to be rehabilitative, getting them to renounce their religion, to see that their God has failed them, and to change their perception of how the universe is ordered from a religious model to a secularized one. Over and over, guards worked to fundamentally restructure the belief systems of their detainees and have them accept American power as more fundamental than their religious belief. The Qur'an is sullied, specific rituals are denied, and regulations are broken including contact with women, forced grooming, and public nakedness.¹⁴ The punishments seem calculated to replace a belief in transcendental authority with an acceptance of worldly power. Punishment is the restructuring of perception, the inscription of cause and effect, and the demonstration of sovereignty. However, it is apparent that trying to force a conversion from the worldview of Job to that of Hobbes is counterproductive to say the least.

In another regard, the abuse can be seen as an attempt, not to produce reformation, but rather as deterrence. Terrorist attacks made the United States look and feel vulnerable. In order to prevent future terrorist attacks, it needs to demonstrate its might. Stated differently, the detentions and abuse may be a declaration of U.S. sovereignty in a Schmittian sense: the government suspends the law, not because it needs to, but to demonstrate that the U.S. government can, and will.¹⁵ The extraterritorial jurisdictions in Guantánamo Bay and the abuse in Afghanistan and Iraq might not only be about avoiding legal restrictions, but it may also be construed as a demonstration of the geographical expanse of American sovereignty.

The UN report on Guantánamo Bay observed that the U.S. military serves as "defense, judge, and executioner" in the cases of the detainees.¹⁶ The bizarre structure of legal proceedings, largely engineered with the help of the U.S. court system in response to challenges such as *Hamdi v. Rumsfeld*, almost seems determined to produce just

this impression of totalistic power. The policy on detentions and tolerance of prisoner abuse may not actually be aimed at extracting information, especially since torture produces only the most suspect knowledge in any circumstances, but rather the logic of deterrence. The images of abuse in Abu Ghraib and stories from Guantánamo Bay are contemporary equivalents of heads placed on spikes next to the fortress walls, all done in the name of a Leviathan unrestricted by territory.

Or this may be simply retribution. The prisoners assume that they are being punished in retaliation, and in some indirect sense, they are correct. The abuses in Abu Ghraib must be viewed in relation to the inability of occupying forces to exert control over the rest of the country. Several transcripts recounted that specific instances of abuse were presented as retaliation for roadside bombings and insurgent attacks on U.S. armed forces in Iraq. In February 2006, a Guantánamo Bay detainee stated in an interview with the BBC: "If anything bad happens to the United States anywhere in the world, they immediately react to us and treat us badly, like animals. It's understandable they would treat us that way."¹⁷ Lack of control outside these facilities leads the United States to exact revenge upon those vulnerable to its control. This impulse to revenge is palpable in Iraq, which is why the continued perception on the part of the American public that there was a direct connection between the terrorist attacks in New York and Washington and the invasion of Iraq is not as misguided as it initially appears.

The Abu Ghraib case demonstrates many of the elements of my theoretical discussion about sovereignty, perception, the rule of law, and the exercise of political power. The primary way that the state can punish and cause pain without appearing to be violent is to do so within the bounds of law. They will punish no more nor less than the letter of the law: in this way the state demonstrates it is rationally prescribed how they go about punishing, rather than being motivated by fear or anger. The spirit of punishment is presumably legal, not personal, and therefore the pain and violence is fundamentally different than the pain and violence inflicted by one individual or group of individuals upon others.

When punishment appears to go outside the bounds of law, a state can save face by proclaiming that the law was broken, and that those who broke the law will be punished. In doing this, they will stand for the rule of law, even persecuting those among their own ranks who fail. This is reminiscent of Machiavelli's counsel when it comes to using strict discipline to supplicate a given population. It may upon occasion

be necessary to use cruelty to supplicate an intransigent population. But Machiavelli wisely counsels that then the instrument of cruelty needs to be sacrificed. Cesare Borgia provides this example in *The Prince*.

And as he knew that the harshness of the past had engendered some amount of hatred, in order to purge the minds of the people and to win them over completely, he resolved to show that if any cruelty had taken place it was not by his orders, but through the harsh discipline of his minister. And having found the opportunity he had him cut in half and placed one morning in the public square at Cesena with a piece of wood and blood-stained knife by his side.¹⁸

In contrast, President Bush announced on May 20, 2005, that full justice had been done to the few miscreants in the service of the U.S. military, the day after yet another damaging report of prison abuse in Afghanistan had been leaked. "Regardless of rank, every person has been held accountable," he claimed. This assertion is belied by the fact that the commanding officer in charge of military interrogations at Abu Ghraib was issued a written reprimand.¹⁹ Others have noted that the Bush administration has actually rewarded those responsible for promoting the policies leading to the abuse. Some congressional representatives understand the symbolic importance of the handling of the prison abuse scandal. On June 22, several Republican and Democratic senators called for a congressional inquiry into prison abuse, stating, "we need to prove that we are a rule of law nation."²⁰

Though reform seems slow in coming, as the administration insists that these quasi-legal practices are necessary, nonetheless there is a new concern to at least appear as though the United States respects the rule of law in other regards. Since the prison abuse scandal broke, there has been more attention paid to whether soldiers are fighting according to the rules of engagement. "By any means necessary" is no longer acceptable, at least in front of the American public. There are points where the strength of the actions themselves can break through the interpretive model that is provided to situate them. The deployment of prisoner abuse photos and stories has accomplished this task. It has changed the frame of reference by which we understand the U.S. role in Iraq.

The need to assert our authority in relationship to the law is driven

by the context of the Iraq war. The United States invaded Iraq without the blessing of the United Nations. This invasion was largely predicated upon the failure of Hussein's regime to follow the rule of law; hence he was considered a danger to the world at large. Like the emergency suspension, our invasion was justified on the grounds that it would ultimately create a more stable international regime. In these circumstances it is particularly important to prove that our actions do fall within the bounds of international law.

In other circumstances, when the legitimacy and authority of a government's regime are not in question, there is no need to *demonstrate* adherence to the rule of law—it is taken as a given. This fact explains the divergence in public opinion between the prison abuse scandal in Iraq and the conditions in supermax prisons in the United States. Has anything happened at Abu Ghraib that would be unthinkable in a maximum-security prison in the United States? The sexual sadism, the humiliation, deprivation, humiliation? Charles Graner worked as a guard in a prison in the United States before being sent to Iraq. We can watch degradation and torture within our native penal system depicted in gruesome detail on cable television in shows such as *Oz*, but that is normalized within our own expectation of criminality and punishment in the United States. Many people have a fascination with the violence, sexual sadism, health problems, and denial of humanity involved in prison life in the United States. Reports of inmates being beaten to death, raped, dying from lack of health care, and even used in battles in *Gladiator Days* in California prisons are shocking, but routine. To then have the same group of people announce that they are appalled to find that such things happen in prisons run by the United States abroad is surprising indeed.

Whether the shock of seeing such displays of governmental power abroad will encourage American citizens to question what they take as a given at home remains to be seen. The audience of world opinion has certainly brought a new element to considerations of American practices of punishment, just as it did in More's utopian treatise. If pressure from Europe and China continues, extending from punitive practices abroad to those at home, we might see a renewed perception on the part of the American public that could spur reform.

The actions of the U.S. government and its agents in detaining suspects and torturing prisoners can be understood in no other terms except using punishment to demonstrate the power of command. Yet

what distinguishes this demonstration of power is that the government is using punishment to create command over citizens of other countries. This surely exceeds the boundaries of what can be considered appropriate expressions of power. But these incidents also demonstrate why using state punishment to try to create the power of command is particularly disastrous. Just as Arendt explained, authority is strongest when it has no need to draw attention to itself or defend its exercise. Here, the U.S. government uses punishment to visibly and forcibly order what it experiences as a chaotic world, yet it only succeeds in creating ever more disorder.

This growing resistance to assertions of U.S. power means that I can end this book on an optimistic note, even though current policies offer little hope for immediate redemption. The promise of political order is a harmonious balance between the concentration of human capacities in the development of government and the circumscription of these powers by ideals and principles. History presents countless examples of regimes that have failed to maintain this balance, generally favoring the exercise of power over adherence to a set of ideals. It seems it is particularly tempting to violate this balance in conducting state punishment, as the recipients have so little power or sympathy. Abusing this prerogative has consistently disastrous effects for a regime, however. History shows that no political regime has been able to balance the requirements of power and justice perfectly, but it also demonstrates a persistent resistance to state injustice on the part of subjects. When states give in to the temptations of power and punish merely for the sake of command, punishment may sow obedience but will ultimately reap resistance.

