Introduction: Law, text, terror

On 11 September 2001, two hijacked planes crashed into the Twin Towers in New York killing three thousand. A terrorist organisation, hitherto largely unknown outside security circles, claimed responsibility. Nineteen 'martyrs' of Al-Qaeda had carried out the attack. It was designed to bring nihilistic violence to the forefront of the American psyche, and that of its allies. It was designed to terrify, to obsess us, to lead us, perhaps, into abandoning centuries of jurisprudence, to abandoning our faith in the powers of reason, and the political ideas of liberty, tolerance and justice. It succeeded.[1] And it was designed to hurt. It hurt, most obviously, those who suffered loss, the families and friends of victims of the initial strike. But it was also designed to hurt a potentially infinite number of others; all those who would become victims of the counter-terrorist response which, or so it was fervently hoped by those who planned the events of 9/11, would be launched.

And, once again, it has. Seduced by our political leaders, betrayed by our own deeper insecurities, we have developed a peculiar 'tolerance of nonsense'.[2] And so, in pursuit of something termed a 'war on terror', and with scant regard to any associated provisions of international law, US and British forces have invaded two far-away Islamic countries, Afghanistan and Iraq, laying waste to both.[3] Anarchy has ensued. Collateral violence has been spawned in much of the rest of the region, most obviously Pakistan, Lebanon and various former Soviet republics. Thousands of allied military personnel have died, tens of thousands of Afghans and Iraqis, Pakistanis and Palestinians, Chechens and Kurds. We will never know the exact number; just as we will never know the exact number of women raped, and children maimed.

[1] See M. Amis, *The Second Plane* (Jonathan Cape, 2008), 7, reaching precisely the same conclusion. If a criterion of success rests in the extent to which we have allowed ourselves to be terrified far beyond reason, then the mission to destroy the Twin Towers was an unalloyed success.

[2] See Amis, *Plane*, 198, for this assertion.

[3] For a comment on the 'chain of events' which has unfolded following 9/11, see A. Chaskalson, 'The Widening Gyre: Counter-Terrorism, Human Rights and the Rule of Law', *Cambridge Law Journal*, 67 (2008), 72.

The 'war on terror' continues. So does the terror. Whilst this is not, at first instance, a book about the 'war on terror' or 9/11, it can now only be read in this immediate context.[4] Any study of terrorism is written in the shadows of this 'gigantic abreaction', as Jean Baudrillard rather fantastically calls it.[5] We live in a long shadow, and we write in it too. This book, the more particular aspiration of which is to explore the historically and conceptually fraught relation of law, literature and terrorism, cannot escape this shadow. Terrorism is evasive, maddeningly so. Its primary strategy is dissimulation. It seeks to entrance us, so that we might be deluded into thinking it is something much more than it really is.[6] Susan Faludi has recently written about the 'terror dream' in which contemporary America continues to 'walk', and the 'kind of cultural hypnosis' which appears to have afflicted us all.[7] And, critically, it evades definition. And it seems to evade the law; or at least so our political leaders would have us believe. And we, or a substantial number of us it seems, are willing to accept this. We are terrified, not just by the rhetoric of terrorism, but by the rhetoric of counter-terrorism too. We shall revisit this rhetoric in the first part of this Introduction, before doing so again in subsequent chapters.

This is, then, a book about terrorism, and about counter-terrorist strategy, about the relation of law and terror, the limitations of the former, the elusiveness of the latter. But more precisely still, it is about the extent to which the related tensions that exist in the jurisprudential discourse of terrorism might be better comprehended in an interdisciplinary context framed by the particular relation of literature, terror and justice. The possibilities which this particularly inter-disciplinary strategy presents will be introduced in the final part of this Introduction. First, however, we need to get a better sense of the nature of the discourse of 9/11, and the impact it has had upon current debates surrounding the extent to which law can or cannot respond to the challenges it presents. We live, we are told, in an 'age of terror'. We certainly live in an age when we are supposed to be terrified. But what, really, does this mean?

The age of hysteria

The rhetoric of terrorism and counter-terrorism, post-9/11, is all-consuming. It seeks to persuade us that our lives will never be the same again.[8] Terrorism is

[4] For a similar suggestion, see D. Held, 'Violence, Law, and Justice in a Global Age', *Constellations*, 9 (2002), 79.

[5] J. Baudrillard, *The Spirit of Terrorism* (Verso, 2003), 4–5, 73–4.

[6] Amis presents two statistics, both equally shocking, and equally revealing. 85% of American troops currently engaged in Iraq believe that Saddam Hussein was responsible for the attack on the Twin Towers. 42% think it was, in fact, the US government itself. Cited in Amis, *Plane*, at 139–40.

[7] S. Faludi, *The Terror Dream: Fear and Fantasy in Post-9/11 America* (Metropolitan Books, 2007), 2. Amis plays with an associated metaphor, suggesting that 9/11 'loosened the ground between reality and delirium'. See his *Plane*, at 206.

[8] Rhetoric 'designed', as Eric Hobsbawn puts it pithily, 'to make the flesh of the citizens creep rather than help fight terror'. See his *Globalisation, Democracy and Terrorism* (Little Brown, 2007), 150–1.

an ultimate expression, something which in its aesthetic form Enlightenment *philosophes* presented as the sublime. We shall encounter such expressions in Chapter 1. Ours is an 'Age of Terror', because we are told it is, and because we tend to believe the rhetoric; one which, we are further assured, post-9/11, lays waste to all the cosy complacencies of liberal democratic politics, and its law.[9] It is part of a wider descent into an age of 'global anarchy'.[10] Ours is, therefore, also a 'new' terrorism, far more terrifying than any terrorism that has gone before.[11] We should be terrified, the logic proceeds, we are right to be terrified. The future is bleak.

It finds a harrowing depiction in J.G. Ballard's novel *Millennium People*. Of all the contributions to the emergent post-9/11 'genre', Ballard's portrayal of our shared fate, terrorist and counter-terrorist alike, as 'apostles' of a 'new kind of alienation', best captures the intensely pessimistic mood of so many who presently presume to chart our future.[12] Of all the terrors that a terrorist act insinuates, the possibility that it conceals nothing at all, that it is wholly devoid of meaning, is perhaps the most terrifying of all.[13] Martin Amis touches upon the same supposition when he suggests that the 'age of terror' might, in time, also be remembered as an age of 'superboredom, rounding out and complementing the superterror of suicide-mass murder'.[14] The familiar Conradian metaphor has never resonated more terrifyingly. The 'heart of darkness' has finally possessed the middle-class psyche, and is to be found, as Ballard puts it, not in late nineteenth-century Africa, but in early twenty-first-century Twickenham and Chelsea Quays.[15] For many, like Ballard, Conrad is not just the chronicler of modern terrorism, but also its most prescient prophet. We shall revisit these particular chronicles and prophesies in Chapter 5.

[9] See W. Bradford, '"The Duty to Defend Them": A Natural Law Justification for the Bush Doctrine of Preventive War', *Notre Dame Law Review*, 79 (2004), 1365.

[10] See B. Barber, *Fear's Empire: War, Terrorism and Democracy* (Norton, 2004), 87, adding at 92, that 'terror is the apotheosis of international anarchy'.

[11] For sceptical commentaries on the extent to which contemporary experiences of Al-Qaeda terrorism are somehow distinctively 'new', still less any more terrifying than previous instances of terrorist activity, see I. Duyvesteyn, 'How New is the New Terrorism?' *Studies in Conflict and Terrorism*, 27 (2004), particularly 449–51, and M. Stohl, 'Old Myths, New Fantasies and the Enduring Realities of Terrorism', *Critical Studies on Terrorism*, 1 (2008), 11–14.

[12] J. Ballard, *Millennium People* (HarperCollins, 2004), 136.

[13] Something which, of course, imports the ever more frantic desire to fantasise some kind of meaning. See B. Durodie, 'Fear and Terror in a Post-Political Age', *Government and Opposition*, 42 (2007), 430, 441.

[14] Amis, *Plane*, 77, and also 108, 'whatever else terrorism' has 'achieved in the past few decades', it has 'certainly brought about a net increase in boredom'. The latter observation is couched in the context of airport security checks, but retains, for very obvious reasons, a wider resonance.

[15] Ballard, *Millennium People*, 84. The Conradian theme finds its most acute expression in the comments of his Nietzschean protagonist Gould. 'In his despairing and psychopathic way', Ballard concludes, at 292, 'Richard Gould's motives were honourable. He was trying to find meaning in the most meaningless times, the first of a new kind of desperate man who refuses to bow before the arrogance of existence and the tyranny of space-time'.

Meanwhile, all we can do for now is await the irresistible and 'devastating storm' of 'megaterrorism' that approaches.[16] Terrorism, we are advised, is now 'all-invasive', affecting all our lives, either directly, for the tragic few, or indirectly, for the rest of us.[17] The 'grammar of political terror' has changed. Ideology has gone, and in its place can be found an 'apocalyptic kind' of 'transcendental nihilism'; a future which again finds an acute expression in Ballard's novel, a prospective history that can only be defined by necessarily random 'meaningless acts'.[18] The apocalyptic fascinates us, the apparent potential of 'hyperterrorism' and 'technoscience' to obliterate us all.[19] And so we live in an age of terror, not because we are likely to be obliterated, but because we are entranced by the possibility, however remote.[20] And so we wait, thrilled and terrified in equal measure; for as Alfred Hitchcock shrewdly observed, 'There is no terror in a bang, only in the anticipation of one'.[21]

We are also, very clearly, living an age of hyperbole. 9/11, Amis opines, represents a 'massive geohistorical jolt, which will reverberate for centuries'.[22]

[16] W. Lacqueur, *The New Terrorism: Fanaticism and the Arms of Mass Destruction* (Oxford University Press, 1999), 282.

[17] So concluded Xavier Raufer, writing before 9/11. See his 'New World Disorder, New Terrorisms: New Threats for Europe and the Western World', *Terrorism and Political Violence*, 11 (1999), 30, and 37, observing that terrorist threats are, in their modern form, 'a lot more than fuzzy silhouettes in hazy far-away lands'. Charles Webel cites research in the *New England Journal of Medicine* which revealed the extent to which the impact of 9/11 had caused serious degrees of stress and anxiety amongst the wider population of America. Of those interviewed, 44% suggested that they experienced 'substantial symptoms' of 9/11-related stress, 90% admitted to suffering some degree of stress. See C. Webel, *Terror, Terrorism and the Human Condition* (Palgrave, 2004), 6–7.

[18] Ballard, *Millennium People*, 139–40.

[19] See J. Schell, *The Unconquerable World: Power, Nonviolence and the Will of the People* (Penguin, 2003), 5; M. Cusimano, 'Globalization, Ethics, and the War on Terrorism', *Notre Dame Journal of Law, Ethics and Public Policy*, 16 (2002), 66, 77; Raufer, 'New World Disorder', 30–51; and T. Homer-Dixon, 'The Rise of Complex Terrorism', *Foreign Policy* (Jan/Feb 2002), 52–62, emphasising the fact that the Twin Towers collapsed in approximately 15 seconds each, a tribute, albeit a perverse one, to the destructive capacity of modern technology. Speaking to the relation of modern terrorism and technology, Benjamin Barber puts it succinctly. Without the internet and global credit card facilities, bin Laden would have been 'reduced to throwing stones at local sheiks'. See his 'Democracy and Terror in the Era of Jihad and McWorld' in K. Booth and T. Dunne (eds.) *Worlds in Collision: Terror and the Power of Global Order* (Palgrave, 2002), 249.

[20] For a commentary on the extent to which we fail to comprehend just how remote is the danger of experiencing a terrorist attack, see R. Jackson, 'Constructing Enemies: Islamic Terrorism in Political and Academic Discourse', *Government and Opposition*, 42 (2007), 419, concluding that the possibility can be most accurately termed 'minuscule', and also J. Zulaika and W. Douglass, 'The Terrorist Subject: Terrorism Studies and the Absent Subjectivity', *Critical Studies on Terrorism*, 1 (2008), 30–1, noting the statistic that we are, each of us, as likely to die from the impact of a falling asteroid as we are as a result of a terrorist bomb.

[21] In L. Freedman, 'Terrorism as Strategy', *Government and Opposition*, 42 (2007), 320. For a recent affirmation of this simple truth, one which deploys a cinematic metaphor, see A. Guelke, 'Great Whites, Paedophiles and Terrorists: the Need for Critical Thinking in a New Age of Fear', *Critical Studies on Terrorism*, 1 (2008), 21–3. Fear is something that producers, terrorist or counter-terrorist, 'produce'.

[22] Amis, *Plane*, 22.

The 'fates of each one of us, our species as a whole' might 'depend' on our 'collective ability, or inability, to come to terms with terror' and terrorism.[23] It is the 'defining issue of our age'.[24] The 'spirit of the laws', moreover, itself is at stake.[25] Rarely given to understatement, Jean Baudrillard announces that the 'Whole play of history and power is disrupted by this event', and so too are the 'conditions of analysis'. 9/11 has awakened the 'terroristic imagination that dwells in all of us'; a supposition which is intended to insinuate a common reaction against the twin tyrannies of US hegemony and globalisation.[26] We are condemned, he comments, without any apparent sense of irony, to live in an age of fantastical 'hysteria'.[27]

Certainly the target of 9/11 was not coincidental.[28] The cultural context aligns with the economic. The Islamic terrorist, Baudrillard continues, is an 'antibody' of globalisation.[29] 9/11, we are told, represents the 'dark side of globalization', its mutant 'offspring', a glimpse, moreover, of a forbidding future.[30] John Gray invokes the spectre of a coming age of 'Hobbesian anarchy'.[31] Amis contemplates

[23] See Webel, *Terror*, 2, and also 99.

[24] A. Dershowitz, *Why Terrorism Works: Understanding the Threat, Responding to the Challenge* (Yale University Press, 2002), 11–12. A similar question is articulated by Dominic McGoldrick at the outset of his *From '9–11' to the Iraq War 2003*, (Hart, 2004), 1–2.

[25] H. Koh, 'The Spirit of the Laws', *Harvard International Law Journal*, 43 (2002), 23–4.

[26] Baudrillard, *Spirit of Terrorism*, 4–5, 73–4. A similar insinuation can be found in Slavoj Zizek's suggestion that such violence is necessary in order to shake people 'out of their ideological numbness, their hypnotic consumerist state'. See his *Welcome to the Desert of the Real* (Verso, 2002), 9.

[27] Baudrillard, *Spirit of Terrorism*, 33.

[28] See M. Rasmussen, 'A Parallel Globalization of Terror: 9–11, Security and Globalization', *Cooperation and Conflict*, 37 (2002), 324, suggesting that the World Trade Centre had become 'a scale model of a globalized world, and the fact that the twin towers fell represented the vulnerability of the world order defined by globalization'. And also Amis, *Plane*, 4–5, engaging the same supposition.

[29] Baudrillard, *Spirit of Terrorism*, 3, 11–2, 21, 37, 87–91.

[30] The critical literature here is considerable. See variously A. Heller, '9/11, or Modernity and Terror', *Constellations*, 9 (2002), 55; J. Urry, *Global Complexity* (Polity, 2003), 7–8; Jacques Derrida's comments in 'A Dialogue with Jacques Derrida' in G. Borradori (ed.), *Philosophy in a Time of Terror: Dialogues with Juergen Habermas and Jacques Derrida* (Chicago University Press, 2003), 96–7; F. Megret, 'Justice in Times of Violence', *European Journal of International Law*, 14 (2003), 332; Rasmussen, 'Parallel Globalization', 327; W. Sofsky, *Violence: Terrorism, Genocide and War* (Granta, 2003), 150; and also C. Douzinas, 'Postmodern Just Wars: Kosovo, Afghanistan and the New World Order' in J. Strawson (ed.), *Law After Ground Zero* (Glasshouse, 2002), particularly 20–1, 32. For a compelling, if controversial, account of a post-modern world order, see B. de Sousa Santos, *Towards a New Common Sense: Law, Science and Politics in Paradigmatic Transition* (Routledge, London, 1995).

[31] J. Gray, *Al-Qaeda: and What it Means to be Modern* (Faber and Faber, 2003), 1–2, 21, 73–5, 84. A similar sentiment can be found in R. Cooper, *The Breaking of Nations: Order and Chaos in the Twenty-First Century* (Atlantic Books, London, 2003), vii–ix, 70. The Hobbesian allusion finds an obvious echo in the distinction between the idealistic Europeans and the pragmatic Americans which lies at heart of Robert Kagan's analysis of contemporary international relations. See his *Paradise and Power: America and Europe in the New World Order* (Atlantic Books, 2003), particularly 55–7, 73–6.

a 'day of de-Enlightenment'.[32] '9/11' has itself become a semiotic, a symbol of this rupture, a 'day', to use the language coined by the US National Commission on Terrorism, 'of unprecedented shock and suffering'.[33] According to Norman Mailer, '9/11 is one of those events that will never fade out of our history, for it was not only a cataclysmic disaster but a symbol, gargantuan and mysterious, of we know not what, an obsession that will return through decades to come'.[34] At a deeper, no less troubling level, the collapse of the Twin Towers is taken to be a semiotic for the 'abject nature of our dying culture', a bolt of lightning that revealed all the 'profound fissures and cleavages' that threaten to tear our world asunder.[35] 'Something terrible happened on September 11', an agonised Jacques Derrida opines, and in the end we 'don't know what'.[36] But we are not short of opinions, particularly scary ones.

Politicians, of course, live by hyperbole. President Bush warned of a 'lengthy campaign' against terrorism, one that will dictate whether 'civilisation' can defeat the forces of 'evil'. It will be the defining battle for 'progress and pluralism, tolerance and freedom'.[37] In similar tones former German Chancellor Schroeder confirmed that 9/11 represented a 'declaration of war against all of civilization'.[38] The idea of an apparently indefinite 'war' against terrorism has taken hold.[39] 'We are at war, and it is a world war' according to one senior US military official.[40] America must engage a 'new set of totalitarian enemies' intones Vice-President Cheney.[41] 'Either you are with us, or you are with the terrorists', the President warned the world nine days later. There were no longer any 'shades of grey'.[42] In his State of the Union address to Congress in early 2003, Bush famously described an 'axis of Evil, aiming to threaten the peace of the World'. And somewhere between the co-ordinates of the axis could be

[32] Amis, *Plane*, 13.
[33] Quoted in C. Walker, 'Prisoners of "War All The Time"', *European Human Rights Law Review*, 1 (2005), 50.
[34] N. Mailer, *Why Are We At War?* (Random House, 2003), 4.
[35] See Baudrillard, *Spirit of Terrorism*, 64, and also F. Dallmayr, 'Lessons of September 11', *Theory, Culture & Society*, 19 (2002), 137.
[36] Derrida, 'Dialogue', 87. A similar sentiment is articulated by Ulrich Beck, in 'The Terrorist Threat: World Risk Society Revisited', *Theory, Culture & Society*, 19 (2002), at 39.
[37] In McGoldrick, *From 9–11*, 11. [38] In Rasmussen, 'Parallel Globalization', 333.
[39] See J. Fitzpatrick, 'Speaking Law to Power: The War Against Terrorism and Human Rights', *European Journal of International Law*, 14 (2003), at 244, commenting on the 'truly unprecedented' nature of this claim. A similar sentiment is articulated by David Williams, who muses on a 'growing appreciation of the seemingly endless drift of terrorist activity into the future', in 'The United Kingdom's Response to International Terrorism', *Indiana International and Comparative Law Review*, 13 (2003), at 683.
[40] In R. Jackson, *Writing the War on Terrorism: Language, Politics and Counter-Terrorism* (Manchester University Press, 2005), 9. See G. Achcar, *The Clash of Barbarisms: The Making of the New World Disorder* (Saqi, 2006), 27, ridiculing such a suggestion.
[41] In Jackson, *Writing*, 46.
[42] In Jackson, *Writing*, 86–7. For critical commentary, see Barber, *Fear's Empire*, 17–18, and C. Merill, 'A Kind of Solution', *Virginia Quarterly Review*, 80 (2004), 68–9. For the Schmittian echo, see Zizek, *Desert*, 109–11.

found the terrorists, 'them', the 'other'. The world must choose, Bush re-asserted, either to be 'with us or against us'.[43]

Perspective can help; but not that much.[44] Statistics are cold.[45] Three thousand died on 9/11; more American troops have since died in Iraq in the futile pursuit of an illusory 'war on terror', and still more will follow.[46] There were fifty times as many victims of the tsunamis in the Indian Ocean in 2004. Each year, 3,000 American women are killed by abusive husbands.[47] Each day, around the world, more than 20,000 die of starvation.[48] In Africa alone 3,000 children die each day from malaria.[49] But there is nothing particularly fascinating or thrilling about drowning or starving, and no one seems particularly inclined to go to war against easily preventable diseases. In a world of impressions and rhetorical frenzy, cold facts are of limited value. Hyperbole devours perspective.[50] The discourse of terrorism today is an apocalyptic one; both terrorists and counter-terrorists prefer it that way.[51]

History provides further context.[52] We shall in ensuing chapters encounter similar hyperbole stretching back to classical Greece. More contemporary history provides a further, and slightly different, context. A decade earlier, we had been advised that a 'new world order' heralded an age of 'perpetual peace'. The great Enlightenment prophesies, Kantian or Hegelian by turn, were supposed to have come to pass, at long last. The 'end of history', famously, was

[43] In K. Hayward and W. Morrison, 'Locating Ground Zero: Caught Between Narratives of Crime and War' in Strawson, *Ground Zero*, 153.

[44] As Zulaika and Douglass observe, America is a country where in excess of 100,000 are murdered each year, and where, between 1974 and 1994, more people died each year of bee-stings than as a result of any terrorist-related events. See J. Zulaika and W. Douglass, *Terror and Taboo: The Follies, Fables and Faces of Terrorism* (Routledge, 1996), 6.

[45] For a suggestive set of such statistical comparators, see S. Marks, 'Branding the War on Terror: Is There a New Paradigm of International Law?', *Michigan State Journal of International Law*, 14 (2006), 73.

[46] See J. Gray, *Black Mass: Apocalyptic Religion and the Death of Utopia* (Penguin, 2007), 157.

[47] See C. MacKinnon, *Are Women Human? And Other International Dialogues* (Harvard University Press, 2006), 260–1, and also 274, referring to a 'systematic slaughter built into everyday life'.

[48] See T. Honderich, *Terrorism for Humanity: Inquiries in Political Philosophy* (Pluto, 2003), 23–4, 54–6.

[49] A disease which, in strictly medical terms, is easily preventable. For this statistic, see P. Hoffman, 'Human Rights and Terrorism', *Human Rights Quarterly*, 26 (2004), 953.

[50] Walter Lacqueur suggests that 'perhaps no other topic in our time has provoked such violent emotions'. See his *No End to War* (Continuum, 2004), 8.

[51] For this accusation, see Zulaika and Douglass, *Terror*, 30, and also T. Kapitan, 'The Terrorism of "Terrorism"' in J. Sterba (ed.), *Terrorism and International Justice* (Oxford University Press, 2003), 53.

[52] The literature here is again vast. See, for example, Sterba, 'Introduction' in Sterba, *Terrorism*, 2–3; Webel, *Terror*, 16–17; B. Ackerman, *Before the Next Attack: Preserving Civil Liberties in an Age of Terrorism* (Yale University Press, 2006), 170; W. Lacqueur, *Terrorism* (Weidenfeld & Nicolson, 1977), 3–22; Megret, 'Justice', 328; C. Bassiouni, 'Legal Control of International Terrorism: A Policy-Oriented Assessment', *Harvard International Law Journal*, 43 (2002), 83; Hoffman, 'Human Rights', 932–3; and most recently Guelke, 'Great Whites', 18–21.

announced.[53] In his 1991 State of the Union address, the first President Bush described a 'new world order – where diverse nations are drawn together in common cause, to achieve the universal aspirations of mankind: peace and security, freedom and the rule of law'. It was, the President confirmed, a very 'big idea'.[54] Indeed.

Unfortunately, a decade later the optimism has rather vanished.[55] The pessimist is vindicated. 'Violence', we are told, is 'the result of our specific humanity', moments of peace merely transient interludes.[56] The decade anticipated by Francis Fukuyama's fantastical provenance has proved to be no less brutal than most of its predecessors, a decade of extremes; to quote Derrida, of extreme 'violence, inequality, exclusion, famine'.[57] We are presently trapped amidst an age of unprecedented violence, one that is stripping to the bones all our pretences to reason, progress and civilisation.[58] Terrorism is a 'metaphor' for the 'revolutionary' challenges of globalisation, its apparent vitality 'emblematic' of shattered hopes, an expression of the 'paradox of humanitarianism drowned in human disaster'.[59] The irony is immediate; the abrupt end of the 'end of history'. The 'most devastating act of terrorism in history' represents the symbolic moment when modernity itself 'ended'.[60]

In the perception of many, far too many, particularly outside America, the 'new world order' has morphed into a new US imperialism, whilst terrorism, especially the terrorism of militant Islam, has emerged as a virulent allergic response.[61] Responses to 9/11 merely serve to confirm this suspicion.[62] Most obvious is the National Security Strategy, or 'Bush Doctrine', an expression of

[53] Most famously of all by Francis Fukuyama. See *The End of History and the Last Man* (Penguin, London, 1992), xi–ii, 13–18.

[54] See H. Koh, 'On American Exceptionalism', *Stanford Law Review*, 55 (2003), 1498–9, and also I. Ward, *Justice, Humanity and the New World Order* (Ashgate, 2003), 73.

[55] Paradoxically, the 'end' of such naïve optimism had been long foretold, finding an original expression in Albert Camus's observation, in 1946, that 'our time marks the end of ideologies, that is, absolute utopias which in reality destroy themselves'. See R. Jacoby, *The End of Utopia: Politics and Culture in an Age of Apathy* (Basic Books, 1999), xi, 3, 155–8. For similar conclusions, see D. Archibugi and I. Young, 'Envisioning a Global Rule of Law' in Sterba, *Terrorism*, 160–1, and Hobsbawn, *Globalisation*, 83–9, 124–9. The suggestion was also famously echoed in Martin Heidegger's proclamation that philosophy itself had come to an 'end'. See M. Heidegger, 'The End of Philosophy and the Task of Thinking' in D. Krell (ed.), *Basic Writings* (Harper & Row, 1972), 374–8, 387–91.

[56] Sofsky, *Violence*, 7. [57] J. Derrida, *Specters of Marx* (Routledge, 1994), 85.

[58] Sofsky, *Violence*, 61, 65.

[59] See G. Hart, *The Fourth Power: A Grand Strategy for the United States in the Twenty-First Century* (Oxford University Press, 2004), 5–7, 19–20, 65–6, 109; Douzinas, 'Kosovo', 20; and also Zulaika and Douglass, *Terror*, 186, 228.

[60] See G. Borradori, 'Introduction' in Borradori, *Philosophy*, 1–20, and also Jonathan Schell commenting that the 'burning towers of 2001 eclipsed the broken wall of 1989', in his *World*, at 6.

[61] See A. Soueif, *Mezzaterra: Fragments from the Common Ground* (Anchor, 2004), 10–11 articulating the common Islamic view that the rhetoric of the 'new world order' was always intended to be a mask for a 'new American century'. For a caustic critique of US imperialism, and the myth of 'Pax Americana', see Hobsbawn, *Globalisation*, 54–61.

[62] For the particular impact of 9–11, see Archibugi and Young, 'Envisioning', 160–1.

US 'exceptionalism', and the quasi-legal authority for the 'war against terror'.[63] Arguments regarding the legal efficacy of this 'war' continue, just as do those which test the novelty of the unilateralism of which it is an expression.[64] The Bush administration has tended to pronounce a more visceral justification.[65] Thomas Friedman puts it bluntly. Regardless of the legal shadow-boxing, post 9/11, the US 'needed to hit someone in the Arab-Muslim world', to flex a little muscle and vent a little spleen.[66] Looking back more than a year after 9/11, the *Washington Post* was prosaic. 'All you need to know' was that 'there was a before 9/11, and there was an after 9/11'. And, it continued, 'After 9/11 the gloves came off'.[67] It was a time, as the *Chicago Tribune* confirmed, when it was 'Ok to let boys be boys again'; untrammelled by the twin restrictions of uppity women and irritating human rights conventions.[68]

Opposition to the 'war on terror' has been louder, though not always much louder, in Europe. The 'American administration is now a bloodthirsty wild animal', Harold Pinter declaims, 'Bombs are its only vocabulary'.[69] A counter-terrorist strategy of 'shock and awe' is representative of a further descent into a pervasive global 'barbarism'.[70] Baudrillard is again acerbic. Americans, he

[63] State Department Policy Director Richard Haass preferred the phrase '*a la carte* multilateralism', in P. Sands, *Lawless World: America and the Making and Breaking of Global Rules* (Penguin, 2005), 20. Either way, the 'war against terror' is not, of course, the only expression of this *a la carte* approach to foreign policy. Precedents can be found in a refusal to lend support to the Kyoto Protocol, the Anti-Ballistic Missile Treaty or the Test-Ban Treaty, or the International Criminal Court. A notorious example of the US's equivocal attitude to international law can be found in its response to the judgement of the International Court of Justice in the *Nicaragua* case. As far back as 1994, then Secretary of State Albright confirmed that the US would, henceforth, act multilaterally where possible, unilaterally where 'necessary'. For a commentary on Albright's observation, see T. Franck, 'The Use of Force in International Law', *Tulane Journal of International and Comparative Law*, 11 (2003), 10–11. See also Miriam Sapiro, 'Iraq: the Shifting Sands of Preemptive Self-Defence', *American Journal of International Law*, 97 (2003), 599, suggesting that the doctrine rose 'like a phoenix from the ashes' after 9/11.

[64] See M. Walzer, *Arguing About War* (Yale University Press, 2004), xiv, 88–91, 137–8, 160, seeking to present a theoretical justification for the war against terror as a 'just war'. Such wars, Walzer asserts, must be limited, and directed against credible threats, and fought in aid of legal and moral principle. Accordingly, he is prepared to sanction the Afghan war in these terms, but not the Iraqi. For the suggestion that unilateralism has always characterised US foreign policy, see also Barber, *Fear's Empire*, 75, 79.

[65] See Barber, *Fear's Empire*, 114, noting that no one in the Bush administration has ever invoked a 'just war' defence.

[66] In A. Paulus, 'The War Against Iraq and the Future of International Law: Hegemony or Pluralism?', *Michigan Journal of International Law*, 25 (2004), 695. Martin Amis deploys the same metaphor, commenting on the appearance of President Bush as a 'man in the bar who isn't going anywhere until he has had his fist fight'. See his *Plane*, 151.

[67] Quoted in J. Steyn, 'Guantanamo Bay: The Legal Black Hole', *International and Comparative Law Quarterly*, 53 (2004), 8. And the purses opened too. During the following two years, over $100 billion was spent, in part funding the salaries of 40,000 employees in a revamped Department of Homeland Security. See Jackson *Writing*, 15.

[68] See Faludi, *Dream*, 77.

[69] In Mailer, *Why*, 43, also quoting the similar observation of John le Carre, that the US has 'entered one of its periods of historic madness'.

[70] See Barber, *Fear's Empire*, 21, and Achcar, *Barbarisms*, 67, 104–5.

suggests with a deceptive simplicity, have 'fomented all this violence', and have thus brought about their own trauma. Terror has assumed its inherently 'asymmetrical' form. At some level, he insinuates, whilst 'we can say that they did it … we wished for it'.[71] Preferring to recast the blame in conceptual terms, Ulrich Beck is similarly unsentimental. The 'horrible pictures' burnt into our collective memories of 9/11 'contain a message: a state can neo-liberalise itself to death'.[72]

Jacques Derrida dances more nimbly around the sentimentality. But the conclusion is much the same. 'My unconditional compassion, addressed at the victims of September 11, does not prevent me from saying aloud: with regard to this crime, I do not believe that anyone is politically guiltless'.[73] There is an obvious ethical edge here; one to which we will return in due course. Indeed, we shall encounter similar sentiments, similar anxieties, throughout subsequent chapters; ever more intense the greater the shock and the awe, and the more readily the very principles which are supposed to be under threat from terrorists, such as liberty, democracy and the rule of law, appear to be compromised by the so-called 'war on terror'.

The limits of law

All this matters, not just because it sets the tone for current discussions of terrorism, but because it establishes the necessarily depressive mood within which jurists presently stumble towards some kind of legal response. Not everyone is depressed, of course. There is a tangible sense of excitement in President George W. Bush's declaration, 'I don't care what the international lawyer says we are going to kick some ass'. Ours, he confirms, is a world 'without rules'; a view, and a metaphor, which found ready echo and favour across the Atlantic in London.[74] There would be no more 'siding with the arseholes', as Under-Secretary of Defence Feith confirmed, revealing a less than respectful view of the legal profession.[75] The sentiment finds a more sombre echo in the advice of the US Ambassador for War Crimes, that ours is a 'changed world', one which

[71] Baudrillard, *Spirit of Terrorism*, 5, 9, 15. For a similar sentiment, from within America, see N. Chomsky, *9–11*, (Seven Stories Press, 2002), 12, 61 and *Hegemony or Survival: America's Quest for Global Dominance* (Penguin, 2003), 51–61, suggesting that 9/11 can be seen, accordingly, as a 'blowback' against decades of US-sponsored terrorism across the globe. A similar tone can be discerned in Ariel Dorfman's *Other Septembers, Many Americas: Selected Provocations 1980–2004*, (Pluto, 2004), xii–vi and 8–14. It can also be seen in Kenneth McKenzie's observation, quoted in Achcar, *Barbarisms*, at 157, that anti-US terrorism might be cast as the 'revenge of the Melians'. We shall encounter the Melians again in shortly.

[72] Beck, 'Terrorist Threat', 47. [73] In Zizek, *Desert*, 57.

[74] In Sands, *Lawless World*, 174 and McGoldrick, *9–11*, 87. For the London echo, articulated most immediately by Prime Minister Blair, in his 2005 declaration 'Let no one be in any doubt, the rules of the game are changing', see C. Walker, 'The Treatment of Foreign Terror Suspects', *Modern Law Review*, 70 (2007), 427.

[75] Quoted in P. Sands, *Torture Team: Deception, Cruelty and the Compromise of Law* (Penguin, 2008), 126.