Suppose we overhaul our response to crime so that the emphasis is on the offender’s doing good instead of doing bad to the offender. Is such an approach at all viable in dealing with acts of extreme wickedness, terrorism, or crimes against humanity? In this paper I identify more specifically the elements of this approach and its application in these situations.

The war in Iraq presents numerous instances of evil perpetrated by a state or in the name of one and raises anew the question of how to respond and what punishment is appropriate. What should be done to Saddam Hussein as a penalty for what he did to his citizenry. What should be done to U.S. officials for allowing the abuse of Iraqi prisoners and to those who abused these prisoners. Is there a New Balance alternative to any standard approach of doing bad to the offender?

This approach, which I call “New Balance,” is derived from the common sense notion of punishing the offender to balance the scales of justice and from such major approaches and alternatives to restore the balance. Traditional thinking depicts offenders as upsetting the scales of justice with the evil they caused and shows society offsetting it by delivering some harm or evil to the offenders. Utilitarians do so in the name of deterrence and the greatest good of society while retributivists, who abhor using an offender as a means to deter, justify the harm they cause the offender as the offender’s just desert.

New Balance does employ the scales of justice, it acknowledges that offenders’ deeds have upset the balance, it holds the offenders responsible for doing so, and it aims to give them what they deserve without using them as a means to an end. But New Balance’s approach to offsetting the evil caused by the offender is to require the offender to do good or to engage in acts calculated at positioning the offender to do good. Requiring community service for someone convicted of shoplifting or attendance at rage management classes for someone convicted of an assaultive offense are examples.

It is noteworthy that New Balance is not among those extreme approaches, which dispense with the scales of justice, desert, responsibility, and punishment, like Darrow’s and Tolstoy’s which seek to abolish punishment or like Menninger’s which treat crime as a disease. New Balance is akin to such pioneering attempts to address wrong-doing as therapeutic jurisprudence, restorative justice, community peace circles, wholistic justice, along with the longstanding Native American approach of taking every step to weave the offender into the fabric of the community. An important point in its favor is its ability to unify the thinking of a number of cognate views and make explicit what the unifying features are.
Surely the burden is on the proponent of New Balance to map in a plausible way the equivalents of offender to do good for do bad to offender. It may be quite clear that twenty-four hours of community service is equivalent to a $300.00 fine for public intoxication, but what would New Balance’s equivalent be to felony possession of a controlled substance with intent to distribute which might carry a fine of $10,000 and incarceration for twenty-five years. What would its equivalent be for such gross acts of wickedness as genocide and terrorist destruction about which this conference has a special interest.

While I cannot meet this burden in this brief discussion, I do think it fair to highlight how we have devoted more than several millennia to determining what the right amount of pain or evil is to send the way of offenders to restore the imbalance created by them. Surely some sustained and considered reflection is in order to determine the viability of New Balance as much as informed dialogue and debate are to assess New Balance’s ability to respond to crimes of an especially great magnitude. In what follows, I consider how we now respond to these acts, alternatives akin to New Balance, and the approach of New Balance itself which is informed by these alternatives.

Using the traditional model, we find punishments for crimes like genocide ranging from prison terms up to life to execution. In Ethiopia, for example, officers and civilians were charged with acts of genocide during a campaign of Red Terror and were prosecuted under Ethiopia’s penal code. One of them received the death penalty in 1999 for ordering the torture and murder of people and in the next few years some two hundred received prison terms ranging from two years to life.

During the Nuremberg trials of 1945-1948, Nazi war criminals received sentences ranging from imprisonment to death by hanging.

When the trial is conducted under the law of a nation, the death penalty is in the offing if permitted by that nation. When the jurisdiction is international through the United Nations, the death penalty is not an option. The first tribunal of this sort since World War II was convened 1997 to try a Bosnian Serb for war crimes and crimes against humanity including murder and torture during the Bosnian War. One allegation detailed his ordering a prisoner bite off the genitals of another prisoner.

One commentator acknowledges the disparity between the enormity of some war crimes like those of Milosevic and the limited penalties which tribunals can impose. He mentions Hannah Arendt’s observation about the Nazi war crimes tried at Nuremberg: “For these crimes no punishment is severe enough . . . . this guilt . . . oversteps and shatters any and all legal systems.” Nonetheless, he recommends that this route is preferable to the alternatives of doing nothing or employing summary executions, which President Franklin D. Roosevelt thought appropriate, but never ordered, in dealing with high-ranking Nazis.
This perception about there being no truly adequate response to crimes of great enormity has strong roots in common sense. Even so, it makes sense on any model to ask what a reasonably adequate response would be.

A number of teachings about non-violent responses to crime inform our thinking about what an adequate response might be. There are the ideas of Jesus, Gandhi, Ikeda, and Martin Luther King, those of people who believe crime and the traditional punishments to be a manifestation of political domination, like Marx and Wolff, and people whose estimation of human nature is such that violent responses to violence worsens the situation while non-violent responses and love promote harmony, a view which is included by some of the thinkers already mentioned. This same view is part of the moral logic that we are no better than the doers of violence if we respond by doing evil to those doers and part of the logic that we end up literally having to pay a high price to ensure that offenders pay for their crimes on the OB model.

What is interesting is how people committed to nonviolent responses to large-scale violence do not extend the commitment to offenders. The Quakers and Friends point to some alternatives in the wake of 9/11. The Friends United Meeting provided people with a form letter to send to President Bush. It underscored their condemnation of violence and invoked Jesus’ teaching of love and Paul’s advice to meet evil with good as the proper response to violence. “The advice of the apostle Paul that we overcome evil with good may point the way to the recovery of our national spirit.”

Another case in point comes from The Nonviolence Commission of the International Peace Research Association. We should not respond to the violence of 9/11 with more violence. Invoked is the famous wisdom of Martin Luther King, Jr. that “darkness cannot drive out darkness” along with a recitation of a host of contemporary thinkers, Vaclav Havel, Daisaku Ikeda, Nelson Mandela, and Elie Wiesel, mostly Nobel Laureates, who are committed to nonviolence and a nonviolent response to 9/11. The response that is urged is an international one. The international community would track the terrorists down and bring them to justice. Doing so very regrettably may mean the use of force. But that is the extent of the nonviolent response. There is no indication that, once these people are brought to justice in as peaceful a manner as is possible, we will not employ the traditional model of OB. Says Ralph Summy in 2002 in “A Nonviolent Response to September 11,” “. . . in order to maintain a peaceful world . . . criminals . . . must be brought to justice, and sometimes violence becomes the instrument of last resort. . . . Thus only when the suspect violently resists arrests can there be a physical transgression of the nonviolent ethic.”

Advocates of having offenders make restitution as the proper response to crime come under the umbrella of New Balance but do consider more serious crimes like murder to be especially difficult to address. Still, these advocates stretch the model to require a lifetime of service to the family of the victim or at least compensation and a willingness to
be reunited with the community. They claim it is unlikely that large numbers of offenders would not work given the monotony of doing nothing, and I would add that coupling this work with a mindset that we see the offender as doing good as an additional motivation. As Abel and Marsh bring out, “In ‘worst case’ situations it may be necessary for offenders to labor in prison factories for their entire lives, the proceeds going to both the victim’s family and the general revenue. In the best cases, some time might be put in this way with the remainder in one of the community-based programs.” (Charles F. Abel and Frank H. Marsh, *Punishment and Restitution* (Westport: Greenwood Press, 1984), p. 184. This line of thinking is useful but might err on the simple side as do other Old Balance methods in that both think about sentencing offenders for large blocks of time without much detail.

A study by David Anderson highlights projects like those in Arizona, Georgia, North Carolina, and Texas, which provide a “ladder of sanctions” as an alternative to incarceration, but which could head the non-compliant offender to prison. Also know as intermediate sanctions, they include, as one moves up the ladder, supervised probation, house arrest through electronic monitoring, and work at day centers. The path for those who fall off the ladder is work-release, boot camp, and prison. One variation includes a prison term at the lower rung of the ladder prior to the alternatives. (David Anderson, *Sensible Justice: Alternatives to Prison* (New York: The New Press, 1998), pp. 143-147. This approach is classified as rehabilitative in an American tradition traceable to John Augustus (p. 16) and further justified for being more cost-effective than incarceration. (p. 20) The ladder represents how a variety of sentencing alternatives can be selected during the course of punishing and rehabilitating someone when incarceration seems costly and counter-productive, but the use of any of these alternatives is guided by a rehabilitative ideal. The alternatives are considered especially appropriate for non-violent offenders (p.19), and include treatment programs for some sex offenders. (p. 90).

This line of thinking is very much akin to New Balance in that rehabilitation can be subsumed under the requirement of offenders to do good and more specifically of positioning offenders to do good. It does not explicitly affirm all of the elements of New Balance, and New Balance does not require rehabilitation. Neither one has looked into the applicability of its model to extreme circumstances, and there are indications that people who commit serious offenses are not candidates for a sentence alternative to prison in Anderson’s view. The challenge for New Balance is to bring into the realm of the imaginable a response to great evil that requires the perpetrator to do good, and it seems to require a great deal of imagination to plan specifically for such a sentence and to keep it meaningful for the future generations that will be paying for its enforcement. A traditional life sentence suggests little about the details about the day to day and year to year nature of this life, but a New Balance alternative requires specificity. Below is plan for sentencing a perpetrator of genocide who is twenty-five years old to a lifetime of doing good:
Prison Factory Labor 5 years
(compensation to victims & their families)
Prison Factory Labor 5 years
(compensation to victims of similar offenses)

Combinations of:
Monitored community service
Monitored work with similar offenders
Work in self-sufficient detention facilities
Supervised work with international units like Amnesty International
Supervised activities which deliver care to victims of genocide
Supervised discussions with family members of victims of genocide
Input into choice of supervised service activities
Payments into account for self-support of monitored living in old age

I ask the reader to consider what could be added to this list or how better to sketch a life sentence on the New Balance model. I do think that it is a very difficult task but participating in it heightens one’s awareness of its nature, the New Balance approach, and the worth of New Balance. New Balance’s focus is on the offender’s doing something worthwhile, minimizing despair, providing conditions for hope, and being respectful. With Old Balance, the serving of a life sentence is mostly invisible to the public, so its effect of satisfying anyone’s rage or indignation is short-lived over the offender’s long life. One thing seems certain – with New Balance, the actions of the offender occur in a much more visible and public context, and the service the offender provides can supply ongoing evidence of an ongoing social response to the offence. Considerations of this sort will determine whether the scales of justice will tip on the side of New Balance when it is weighed against approaches which require doing bad to offenders.