

# Conservatism in American Crime Films

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## ABSTRACT

This article uses conservative crime films from the founding era of modern conservatism, the late 1960s and early 1970s, to explain conservative legal thought, specifically popular rather than professional thinking about law, rights, justice, and courts. The primary focus is on *Dirty Harry* and *Death Wish*, two films whose explicitly conservative themes provide excellent insights into the change from liberal to conservative thinking about crime. The primary objective is to increase understanding of legal conservatism, the dominant influence on contemporary criminal justice policy. The article uses the crime control and due process models of justice to explain conservative attitudes and policies, with special attention paid to the relationship between law and order.

## INTRODUCTION

*Quick Change* (1990) is a crime comedy where Grimm (Bill Murray), disguised as a clown, robs a New York City bank and then attempts to flee the city. Confronted by an armed yuppie who mistakenly thinks Grimm is burglarizing his apartment, Grimm facetiously asks him, "From Woodstock to Charles Bronson in 20 years?" This humorous question is also very interesting. How did we get from *there*, due process liberalism, to *here*, crime control conservatism? The change from criminal justice policy that was primarily shaped by liberal thinking about crime to criminal justice policy that was primarily shaped by conservative thinking about crime is one of the most important public policy changes during the latter half of the 20<sup>th</sup> century.

The change is usually described using empirical data such as crime rates, surveys of public opinion, and U.S. Department of Justice statistics on sentencing trends and prison populations, or doctrinal analysis of Supreme Court case law. This article studies legal conservatism from the perspective of popular rather than professional legal culture, and mass rather than elite thinking about rights, law, courts, and justice. It uses crime films to explain conservative thinking about crime. The primary focus here is two crime films with explicitly conservative themes embedded in the narratives, *Dirty Harry* (1971) and *Death Wish* (1974). These works of legal fiction were selected because they are excellent filmic expressions of conservative political and legal thought during the founding era of modern conservatism, the pivotal period from the mid-1960s to the early 1970s (Lenz, 2003) when, after a brief period of concern about police brutality, public opinion began "swinging back toward law-and-order positions" (Rafter, 2000, p. 75).

*Dirty Harry* is a classic cop film starring Clint Eastwood as Inspector Harry Callahan, a San Francisco homicide detective assigned the case of a serial killer named Scorpio. Legal “technicalities” involving the admissibility of evidence frustrate Callahan’s efforts to bring the killer to justice, but he finally gets his man. Scorpio is loosely based on a San Francisco Bay area serial killer called “Zodiac” who was never caught. *Dirty Harry* is one of the “landmark” films of the 1970s (Demme, La Gravenese, Kupfer, & Reticker, 2003).

*Death Wish* is a vigilante film based on Brian Garfield’s book *Death Wish* (1972). The lead character in the book is Paul Benjamin, a New York City accountant who becomes a vigilante after young thugs murder his wife and seriously injure his daughter. The film stars Charles Bronson as Paul Kersey, a New York City development engineer who becomes a vigilante after his wife is killed and his daughter seriously injured in a brutal home invasion robbery. The book is even more explicitly critical of liberalism than the film, but both works of legal fiction provide excellent descriptions of the change from liberal to conservative thinking about crime. Kersey’s personal journey from a bleeding-heart liberal, who sympathizes with the underprivileged who were driven by poverty to lives of crime, to a crime control conservative, who advocates vigilantism as a response to street crime, mirrors the nation’s political transformation from liberalism to conservatism.

*Dirty Harry* and *Death Wish* are of great heuristic value because they show the strong emotional appeal of crime control values during this period, a popular appeal that cannot be appreciated solely by reading empirical data on crime rates or Supreme Court opinions. Films help audiences “negotiate” difficult periods of “cultural transition” (Belton, 1996, p. 2) such as the change from liberal to conservative thinking about crime. This article uses the due process and crime control models of justice to examine the conservative themes in the films. These two models of justice, which consist of value clusters and policies that have historically separated liberals and conservatives, are useful insofar as they are used to describe the polar ends of the criminal justice policy continuum. Crime policy is not *either* due process *or* crime control, but it does range along a continuum of values and policies that are generally labeled liberal or conservative.

One of the oldest philosophical debates is whether justice is better served with or without law. Plato argued that the best form of government was rule by a philosopher-king; Aristotle believed that justice was better served when laws governed the governors. *Dirty Harry* and *Death Wish* show why modern conservatives advocate justice without law. The terms *law* and *order* are so commonly linked that they are assumed to refer to a single value, *law-and-order*, generally understood to mean getting tough on crime. Legal scholars recognize that law and order are separate values that sometimes conflict with one another (Ericson, 1982; Garland, 2001). Furthermore, conservatism is so strongly identified with law-and-order that it is redundant to refer to a *law and order conservative*. But the conservative films examined here are evidence that, when forced to choose between law and order, conservatives generally prefer order because law is merely an instrumental means to an intrinsically valuable end, the maintenance of public order.

Conflating the distinction between law and order is problematic for three reasons. First, it obscures one of the central issues in the history of American criminal justice, the struggle to

bring law to a system that traditionally valued order. Second, it undermines support for the ideal of government according to the rule of law, one of the guiding principles of the administration of justice. Third, it seriously limits understanding of modern conservatism, which is the dominant, albeit not hegemonic, ideology shaping contemporary crime policy. An ideology is defined here as a relatively consistent set of beliefs, and the term *legal ideology* refers to the components of an ideology that pertain to law, rights, courts, and justice. The article uses the crime films to analyze conservative views on these matters.

### THE POLITICS OF CRIME CONTROL

Crime has historically been an issue for state and local government, but it became a national issue in the 1960s. Republican Barry Goldwater made lawlessness and crime in the streets an issue in the 1964 presidential campaign (Walker, 1980). In the 1968 presidential election, George Wallace recognized the popular appeal of law and order, and made it a central theme of his third-party campaign. The political establishment was initially wary of Wallace's get tough on crime rhetoric because it was closely linked with his race politics, but the law enforcement community liked what Wallace said about crime and the Fraternal Order of Police invited him to give the keynote address at its annual convention in 1968. Wallace's law-and-order rhetoric appealed to those who were outraged by street crime and those who were frightened by street crime (Leshner, 1994). But the politics of rage (Carter, 2000), not fear, is central to understanding the emotional appeal of conservative thinking about crime during this era. Wallace's rhetoric was so popular that the Republican Party Candidate, Richard Nixon, and the Democratic Party candidate, Hubert Humphrey, "parroted" his language until the presidential election sounded like three sheriffs running for office (Leshner, 1994, p. 414). Nixon made "the law-and-order theme central to his campaign in an overt quest to appropriate the issue from Wallace" (Leshner, 1994, p. 414). Worried about being labeled soft on crime, the Democratic majority in Congress passed The Omnibus Crime Control and Safe Streets Act of 1968, a major piece of federal anti-crime legislation.

Nixon won the election and declared war against crime. In his 1970 *State of the Union Message*, President Nixon reinforced his conservative crime control values and strengthened the rhetorical linkage between law and order by pledging to create "respect for law rather than lawlessness." In comments directed at due process liberals, Nixon said, "We have heard a great deal of overblown rhetoric during the sixties in which the word 'war' has perhaps too often been used—the war on poverty, the war on misery, the war on disease, the war on hunger. But if there is one area where the word 'war' is appropriate it is in the fight against crime. We must declare and win the war against the criminal elements which increasingly threaten our cities, our homes, and our lives" (Nixon, 1971, p. 12). Conservatives were frustrated because Nixon's appointment of four Supreme Court justices, including Chief Justice Warren Burger, did not immediately end liberal rulings. In fact, the Burger Court struck down state death penalty statutes in *Furman v. Georgia* (1972), limited public aid to religious schools in *Lemon v. Kurtzman* (1971), upheld affirmative action programs, and found a privacy right to abortion in *Roe v. Wade* (1973). *Roe v. Wade* "came as a rude shock" to conservatives who were expecting something more from "their Court" (Piper, 1997, p. 272). However, in criminal law the Burger Court's conservatism was already recognized in the early 1970s. In 1972, the editors of the conservative *National Review* concluded that the "Nixon Court" had given "the requirements of order and stability" a

“more favorable hearing” than the Warren Court by broadening police power to stop-and-frisk without obtaining a search warrant and by narrowing a suspect’s right to the assistance of counsel (“The First Nixon Court”, 1972, p. 785).

Legal scholars have different assessments of conservatism’s initial impact on the Court. In 1974, Levy concluded that the four Nixon appointees “immediately demonstrated a remarkable cohesiveness” in criminal justice cases and effectively “repealed” the Warren Court’s earlier criminal justice “revolution” (p. 20) by voting as a conservative bloc (p. 60). Other legal scholars described the Court’s “clear turn toward the right” in criminal law cases (Abadinsky, 1998, p. 85). But in *The Burger Court: The counter-revolution that wasn’t* Blasi (1983) concludes that the Burger Court provided more continuity than change. The position presented in the current article is that this is the revolution that *was*, that there was a counter-revolution or backlash against the liberal Warren Court revolution that occurred over a period of time beginning in the late 1960s and extending through the 1970s and 1980s. The empirical evidence of a conservative revolution includes changes in the rate of incarceration. In 1970, the rate was 96 prisoners per 100,000 population (U.S. Department of Justice, 1985, p. 531). The rate increased in the early 1980s because the Reagan Administration shifted the strategy for fighting the war on drugs from treatment to punishment, and by 2002 the rate was 702 per 100,000 population (Harrison & Karberg, 2003).

### **DUE PROCESS OF LAW**

Due process is arguably the most important legal concept in American law. Originally defined narrowly to apply only to criminal trials, its meaning has been stretched “like taffy” (Friedman, 1985, p. 80) until today, due process refers to a general expectation of fair treatment. Conservatives have been especially critical of the impact that the expansion of due process has had on the criminal justice system. The rightward movement of public opinion during the last several decades has meant increased support for the crime control model of justice and decreased support for the due process model of justice. Packer’s (1968) due process and crime control models can be adapted to include the sets of values and public policies that define liberal and conservative thinking about crime.

Liberals generally emphasize (a) *due process* of law; (b) the protection of individual *rights*; (c) *rehabilitation* as the primary purpose of indeterminate sentencing; and (d) public policies collectively labeled *professionalism*, including civil service, merit selection of judges, and judicial review of criminal justice officials. Conversely, conservatives generally emphasize (a) *crime control*; (b) *social order* achieved through broad executive discretion; (c) *punishment* as the primary purpose of determinate sentencing; and (d) policies collectively labeled *political accountability* achieved through patronage, election of judges, local justice, executive discretion, and legislative supremacy. Elements of the due process and crime control models of justice appear as themes of crime films.

## DIRTY HARRY

### *The story*

In *Dirty Harry* San Francisco city officials are clueless about how to stop the serial killer Scorpio, but Callahan, a throwback to the old school of crime fighting where cops rely on instincts and experience more than formal education and professional training, knows what to do and expects to be turned loose to do his job. When Scorpio kidnaps a girl whom he claims to have buried alive, and threatens to let her die if the city does not pay him ransom money, Callahan reluctantly agrees to deliver the ransom. Scorpio reneges on the deal and savagely beats Callahan, who manages to stab Scorpio in the leg. Scorpio escapes, but Callahan later learns that he lives beneath a nearby sports stadium. Callahan scales a fence to get on the property and kicks open the door to the man's room. Scorpio is not there, but Callahan tracks him onto the middle of the athletic field where he shoots him in the leg and, as Scorpio lies on the ground, writhing in pain and cowering in fear, Callahan repeatedly asks him where the girl is. Scorpio whines about having rights until Callahan steps on the man's injured leg and grinds his boot. Apparently Scorpio talks because the next scene is the girl's body being removed from the hole where she was buried.

Called to a meeting with the district attorney and a judge, Callahan is shocked to hear that the charges against Scorpio have been dropped. The district attorney tells Callahan that he is lucky that charges are not being filed *against him* because it is against the law to search without a warrant, kick down a door, deny medical treatment, and torture a suspect in order to obtain a confession. The appeals court judge, who also teaches constitutional law at Berkeley, explains that the case against Scorpio has Fourth, Fifth, Sixth, and Fourteenth Amendment problems. The district attorney facetiously asks Callahan, "Where have you been?" accusing Callahan of being ignorant of *Escobedo* and *Miranda*, two landmark Supreme Court rulings that had limited police interrogations. In *Escobedo v. Illinois* (1964), the Court held that suspects have a Sixth Amendment right to the assistance of counsel. In *Miranda v. Arizona* (1966), the Court required police officers to notify suspects that they have a right to remain silent and to have a lawyer present during questioning. Because Callahan did not read Scorpio his *Miranda* rights before asking him where the kidnapped girl was, the gun and the girl's body were inadmissible as evidence because the Exclusionary Rule prohibits using illegally obtained evidence to obtain a conviction. The district attorney sarcastically asks Callahan, "Surely you have heard of the Fourth Amendment?"

The fact that the law prevents Scorpio's conviction is an injustice that Justice Clark acknowledged in his majority opinion in *Mapp v. Ohio* (1961), by quoting Judge Cardozo's famous statement in *People v. Defore* (1926) that "the criminal is to go free because the constable has blundered." Callahan is more interested in fighting crime than upholding the law. When told that he violated Scorpio's constitutional rights, he sarcastically replies, "Well, I'm all broke up about that man's rights." When told that the law does not allow the evidence to be used against Scorpio, Callahan replies, "Well, then the law is crazy." When Callahan asks who speaks for the victim, the prosecutor replies that *he* does *if* Callahan will let him win cases by not illegally gathering evidence.

Scorpio is released, hijacks a school bus, and demands money and an airplane to escape. Callahan refuses to deliver the ransom because he is disgusted with the mayor's desperate and naïve hope that Scorpio will stop killing if he gets what he demands. Although officially off the case, the intrepid Callahan tracks Scorpio, corners him, and in a dramatic final confrontation, wounds and then fatally shoots him. The film ends with a scene where Callahan removes his police badge, looks at it pensively, and throws it into a pond.

### ***Blaming political liberalism***

*Dirty Harry's* criticism of political and legal liberalism is part of the setting and the story line. The film is set in San Francisco in a time when the city epitomized the liberal permissive culture that conservatives blamed for crime. The story line blames liberals for rampant street crime such as daylight bank robberies, muggings, and drug deals; criminogenic social conditions such as seedy strip clubs and alternative lifestyles. The city leadership, specifically the mayor and chief inspector, are portrayed as weak, indecisive, and ineffectual liberals, whereas Callahan is a strong and decisive conservative who knows what to do and is willing to pay a high professional price, his badge, for doing it. Callahan is a martyr (Kael, 1994), the fictional embodiment of the conservatives of the era who portrayed themselves as David, fighting the good fight against the liberal Goliath.

*Dirty Harry* shows how conservatism moved away from its traditional elitist, country club Republican base of support. Traditional conservatism defended a hierarchical society against liberal egalitarianism. The New Right appealed to the average American. Crime was one of the issues that made conservatism more appealing to the average American at a time when liberalism supported legal elites such as lawyers, judges, and academics who were committed to using due process to regulate police behavior. Lay people think about a suspect's guilt or innocence, which is a commonsense matter of substantive justice, more than the legal technicalities of the adversarial system of justice, which are elements of procedural justice. Therefore, the average man or woman on the street considered the constitutional rights associated with the adversarial system of justice part of the problem of street crime. The relationship may not have been causal, but the public understandably blamed the courts for crime rate increases that occurred after landmark Supreme Court rulings providing more rights to suspects and prisoners.

*Dirty Harry* is considered one of the anti-authoritarian films that were popular in the 1970s because the main character had so much trouble with authority, but it is not anti-authoritarian as much as it opposes the prevailing liberal establishment and proposes an alternative order. The film is an especially important source of popular conservative thinking about crime because Clint Eastwood, who had chafed under the Hollywood studio system and went to Italy to make spaghetti westerns, returned as an *auteur* empowered to make *Dirty Harry*, a filmic expression of conservative values. Eastwood, a conservative, became Inspector Callahan, a conservative, after Paul Newman, a liberal, turned down the role (Rafter, 2000). Eastwood (Demme, La Gravenese, Kupfer, & Reticker, 2003) considers the film an alternative or antidote to the era's national mood, the growing sense of self-doubt about economic policy, crime policy, and foreign policy that scholars labeled a crisis of confidence. Eastwood's *Dirty Harry* character projects an air of confidence, certainty, and simplicity, the character attributes

that contributed so much to the political success of another actor turned Republican politician, Ronald Reagan. Reagan's optimism was at least partly based on the rejection of the liberal tendency to describe public policy issues such as crime or welfare as complex problems that required complex solutions. He came to embody the conservative confidence that there were indeed simple solutions to many of the problems facing the nation.

*Dirty Harry's* story line about liberal government officials who were desperate to stop a menacing serial killer, but still expected Callahan to fight crime with one hand tied behind his back, was especially appealing to conservatives in the early 1970s because they also blamed liberals for losing the Vietnam War by requiring the military to fight a limited war with one hand tied behind its back. Callahan is a domestic cold warrior, a practitioner of *realpolitik* on city streets rather than the international stage. Conservatives cheered Callahan's refusal to fight crime under the restrictive rules of engagement determined by liberal legal theory. These conservatives used strongly anti-government rhetoric because they believed government was actually working against the interests of the people that President Nixon called "the silent majority." However, then as now, conservatives advocated more government not less, a stronger criminal justice system, and legal policies that tipped the scales of justice toward crime control. The liberal film critic Pauline Kael (1994, p. 421) argued that *Dirty Harry's* skillful appeal to primal emotions as the story line "marches" toward its "righteous conclusion" makes it "an almost perfect piece of propaganda for para-legal police power".

### ***Challenging legal liberalism***

*Dirty Harry* is even more explicitly critical of legal liberalism. Judges are blamed for both crime and the erosion of public order by interpreting the constitution to inordinately protect individual rights. This theme reflects public opinion surveys that indicated a large and growing majority believed that the courts were soft on crime (U.S. Department of Justice, 1985, p. 166). Conservatives were especially critical of federal judges because they led the due process revolution in criminal justice by providing greater rights for suspects and prisoners. *Dirty Harry* is a bold challenge to liberal assumptions about the efficacy of law as an instrument of justice. When Callahan threw away his badge at the end of the film, he symbolically threw away the law that had effectively disarmed society by forgetting that law was just a means to an end, that due process was the means to achieve justice rather than an end in itself. One of the recurring themes in legal fiction is that achieving justice is a struggle because of the conflict between positive law and justice, the natural sense that individuals are getting what they deserve. *Dirty Harry* portrays law as divorced from justice. Callahan is outraged that rights and law were actually frustrating justice, and he is willing to violate both to do justice. *Dirty Harry* voices the conservative belief that due process liberals have misplaced priorities insofar as they treat law and justice as equal values. In fact, conservatives consider law an instrumental value that can be dispensed with when necessary to achieve other, more important values.

### ***The social utility of violence***

One of the film's most controversial subjects is the relationship between law and violence. *Dirty Harry* directly challenged the prevailing liberal orthodoxy that violence was an atavistic impulse that needed to be controlled by law. One of the best expressions of liberal faith

in law is *To Kill a Mockingbird* (1962), where Atticus Finch—the American Film Institute’s greatest film hero—rejects violence as a primitive human impulse that had to be restrained by law for justice to prevail. Liberals tended to measure human progress by law’s displacement of violence as an instrument of social control. *Dirty Harry* portrays violence as a legitimate solution to the problem of too much law, and advocates the justice and social utility of violence. This theme was intentional. The 1960s and 1970s were “the golden age of American film violence, a fact understood by filmmakers and critics at the time and celebrated since” (Slocum, 2001, p. 7). The concept of redemptive or regenerative violence certainly is a prominent theme in conservative crime films.

Eastwood’s character Blondie in *The Good, the Bad and the Ugly* was the first protagonist to shoot first “in violation of the ethical code that had previously governed Westerns” (Mitchell, 2003, p. 9). In *Dirty Harry*, Callahan’s effective use of violence rather than law to fight crime endorses the morality of an eye for an eye, an ancient principle of retributive justice that is central to the way he administers justice. Callahan flaunts the ethical code that the hero does not shoot first when he taunts wounded criminals by daring them to go for their guns. Because Scorpio savagely beat and tried to kill Callahan earlier in the film, Callahan does not violate the principle of retributive justice when he finally kills the killer. The mayor and the chief inspector realize that doing things by the book is not working, and are tempted by Dirty Harry’s maverick policing and willingness to throw away the book, but they are troubled by his use of violence.

Other cop films of the era, including the classic *The French Connection* (1971) provide more nuanced views of violence by showing negative consequences of police violence, such as mistakenly shooting other police officers. Indeed, Eastwood’s later films *Unforgiven* and *Mystic River* have morally complex characters and story lines that examine the moral and practical dimensions of violence, and Eastwood, the auteur, has described his views on violence as more “evolved” than they were when *Dirty Harry* was made (Whipp, 2003, pp. 1E, 6E). If *Unforgiven* is Eastwood saying he is sorry about portraying violence heroically, *Mystic River* is Eastwood saying he is sorry again because it is the first time he has not “rigged” the story line so that only the right people get shot (Edelstein, 2003).

### ***The importance of order***

*Dirty Harry* reflects the central role that conservatives believe the police play in maintaining social order. Callahan represents the conservative view that experienced cops should be free to do their jobs without law, lawyers, or judges unduly limiting their judgment about the best way to police the streets. In this respect, the desire for justice without law is consistent with the traditional conservative desire to return to or restore the values of a past golden age. *Dirty Harry* is an expression of the conservative desire to return to the time before the Supreme Court used the concept of due process to bring law to the administration of local justice. Law fettered the executive discretion of police officers and prison officials. Callahan’s willingness to bend, even break the law is portrayed as a necessary response to street crime that had gotten out of control. His attitude toward law also indicates that he saw his role as a police officer rather than a law enforcement officer. Callahan was not enforcing law; he was policing to prevent and punish criminal behavior, thereby maintaining social order. The film makes it clear that, when forced to



choose between law and order, Callahan rightly chose order. Callahan voices the conservative belief that liberals produced too much law, but not enough order or justice. He believes that less law will bring more order.

This conservative preference for order above law remains evident in the right's continued criticism of the Supreme Court for reading the Constitution to require search warrants, *Miranda* warnings, and the Exclusionary Rule. These elements of criminal procedure are criticized as legal technicalities that tie the hands of law enforcement officers and allow the guilty to go free. The right wing of the Rehnquist Court includes strong critics of the due process model of justice (O'Brien, 2000). Justices Rehnquist, Scalia, and Thomas support legislative supremacy, executive discretion, political accountability, and responsive law because these crime control values underlie criminal justice policies that allow police and other criminal justice officials to make street-level decisions about what is reasonable and unreasonable behavior, determine what constitutes suspicious behavior, and determine the appropriate use of force without being subjected to judicial scrutiny or second-guessing. Warren Court liberals supported judicial remedies for government abuse of criminal justice powers. Conservatives read the Constitution as a document that relies upon political remedies for government abuse of power and they believe the republican system of representative government is a better check on government than judicial activism on behalf of civil liberties.

*Dirty Harry* challenged the system to do a better job delivering justice by acting on crime control values without paying as much attention to due process. The next film examined here, *Death Wish*, presented an even more direct challenge to the criminal justice system because it took *Dirty Harry*'s official lawlessness one step further and advocated citizen vigilantism.

## DEATH WISH

### *The story*

*Death Wish* begins with Paul Kersey as the quintessential bleeding-heart liberal, a New Yorker who sympathizes with under-privileged youth whom he believes are driven by poverty to commit crime. Kersey initially reacts to his family's assault with a preternaturally calm, hyper-rational faith in the criminal justice system's ability to bring to justice the young thugs who attacked his family. But when he asks a detective whether there has been any progress in the investigation of the crime, the detective candidly replies that the criminals probably will not be caught.

One evening while gazing out his apartment window, Kersey watches a car being burglarized on the street below. He does nothing to interrupt the crime. He does not even call the police. He merely pulls down the window shade. This scene evokes Edmund Burke's warning, "All that is necessary for evil to triumph is that good men do nothing." The scene is also a commentary on the 1964 murder of Kitty Genovese. Genovese was returning from work in the dark of the early morning hours when she was attacked, stabbed, and raped during a series of assaults that lasted about 30 minutes. Twenty-seven residents in her Queens neighborhood heard her screams or saw the attacks from their apartment windows, but did not call the police. The fact that she might have lived if someone had called the police after the initial attack prompted

nation-wide condemnation of modern urban life where individuals were unwilling to get involved by helping a neighbor in trouble.

Kitty Genovese was raised in Brooklyn, but in 1954 her parents moved to New Canaan, Connecticut, partly to get away from crime in New York City (Wikipedia Free Encyclopedia, 2005). Similarly, Paul Kersey first expresses doubts about his liberal convictions when his son-in-law suggests that they move to the suburbs in Connecticut to get away from the street crime in New York City. When Kersey asks what people who flee when threatened are called, his son-in-law replies, "Civilized?" Kersey refuses to "cut and run" to the suburbs. He fights back. Armed with a roll of quarters wrapped in a sock, he strikes a mugger who approaches him and then returns home visibly shaken. He is not shaken by nearly becoming a crime victim; he is upset by his use of violence.

On an extended business trip to Arizona, Kersey works with a local developer who preaches self-defense as the way to fight crime. While target shooting at a gun club, the Arizonan asks Kersey whether World War II or the Korean War was *his* war, and Kersey replies that he was a conscientious objector who served in the medical corps in Korea. When the developer asks where a conscientious objector learned to shoot so well, Kersey explains that his father was a "gun nut" killed in a hunting accident, but his mother was a pacifist and her attitudes prevailed after his father's death. The developer gives Kersey a handgun as a going away gift. Armed with the gun and a new attitude, Kersey walks the streets of New York City inviting attack. After shooting to death a man who intends to rob him, Kersey returns home and becomes physically ill over his use of deadly force, but he continues his private crusade against street crime. His transformation from bleeding heart liberal to hard-hearted conservative is complete when he has no moral qualms about shooting three thugs who confront him. Kersey is now a cold-hearted vigilante killer who considers violence an essential element of an individual's right to self-defense and, perhaps even more importantly, an effective way for citizens to meet their civic responsibility to contribute to public safety.

Kersey's vigilante acts have inspired other New Yorkers to act against street crime rather than simply accepting it as a fact of life in the City or trusting the criminal justice system. City officials tell the inspector in charge of searching for the vigilante that they want the killing to stop, but they do not want the vigilante to be arrested because doing so would make him a martyr. The film ends with Kersey lying wounded in a hospital, listening to the inspector making him an offer to leave town.

### ***The civic virtue of violence***

The criticism of liberalism is part of the film's setting and story line. The rampant street crime in New York City, a bastion of the liberal eastern establishment, is a comment on the failure of liberal governance. The story line repudiates liberal, due process values and endorses conservative, crime control values. Violence is portrayed as a legitimate method of self-defense and as an effective method of crime control in a period when liberals and conservatives were divided on the morality and social utility of violence. The classic film *To Kill a Mockingbird* is an expression of the liberal idealist belief that law and violence were antithetical, that law's displacement of violence was a mark of human progress, and that law's triumph over violence

was evidence of the evolving standards of civilization. Liberals considered *Death Wish* a *reactionary* conservative film because it advocated a return to violence as an instrument of social control.

Although the film acknowledges the social utility of violence, it does not glorify violence. Kersey's apparent inability to control his vigilantism is a warning that violent impulses can be hard to control. The book is even more critical of violence than the movie. Paul Benjamin reads a magazine article that includes a famous forensic psychiatrist's profile of the still unidentified vigilante. The psychiatrist is confident that the vigilante is not like that "truly psychotic" Zodiac killer in San Francisco, but rather a "murderer" with a message: something *can* be done about crime in the streets (Garfield, 1972, pp. 168–169). The *Death Wish* message about the triumph of rage over fear, and decisive action over indecision or apathy, had widespread popular appeal for the same reason that George Wallace and Richard Nixon's populist rhetoric about getting tough on crime was appealing.

Charles Bronson was aware of the popular appeal of a crime fighting screen hero with a capacity for violence and ambivalence about law, apparently fabricating stories about his youthful brushes with the law (Severo, n.d.). His character Kersey is, to use Slotkin's (1973) term, "regenerated through violence" and revitalized by developing the spirit that did not develop because he was raised fatherless and Eastern. He developed his civic virility by leaving the East, where being civilized meant relying on law for safety, and returning to the West, where the Jeffersonian ideal of civic virtue inspired individuals to rely on their natural sense of justice to promote good social order. Kersey's civic vigilantism thereby revitalizes and regenerates the community as other residents end their dependence on government and take personal responsibility for public safety. The film's popular appeal is partly due to its anticipation of the growing popular dissatisfaction with government and the administration of justice, dissatisfaction that was ultimately manifested as conservative support for privatization of public services including security.

### ***The political theory of vigilantism***

The contract theory of government provides a justification for vigilantism. According to the contract theory, government is created when individuals agree to live together under a system of laws. Individuals give government certain powers, but they keep certain rights. For example, individuals give up their right to prosecute or punish criminal acts in exchange for the government assuming responsibility for providing public safety. But citizens acting individually or collectively have the right to take the law *back* into their own hands when the government is unwilling or unable to provide public order, safety, or justice. The image of a vigilante as a public-spirited citizen who assumes personal responsibility for administering justice is appealing in a democracy, where law and politics are apt to be closely related because the values of direct democracy are closely related to the values of direct justice.

Vigilantism is consistent with the values of the crime control model of justice insofar as it results in a responsive legal system, where law reflects politics, rather than an autonomous legal system, where law is insulated from politics. The direct-action impulse of vigilantism is hard to reconcile with the professional administration of justice, where police officers, prosecutors, and

judges are insulated from direct popular control by, among things, merit selection systems or appointment rather than election. Legal scholars describe the history of American criminal justice as an ongoing struggle between the democratic demands for popular justice expressed as a legal system that is responsive to public opinion, and aspirations of professional justice expressed as a legal system that is insulated from public opinion (Walker, 1980). American legal fiction does include images of vigilantes as ignorant, bigoted individuals or unruly mobs that kill the innocent. Both the good and the bad vigilante figure prominently in American legal fiction because of American ambivalence toward law. The contract theory of government assumes that the people are sovereign, and popular sovereignty literally means that the people, not the government or laws, are the ultimate source of authority.

The ideas of the English political philosophers John Locke and Thomas Hobbes greatly influenced American thinking about government and law. Locke believed that individuals left the state of nature and created government as part of the desire to pursue justice as something other than might makes right. Without established law, individuals assert their own biased interests without regard for justice and, in the absence of impartial judges, “passion and revenge” will overwhelm an ordinarily reasonable person who then becomes “both judge and executioner” (Locke, 1960, pp. 73–75). In *Leviathan*, Thomas Hobbes presented a more jaundiced view of human nature. He described life without government as “solitary, poor, nasty, brutish, and short” because it was human nature for individuals to use “force and fraud” to get what they want. Laws are necessary to prevent the human condition from degenerating into a “war of every man against every man” (Hobbes, 1950, Ch. xiii). As a vigilante, Kersey obviously violates Locke’s injunction against having one person acting as both judge and executioner, and Kersey seems to disagree with Hobbes insofar as Kersey believes that vigilantism can supplement law as a restraint on human impulses. American legal history includes periods when conservatives and liberals feared popular justice as mob rule or might makes right, but for most of the 20<sup>th</sup> Century, liberals generally supported an autonomous legal system that reflected the Progressive Era ideals of the professional administration of justice. *Death Wish* begins with Kersey representing these ideals, and it concludes with Kersey representing the conservative ideal of a responsive legal system.

### *A consumer’s perspective on criminal justice*

*Death Wish* presents the problem of street crime from the perspective of the consumers of law, the citizens who expect safe streets and subways, during a period of eroding public confidence in the system. The depiction of government officials as self-serving bureaucrats who are out of touch with the average American is a filmic expression of the views of modern conservatives who have taken pains to differentiate between the people and the government. This differentiation enabled conservatives to criticize the government without alienating the people. In the 1960s and 1970s, liberals who criticized government policy were considered disloyal and taunted with the slogan, *America: Love it or leave it*. Conservatives, like Kersey, criticized the government without having their loyalty questioned and the public supported his acting on crime control values. While in a bar watching a television news story about the police department’s views on the vigilante killings, Kersey listens to the police commissioner, whom one of the customers refers to as “the king of clichés,” advise the public to resist the temptation to take the law into their own hands because the police department has street crime under control. Kersey

sardonically observes that the commissioner is a self-serving bureaucrat who is more interested in protecting his job than providing public safety. Even the media are skeptical of government claims that the vigilante has not reduced the crime rate. The evening news reports inspirational stories about citizens defending themselves, friends, neighbors, and even strangers.

The contract theory provides that government has an obligation to prevent crime and punish offenders. The theory also provides that individuals retain the right of self-defense, to take the law back into their own hands and administer justice without regard for due process of law. The political theory of vigilantism is firmly rooted in both classical liberal theory – which emphasizes individualism, rights, and the contract theory of government – and republican theory, which emphasizes traditional Burkean conservative values such as the importance of civic-minded action for the common good. Kersey is not a self-interested individual; he deliberately acts from a sense of an individual's responsibility to promote the public good.

### *A conservative epiphany*

Charles Bronson's Paul Kersey is the embodiment of Tom Wolfe's quip in *Bonfire of the Vanities* that a conservative is a liberal who has been mugged. The story line about a liberal New Yorker going west to rediscover the civic virtue of self-defense reflects what was actually happening in the country when the film was released. Kersey's personal journey from the northeast to the southwest represents the actual journey that conservatives and the Republican Party took when they went western on crime. The modern conservative movement has political roots in the southwest, where the "get tough on crime" movement began in places like Orange County, California, and Scottsdale and Maricopa Counties, Arizona, and then spread to national politics (McGirr, 2001). These *movement* conservatives, who blamed east coast liberals for the crime wave facing the region, fervently believed that the only way the country could be saved was by waging a culture war to restore traditional values such as self-reliance and self-defense. Ronald Reagan's election as governor of California in 1966 provided an electoral base in the Republican Party that transformed conservatism from an elitist, country club ideology into a more populist, middle-class ideology.

Chief Justice Earl Warren believed that President Nixon's political attacks on the Warren Court's criminal law rulings "centered" on the *Miranda* ruling (Warren, 1977, p. 316). *Dirty Harry*'s extremely negative portrayal of the *Miranda* Rights and the Exclusionary Rule reflects the conservative politics of crime control. In fact, even though the *Miranda* ruling has actually worked to indemnify the police against subsequent challenges to the admissibility of evidence obtained after suspects have been informed of their rights, *Miranda* still has symbolic value for conservatives who believe in the crime control value of executive discretion.

The growing gap between elite (liberal) and mass (conservative) thinking about crime was caused by popular disillusionment with the administration of criminal justice. *Death Wish* identifies with the average American's commonsense understanding of the crime problem rather than the theories of the legal and academic professionals. Professionals are apt to consider crime a complicated problem that requires complex solutions, and their thoughtful approach stands in sharp contrast to the simple, commonsense approach taken by Harry Callahan, Paul Kersey, and ultimately President Ronald Reagan.

Crime, and related issues such as drugs, juvenile delinquency, and prisoner's rights, was an especially effective issue for conservatives (Anderson & Lee, 1976) because it, like race, was one of the *wedge issues* that Republicans used to crack the liberal New Deal/Great Society coalition that was the Democratic Party's political base beginning in the 1930s. The book *Death Wish* describes how the liberal coalition cracked. Paul Benjamin keeps his contempt for conservative economic policies, which help the rich and hurt the poor, but embraces the right wing's "fundamentalist" attitudes toward crime (Garfield, 1972, p. 110). The forensic psychiatrist is confident that the vigilante is someone who, having spent his life "as a liberal of good conscience," had a traumatic experience with crime that caused him to reject certain liberal values (Garfield, 1972, p. 170).

### ***Punishment***

Indeed, the psychiatrist himself rejects "those old [liberal] shibboleths" that crime is a disease and that the primary purpose of punishment is rehabilitation. The psychiatrist believes that punishment is about deterrence, and the legal system "is a shambles" because the courts do not provide immediate and impartial punishment (Garfield, 1972, p. 170). Both the book and the film challenge liberal or progressive legal theory about the purposes of punishment. Liberals generally consider vengeance a primitive human impulse that was inappropriate for public policy in civilized societies. Attitudes toward vengeance divided the left and right wings of the Court in the landmark death penalty case *Furman v. Georgia* (1972). During the early decades of the twentieth century, liberal reformers portrayed rehabilitation as the primary purpose of a modern system of justice, and portrayed punishment and vengeance as holdovers from older, more primitive legal systems. Liberals removed revenge from the penal codes by systematically undermining its legitimacy as one of the purposes of punishment. Once judges, criminal justice professionals, and elements of the general public accepted rehabilitation as the primary purpose of sentencing (Feeley & Rubin, 2000), indeterminate sentencing policies were enacted as the best means to achieve that end. Beginning in the late 1960s, however, conservatives complained that rehabilitation did not work and was soft on crime, and they advocated determinate sentencing systems that restored punishment as the primary end of sentencing policy. Paul Benjamin comes to realize that permissive societies were like permissive parents: "they produced hellish children" (Garfield, 1972, p. 90). Both the book and the film stress the importance of protecting society, not individual rights.

### ***Law and order***

*Death Wish*'s popularity—there are four sequels—is partly attributable to the fact that the conflict between human law and natural justice was especially appealing to a public increasingly disillusioned with liberal ideals and dissatisfied with the criminal justice system's response to street crime. The story line allowed Kersey to take direct action against the government without repudiating the system itself or appearing to be un-American. This anti-authority, anti-establishment theme broke the link between traditional conservatism and defense of the status quo, which made Kersey one of the new right, the radical conservative advocating fundamental change by restoring the values of an earlier era. The change from fear to rage, from liberal inaction to conservative action, is described in even greater detail in the book because the book's

themes are even more explicitly political than the film's themes. Nevertheless, the film's portrayal of the relationship between law and order provides especially important insights into modern conservatism.

## CONCLUSIONS

The two films examined here are ideologically coherent expressions of conservative thinking about crime that support the crime control model of justice, particularly order, punishment, executive discretion, and a responsive system of law. The films portray the problem of street crime as a manifestation of a broader political problem—the breakdown of social order caused by liberal ideas and legal policies. Eastwood's Callahan is a laconic man of action who is on the front lines of the struggle to maintain order in a Hobbesian world where individuals need strong government authority to provide direction. Bronson's Kersey is a sardonic citizen whose scornful ridicule of the government officials responsible for providing public safety, combined with his vigilante actions, inspires the residents of New York City to take the matter of public safety into their own hands.

The criticism of law and individual rights is an especially interesting theme. *Dirty Harry* exposes the roots of the modern conservative backlash against rights, a reaction against individual rights-oriented liberalism that is still reflected in conservative defense of the rights of the community, the society, the majority, or the public against the individual. *Death Wish* exposes the roots of modern conservative criticism of government. The crime control messages in the two films reflected growing doubts about the effectiveness of due process liberalism. The films were especially controversial because they endorsed the social utility of violence and the cathartic effect of vengeance as alternatives to law. Harry Callahan's official vigilantism and Paul Kersey's citizen vigilantism began what Edelstein (2002, p. 1F) calls "an endless stream of movies" justifying "wanton vigilante retribution", from the wholesome Sally Field as a suburban vigilante in *Eye for an Eye* (1996) to Arnold Schwarzenegger as a vigilante retaliating against terrorists in *Collateral Damage* (2002). In *Collateral Damage*, Schwarzenegger replies to the statement that he cannot take the law into his own hands by heroically and violently doing just that.

The fact that conservative films portrayed liberals as ineffectual elites who were out of touch with mainstream popular thinking about crime is not unusual. Empirical studies of American attitudes toward rights, law, and justice, consistently reveal marked differences in support for abstract values, such as freedom, equality, or due process, and their application. The general public supports civil liberties "more often in the abstract than in their concrete application," and this ambivalence "is especially evident in the area of due process" (McClosky & Brill, 1983, p. 147). The portrayal of liberals as more concerned with procedural technicality—law—than substantive justice is an aspect of the conservative backlash against individual rights, particularly in the area of criminal justice where the *Miranda* warnings remain a favorite target.

Conservatives argued that the *Miranda* warnings were dictum, a non-binding part of the decision that Congress eliminated when it included in the Crime Control and Safe Streets Act of 1968 a provision declaring that the standard for determining whether a confession was voluntary

was the pre-*Miranda* “totality of the circumstances” standard. In *Dickerson v. U.S.* (2000), Chief Justice Rehnquist wrote for a 7–2 majority holding that the *Miranda* warnings were a constitutional right that could not be changed by statute. Justices Scalia and Thomas dissented, arguing the traditional conservative belief that judges should refrain from defining the concept of due process because the application of this important concept requires executive flexibility. Their dissents, which reflect the crime control value of executive discretion in the administration of street justice, reveal why they are not “law-and-order” conservatives. Both *Dirty Harry* and *Death Wish* portray a real world of forced choice between law and order, and explain why conservatives prefer order to law.

The relationship between law and politics has historically been both controversial and dynamic. The left and the right have at different times argued for more or less politicized justice. The films examined here explain modern conservative support for a responsive rather than autonomous legal system. Conservative advocacy of responsive law has been a strategic success that, as the electorate moved rightward on crime policy, resulted in more conservative legal policies.

#### ENDNOTE

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