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THE LAW AND ORDER THEME IN POLITICAL AND POPULAR CULTURE

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I. INTRODUCTION

“Law and order” became a potent theme in American politics in the 1960s. With that simple phrase, politicians evoked a litany of troubles plaguing the country, from street crime to racial unrest, urban riots, and unruly student protests. Calling for law and order became a shorthand way of expressing contempt for everything that was wrong with the modern permissive society and calling for a return to the discipline and values of the past. The law and order rallying cry also signified intense opposition to the Supreme Court’s expansion of the constitutional rights of accused criminals. In the eyes of law and order conservatives, judges needed to stop coddling criminals and letting them go free on legal technicalities. In 1968, Richard Nixon made himself the law and order candidate and won the White House, and his administration continued to trumpet the law and order theme and blame weak-kneed liberals,

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particularly judges, for society's ills.

The rhetoric of law and order did not remain isolated to the political dimension of the national life. The same concepts that touched voters' nerves soon found their way into popular films, first in the most classically American film genre—the Western—and then in a spate of police movies and other violence-fueled action pictures that proved extraordinarily appealing to American audiences in the early 1970s. John Wayne and Clint Eastwood, the actors at the forefront of this wave of law and order cinema, were Richard Nixon's and America's favorites. In the wake of Nixon's electoral victory, their movies came to express ideas about law, justice, crime, and courts that mirrored the President's own.¹

This Article considers the ideas about law and order communicated to the nation from its political capital, Washington, D.C., and its entertainment capital, Hollywood, during the Nixon era and beyond. It examines the mutually reinforcing relationship between the rhetoric generated in each arena, the rapidly disappearing line between popular and political culture, and the consequences for public understandings about and attitudes toward constitutional rights in the criminal law field.

Part II of the Article explains how crime emerged as an important political issue in the 1960s, with Barry Goldwater emphasizing the subject in his 1964 presidential campaign and the Supreme Court arousing new controversy with decisions about the constitutional rights of the accused. Movies nevertheless continued to reflect the attitude of Lyndon Johnson's administration, treating crime as a complex social problem that could not be solved by crude political fulminations about the legal system being too soft on criminals. Part III looks at how Richard Nixon rode the law and order issue to victory in the 1968 presidential election and how he approached crime issues during his time in the White House. A chorus of movies, some of the most prominent of which were Westerns and cop films starring John Wayne or Clint Eastwood, soon echoed Nixon's claim that courts had put society in grave danger by impairing the effectiveness of police. Part IV examines how anxiety about crime and doubts about the legal system generated a wave of films in the early 1970s about vigilante violence and justice. Part V describes how the idea that legal technicalities frequently allow dangerous criminals to escape punishment became a cliché taken to

1. For a broad and superbly detailed account of connections between film and political culture in the 1960s, see J. HOBERMAN, *THE DREAM LIFE: MOVIES, MEDIA, AND THE MYTHOLOGY OF THE SIXTIES* (2003).

absurd lengths in movies and television shows of the 1980s. Finally, Part VI considers how the law and order issue enjoyed a brief return to prominence in presidential politics thanks to George H.W. Bush's 1988 campaign against Michael Dukakis but has subsequently faded in significance. With crime rates steadily declining and political attention centered on other issues, a series of recent remakes of key films from the Nixon era shows how cinematic representations of crime, law, and justice have evolved with the political climate.

II. THE DAWN OF THE LAW AND ORDER ERA

Crime was rarely a significant national political issue before the 1960s.² It was primarily a local matter, an issue at the county and city level, where the citizenry elected sheriffs and where town councils debated about the size of police department budgets.

The civil rights movement brought new prominence to the issue, as Southern leaders attempted to characterize anti-segregation protests as criminal acts that threatened a breakdown of law and order.³ Barry Goldwater, the arch-conservative Senator from Arizona, saw an opportunity to wring some political mileage out of rising crime rates and Southern racial unrest by making violent crime the principal domestic issue of his 1964 presidential campaign.⁴ The Supreme Court gave that strategy a boost with its June 1964 decision in *Escobedo v. Illinois*, finding that suspects have a constitutional right to legal counsel during police interrogations.⁵ Critics of the decision saw it as confirming concerns about courts setting criminals free on technicalities.⁶ Just a few weeks after the Court's announcement of the *Escobedo* decision, former President Dwight Eisenhower spoke at the GOP national convention in San Francisco and blamed judges for being too soft on violent offenders:

And let us not be guilty of maudlin sympathy for the criminal, who roaming the streets with switchblade knife and illegal firearms seeking a helpless prey, suddenly becomes upon apprehension, a poor, underprivileged person who counts upon

2. KATHERINE BECKETT, MAKING CRIME PAY: LAW AND ORDER IN CONTEMPORARY AMERICAN POLITICS 30 (1997).

3. *Id.*

4. See THOMAS E. CRONIN ET AL., U.S. v. CRIME IN THE STREETS 18 (1981).

5. *Escobedo v. Illinois*, 378 U.S. 478, 490–91 (1964).

6. CRONIN ET AL., *supra* note 4, at 16.

the compassion of our society and the laxness or weaknesses of too many courts to forgive his offense.⁷

The following night, in his speech accepting the party's presidential nomination, Goldwater struck a similar chord, describing the growing menace of "violence in our streets."⁸ He warned that rampant crime posed a threat to liberty because "nothing prepares the way for tyranny more than the failure of public officials to keep the streets safe from bullies and marauders."⁹ On the campaign trail in the months that followed, Goldwater continued to hammer the idea that the Supreme Court cared more about protecting accused criminals than protecting law enforcers or society and that "[s]omething must be done . . . to swing away from this obsessive concern for the rights of the criminal defendant."¹⁰

Goldwater's opponent, the incumbent President Lyndon Johnson, admired the Supreme Court in general and its Chief Justice Earl Warren in particular.¹¹ On the campaign trail, Johnson "did not say much about 'law and order,' except to accuse the Republican candidate of talking in meaningless generalities."¹² Despite Goldwater's efforts to sound the alarm about crime, Johnson succeeded in characterizing Goldwater as a dangerous right-wing extremist and handily won the election.¹³

Johnson nevertheless recognized the crime issue's potential bite. Although he saw the need to guard his domestic policy flank, there would be no announcement of a crackdown on crime from his administration. Johnson considered social problems like poverty, unemployment, and prejudice to be the root causes of crime.¹⁴ He tried to convince the nation that his domestic agenda promoting "jobs, education, and hope" was the most effective form of a war on crime.¹⁵

The Supreme Court's announcement in June 1966 of its decision in

7. *Transcript of Eisenhower's Speech to the G.O.P. Convention*, N.Y. TIMES, July 15, 1964, at 20.

8. *Transcript of Goldwater's Speech Accepting Republican Presidential Nomination*, N.Y. TIMES, July 17, 1964, at 10.

9. *Id.*

10. LIVA BAKER, *MIRANDA: CRIME, LAW AND POLITICS* 40-41 (1983).

11. *Id.* at 41.

12. *Id.*

13. *Id.*; see also THEODORE H. WHITE, *THE MAKING OF THE PRESIDENT 1964*, at 380 (1965).

14. BAKER, *supra* note 10, at 41.

15. CRONIN ET AL., *supra* note 4, at 27.

Miranda v. Arizona,¹⁶ requiring that police inform a person in custody of the “right to remain silent,”¹⁷ revived the national controversy over rights of the accused. Critics of the decision complained that the Warren Court was once again coddling criminals, handcuffing police, and throwing jail doors wide open. As a Texas police chief exclaimed, “It’s the damndest thing I ever heard—we may as well close up shop.”¹⁸ When a Senate subcommittee held hearings in the summer of 1966 on the effects of *Miranda*, the sensational testimony included writer Truman Capote’s observation that the perpetrators of the Clutter family murders chronicled in his bestseller *In Cold Blood* would have gone “scot free” under *Miranda*.¹⁹

Despite the uproar, the Johnson administration held fast to its determination that social conditions, not lax judges, cause crime. “[F]or the long-range prospects of this country,” Johnson said, “I look not to anticrime laws but to antipoverty laws.”²⁰ Johnson wrestled with Congress over the contents of crime legislation during his last years in office,²¹ and the press frequently noted that the President “never once stoop[ed] to the cheap trick of blaming it all on the Supreme Court” or on “‘criminal-coddling’ justices and judges.”²²

Ramsey Clark, the Attorney General of the United States during the last two years of Johnson’s administration, went even further, making it his personal mission to rebut those who blamed crime on liberal

16. *Miranda v. Arizona*, 384 U.S. 436 (1966).

17. *Id.* at 471–72.

18. *The Supreme Court: New Rules for Police Rooms*, TIME, June 24, 1966, at 53, 54.

19. Nan Robertson, *Capote Says Curbs on Police Hurt ‘the Innocent,’* N.Y. TIMES, July 22, 1966, at 11.

20. *Johnson Says Poverty Must End Before Crime Can Be Eradicated*, N.Y. TIMES, Oct. 16, 1966, at 64.

21. Remaining true to his views about crime even as the political stakes surrounding the issue became higher, Johnson proposed legislation in 1967 that would provide federal grants for state and local anti-crime efforts but that also contained gun control provisions and restrictions on wiretapping and other electronic eavesdropping. CRONIN ET AL., *supra* note 4, at 46. Determined to look tough on crime, Democrats in Congress revamped the bill with provisions providing for expanded use of wiretaps and measures criticizing and attempting to override the Supreme Court’s controversial decisions about the admissibility of confessions. See S. REP. NO. 90-1097, at 11–47 (1968), reprinted in 1968 U.S.C.C.A.N. 2112, 2123–63. The legislation passed Congress easily, and Johnson signed it into law in June 1968. See Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197.

22. *Johnson’s Crime Message*, NEW REPUBLIC, Feb. 18, 1967, at 10, 10; see also Editorial, *Target: The Supreme Court...*, N.Y. TIMES, May 15, 1968, at 46; Editorial, *‘Cruel Hoax’: Veto Called For*, N.Y. TIMES, June 7, 1968, at 38.

politicians and permissive judges.²³ Clark believed in “making the criminal justice system fairer, not necessarily more hard-nosed,”²⁴ and he was “obsessed by the fear that the public alarm over crime might express itself in repressive laws and vigilante actions.”²⁵ Clark’s efforts succeeded in making him a lightning rod for criticism of the administration.²⁶

The depiction of police work in popular entertainment tended to be compatible with the Johnson administration’s attitude. Since the 1950s, the “police procedural” genre, typified by the *Dragnet* radio and television series, portrayed police as effective professionals, aided by the organizational structure of police departments, established investigative methodologies, and new surveillance and forensic technologies.²⁷ A host of other television programs offered similarly positive portrayals of law enforcement efforts, such as *Highway Patrol*, *The F.B.I.*, and *The Untouchables*.²⁸ Television made heroes of criminal defense lawyers as well, in programs like *Perry Mason* and *The Defenders*.²⁹

By the latter part of the 1960s, movies began to portray police work as more of a dark, gritty, and morally ambiguous enterprise. For example, the crime thriller *Madigan*,³⁰ released in the spring of 1968, acknowledged how widespread petty corruption and strong-arm tactics had become in big-city police departments. This new honesty forced a fundamental change in the structure of stories told about police and their work. When police departments were bastions of virtue, lead characters like Joe Friday of *Dragnet* or Elliot Ness of *The Untouchables* could fit comfortably into those institutions and operate effectively as crime fighters while maintaining the respect and support of their peers and superiors. In that setting, an officer who played by his own set of rules

23. See BAKER, *supra* note 10, at 206 (describing Ramsey Clark’s strong commitment to civil liberties and the Johnson administration’s approach to crime).

24. CRONIN ET AL., *supra* note 4, at 55.

25. TED GEST, CRIME & POLITICS: BIG GOVERNMENT’S ERRATIC CAMPAIGN FOR LAW AND ORDER 14 (2001) (quoting Gerald Caplan, a staff member for President Johnson’s special commission on crime).

26. See BAKER, *supra* note 10, at 230–31; CRONIN ET AL., *supra* note 4, at 70–71; RICHARD HARRIS, JUSTICE: THE CRISIS OF LAW, ORDER, AND FREEDOM IN AMERICA 14–15 (1970).

27. See Steven D. Stark, *Perry Mason Meets Sonny Crockett: The History of Lawyers and the Police as Television Heroes*, 42 U. MIAMI L. REV. 229, 240–48, 265–66 (1987).

28. See *id.* at 247.

29. See *id.* at 253–56.

30. MADIGAN (Universal Pictures 1968).

was a threat to effective policing. But once the police department becomes a tarnished institution, full of cops who bend the law and overseen by commanding officers and politicians with impure interests, only a rogue or lone wolf cop can truly be heroic.³¹ He must battle departmental bureaucracy and corruption in addition to pursuing criminals.³²

These sorts of virtuous-rebel cops began to appear on movie screens late in Lyndon Johnson's days in the White House, and they generally echoed Johnson's stance on crime and the law. For instance, Frank Sinatra starred in *The Detective*³³ as Joe Leland, a New York cop who stands out from his peers because of his "liberal, idealistic, compassionate" approach to policing.³⁴ While other officers take bribes and brutalize suspects, Leland believes the real cause of crime is poverty, and he punches out fellow officers who fail to obey the letter of the law.³⁵ Leland spends his evenings studying criminology at Columbia. He is "the ideal, liberal policeman that all the Presidential Commissions of the 1960s sought to produce by a combination of organisational reforms and college education."³⁶

As a treatise on the dangers of overreaching police tactics, *The Detective* seemed almost to have been written by Earl Warren or William Brennan. When Detective Leland investigates the brutal murder of a wealthy homosexual man, clues point to the victim's mentally unstable house guest. Other officers begin a third-degree interrogation of the suspect. Leland takes over and shifts from the harsh, bullying approach to a more subtle psychological one. He offers the suspect a cup of coffee, speaks in reassuring tones, and even works in a little insidious physical contact, as if going through the motions of seduction. The suspect finally confesses to the crime, earning himself a seat in the electric chair but winning a promotion for Leland. But later, in the process of investigating another case, Leland discovers that the confession was false and that another man committed the murder. Stunned, Leland turns in his badge.

31. See Robert Reiner, *Keystone to Kojak: The Hollywood Cop, in CINEMA, POLITICS AND SOCIETY IN AMERICA 195, 208* (Philip Davies & Brian Neve eds., 1981).

32. *Id.*

33. *THE DETECTIVE* (Arcola Pictures 1968).

34. Gene Shalit, *Look at the Movies: Frank Sinatra in "The Detective": A Film Without Conviction*, *LOOK*, July 23, 1968, at T2, T2.

35. See James Q. Wilson, *Movie Cops—Romantic vs. Real*, *NEW YORK*, Aug. 19, 1968, at 39, 40.

36. Reiner, *supra* note 31, at 210.

Far from suggesting that legal technicalities merely serve to let guilty criminals go free, the movie leaves the impression that *Miranda* warnings and the right to counsel would have saved an innocent man's life and preserved a good detective's career.

The quintessential cop movie of the period, *Bullitt*,³⁷ reached theaters just a few months later, and it quickly became one of the year's biggest hits at the box office.³⁸ Steve McQueen played Lieutenant Frank Bullitt, a San Francisco detective assigned to protect a Mafia turncoat slated to testify before a Senate subcommittee at the behest of a politically ambitious prosecutor. When it turns out the mobster plans to skip the country rather than testify, Bullitt tracks and guns him down at the airport in front of a horrified crowd of travelers.

Like Detective Leland, Bullitt is a renegade with a progressive attitude toward police work, the "lone lieutenant playing it straight in a crooked world,"³⁹ or as the film's director Peter Yates called him, "a policeman who fights against Establishment manipulation while still a guardian of Establishment values."⁴⁰ While the character struck some critics as "too good to be true, too much of a liberal goody-goody in a dirty, violent job,"⁴¹ the movie asserts that crime should be a problem for police to handle, not an issue for politicians to exploit. Walter Chalmers, the ambitious district attorney, wants Bullitt "castrated" because he will not follow orders the way his cowardly superiors in the police department do. In the movie's climactic scene, Bullitt kills the crook who was to be the chief attraction at the upcoming subcommittee hearings, and without a word, the self-obsessed politician hops into his limousine, unfolds a copy of the *Wall Street Journal*, and speeds off. The limousine ironically bears a bumper sticker that reads "Support Your Local Police." That slogan, promoted by the far-right, anti-communist John Birch Society, had joined "law and order" as a shorthand way of blaming liberal permissiveness for violent crime.⁴² Echoing the Johnson administration's outlook, *Bullitt* treated a politician who cynically exploits the crime issue as more of a villain than the criminals.

37. *BULLITT* (Warner Bros. 1968).

38. See SUSAN SACKETT, *THE HOLLYWOOD REPORTER BOOK OF BOX OFFICE HITS 200* (1990).

39. *New Movies: Cop Art*, *TIME*, Nov. 8, 1968, at 111, 111.

40. Peter Yates, 'Bullitt,' *TV GUIDE*, Oct. 27, 1973, at 16, 16.

41. Andrew Sarris, *Films in Focus*, *VILLAGE VOICE*, Oct. 21, 1971, at 77.

42. See RICHARD J. WHALEN, *CATCH THE FALLING FLAG: A REPUBLICAN'S CHALLENGE TO HIS PARTY* 169 (1972).

III. LAW AND ORDER TAKES CENTER STAGE

By the time *The Detective* and *Bullitt* reached movie theaters in 1968, Lyndon Johnson had announced that he would not seek re-election.⁴³ The presidential campaign season was underway, and law and order had become a pivotal subject of political debate.

A. *The 1968 Campaign*

Richard Nixon needed a domestic policy issue that could make him appealing to voters. After losing the 1960 presidential race to John Kennedy, Nixon had entered a lucrative New York law firm practice, but politics continued to beckon him. Starting with a staff of just two men, speechwriters William Safire and Patrick Buchanan, Nixon began testing the political waters in 1966 by forming an organization to raise and distribute money to worthy GOP congressional candidates.⁴⁴ As he contemplated a presidential run, Nixon had two major hurdles to overcome, the first being his personality. He came across, as media theorist Marshall McLuhan put it, like a “railway lawyer who signs leases that are not in the best interests of the folks in the little town.”⁴⁵ Early in Nixon’s political career, an opponent accused him of unethical campaigning and dubbed him “Tricky Dick,” a nickname that stuck because it captured the sense of distrust that Nixon often inspired.⁴⁶ Nixon also lacked domestic policymaking credentials, having built his reputation in Congress on the issue of battling Communism and then gaining further experience with foreign affairs as Eisenhower’s Vice President. Nixon privately acknowledged early on that he would have a hard time gaining the Republican presidential nomination if domestic policy issues outweighed the Vietnam War in the minds of voters.⁴⁷

Events were already conspiring, however, to turn law and order into a political issue that could carry Nixon to the White House. A crucial spark came in August 1965 when a white police officer stopped a black motorist for driving drunk in Watts, a predominantly poor and black

43. See Tom Wicker, *Surprise Decision: President Steps Aside in Unity Bid—Says ‘House’ Is Divided*, N.Y. TIMES, Apr. 1, 1968, at 1.

44. THEODORE H. WHITE, *THE MAKING OF THE PRESIDENT 1968*, at 50–51 (1969).

45. JOE MCGINNISS, *THE SELLING OF THE PRESIDENT 32* (Penguin Books 1988) (1969).

46. JONATHAN AITKEN, *NIXON: A LIFE* 179, 188 (1993).

47. WHALEN, *supra* note 42, at 37.

section of Los Angeles.⁴⁸ Their confrontation turned into a brawl and then a devastating riot. Over the next few years, urban riots became a regular part of the summer landscape, forming a season of violence from the first warm days of spring until the cold returned in autumn.⁴⁹ Forty-three violent outbursts occurred in 1966, from major cities like Los Angeles and Washington, D.C., to smaller ones like Muskegon and Perth Amboy.⁵⁰ In 1967, there were more than fifty incidents by July, when the worst riots yet occurred in Newark and then Detroit.⁵¹ By the end of the year, a grim total of 164 riots had left 83 dead.⁵²

America had experienced civil disorder many times in its history but never on such a large scale or with such persistency. Television news coverage brought the riots to those far removed from inner-city streets.⁵³ Images of fire and chaos, beamed from helicopter-mounted cameras to the nation's living rooms, sparked dramatic increases in gun sales as worried suburbanites accumulated a massive "arsenal of fear."⁵⁴

Trouble began again early in 1968, with riots in Orangeburg, Durham, and Omaha in February.⁵⁵ The assassination of Martin Luther King, Jr. on April 4th triggered a new spasm of violence, with riots in over one hundred cities within one week.⁵⁶ "[F]or the first time since the Civil War,"⁵⁷ U.S. Army troops moved in to defend Washington, as "looting and fires [spread] within two blocks of the White House."⁵⁸ The evening news showed smoke clouds rising above the cherry blossom trees around the Tidal Basin and machine guns mounted on the steps of the Capitol building aimed out over the National Mall.⁵⁹ Just back from

48. WHITE, *supra* note 44, at 25.

49. *Id.* at 200, 202.

50. *Id.* at 201.

51. *Id.* at 201, 202.

52. *Id.* at 202.

53. *Id.* at 198.

54. WHALEN, *supra* note 42, at 147; *see also* GEORGE D. NEWTON, JR. & FRANKLIN E. ZIMRING, FIREARMS & VIOLENCE IN AMERICAN LIFE: A STAFF REPORT SUBMITTED TO THE NATIONAL COMMISSION ON THE CAUSES & PREVENTION OF VIOLENCE 21-22 (1969) (describing how gun sales increased dramatically in and around Detroit after riots there); WHITE, *supra* note 44, at 223 (noting that gun sales nationwide increased from 4.1 million in 1966 and 4.7 million in 1967 to an annualized rate of 6 million for the first half of 1968).

55. WHITE, *supra* note 44, at 206.

56. *Id.* at 208-09.

57. *Id.* at 209.

58. *Id.* at 208.

59. *Id.* at 208-09.

Vietnam, General William C. Westmoreland toured Washington by helicopter and said, "It looked considerably more distressing than Saigon during the Tet offensive."⁶⁰

The urban riots subsided for the rest of the year, as police and army troops stood ready to quell any disturbance before it escalated into serious trouble.⁶¹ But as the turmoil in the inner cities died down, campus unrest escalated, with violent clashes occurring late in the spring of 1968 between students and police at Columbia University.⁶²

Fear of crime had reached epidemic proportions. Polls showed that the public considered crime the nation's "top domestic problem,"⁶³ with four-out-of-five Americans believing law and order had broken down⁶⁴ and nearly two-thirds believing the Supreme Court was "too soft" on criminals.⁶⁵ Both ends of the political spectrum seemed to believe the nation was on the verge of imminent catastrophe, with the far left predicting a fascist crackdown on dissent and the right warning of a complete collapse of law and order and the beginning of mob rule.

Richard Nixon was not the first candidate to recognize the appeal of the law and order theme and to inject it into the presidential race. Alabama Governor George Wallace, running on the American Independent Party ticket, railed endlessly about it.⁶⁶ To Wallace, calling for the return of law and order was a way of expressing his disgust with all forms of deviance from traditional values and defiance of American authority.⁶⁷ Wallace lumped civil rights marchers and anti-war protestors with rapists and muggers.⁶⁸ He got roars from the crowds with a quip lamenting the current state of criminal justice in America, saying, "You leave this gathering, and when you get on the street outside you get hit on the head by some criminal, and y'awl know as well as I do that that criminal will be out of jail before y'awl can get into hospital," and that

60. WILLIAM C. WESTMORELAND, *A SOLDIER REPORTS* 362 (1976).

61. WHITE, *supra* note 44, at 209.

62. *Id.* at 219-20.

63. *Poll Finds Crime Top Fear at Home: Gallup Reports Issue Leads List of Domestic Problems*, N.Y. TIMES, Feb. 28, 1968, at 29.

64. *81% in a Poll See Law Breakdown: 84% Feel Strong President Would Help, Harris Says*, N.Y. TIMES, Sept. 10, 1968, at 31.

65. *63% in Gallup Poll Think Courts Are Too Lenient on Criminals*, N.Y. TIMES, Mar. 3, 1968, at 40.

66. *See* CRONIN ET AL., *supra* note 4, at 70.

67. *See id.*

68. *See* DAN T. CARTER, *THE POLITICS OF RAGE: GEORGE WALLACE, THE ORIGINS OF THE NEW CONSERVATISM, AND THE TRANSFORMATION OF AMERICAN POLITICS* 348 (1995).

“[n]ext Monday the police officer who made the arrest will be in court for trial himself.”⁶⁹

Wallace promised that when he became President, troublemakers would be “dragged by the hair of the head and thrown under a good jail.”⁷⁰ Wallace had a natural constituency in the South, but political observers were stunned at how well his rhetoric sold elsewhere. He tapped a reservoir of resentment among working-class whites who were fearful about street crime but also grumbling about riots, black militants, and hippie protestors.⁷¹

As Richard Nixon’s campaign got underway, his advisors quickly realized that the law and order theme could turn Nixon’s stern image from a shortcoming into an asset. Nixon took Wallace’s message, shorn of some but not all of its racial edge, and made it palatable to a broader swath of America. When Nixon spoke of law and order, he conveyed an idea both sweeping and vague, bringing to mind a tide of American fears and nostalgic fantasies. In the words of one journalist who covered the campaign:

[I]t seemed to mean a return to the good old days when family life was stronger, when university students wore short hair and demonstrated at football games, when hippies were unknown and narcotics limited to the ghetto, most of all when it was safe to walk city streets and the Negro knew his place.⁷²

Like Wallace, Nixon blurred the lines among villains—the mugger, the antiwar demonstrator, the drug pusher, the black protestor, the rioter, and the arsonist. Nixon also personalized and dramatized the issue, taking aim at two ready targets: the criminal-coddling Supreme Court and the excuse-making liberal Attorney General Ramsey Clark.⁷³

The Nixon campaign’s television ads hit the law and order issue with emotional force. The most striking spot depicted an obviously frightened, middle-aged woman walking alone down a deserted street, while the menacing voiceover recited statistics about the alarming frequency of violent crimes.⁷⁴ After he finished recording a campaign commercial

69. DAVID ENGLISH, *DIVIDED THEY STAND* 351 (1969).

70. *Id.*

71. *See generally id.* at 346–61.

72. *Id.* at 340.

73. *See, e.g.,* BAKER, *supra* note 10, at 230–31, 245–46, 248–49.

74. MCGINNISS, *supra* note 45, at 251–52.

about the need for more discipline in American classrooms, Nixon could not contain his excitement. The ad, he said, “hits it right on the nose.”⁷⁵ “It’s all about law and order and the damn Negro–Puerto Rican groups out there.”⁷⁶ Among all issues in the campaign, only Vietnam rivaled law and order in importance. As a Nixon campaign strategy memo put it, “*the* issue in this campaign is the encroaching jungle versus what remains of a shaken free society.”⁷⁷

In May of 1968, the Nixon campaign released “Toward Freedom from Fear,” its first position paper on the crime issue.⁷⁸ The paper took aim directly at the Supreme Court, arguing that *Escobedo* and *Miranda* were “seriously hamstringing the peace forces in our society and strengthening the criminal forces.”⁷⁹ It further claimed that “the cumulative impact of these decisions has been to set free patently guilty individuals on the basis of legal technicalities,” and that “[t]he tragic lesson of guilty men walking free from hundreds of courtrooms across this country has not been lost on the criminal community.”⁸⁰

Nixon’s campaign stretched facts about crime and the legal system to make its point. For example, Nixon bashed the Johnson administration with statistics showing that crime had gone up 88% since the start of the 1960s but never mentioned that crime had increased at an even faster rate during the previous decade when the Eisenhower–Nixon administration was in command.⁸¹ Claiming that a “barbed wire of legalisms” erected by the Supreme Court posed a serious obstacle to convicting criminals, Nixon noted that only one-in-eight crimes resulted in a conviction but did not mention that in the overwhelming majority of cases this was the result of a failure to make an arrest or failure to prosecute, not a court’s failure to convict.⁸² When criticizing the Supreme Court for decisions like *United States v. Wade*⁸³ and *Gilbert v. California*⁸⁴ that extended the

75. *Id.* at 23.

76. *Id.*

77. WHALEN, *supra* note 42, at 172.

78. RICHARD M. NIXON, *Toward Freedom from Fear*, in NIXON SPEAKS OUT: MAJOR SPEECHES AND STATEMENTS BY RICHARD M. NIXON IN THE PRESIDENTIAL CAMPAIGN OF 1968, at 135 (1968).

79. *Id.* at 142.

80. *Id.* at 143.

81. HARRIS, *supra* note 26, at 25–26.

82. Alexander M. Bickel, *Crime, the Courts, and the Old Nixon*, NEW REPUBLIC, June 15, 1968, at 8, 8–9.

83. *United States v. Wade*, 388 U.S. 218 (1967).

84. *Gilbert v. California*, 388 U.S. 263 (1967).

right to counsel to pretrial line-ups,⁸⁵ Nixon singled out *United States v. Beasley* as the most absurd example of unwarranted judicial protection of criminals' rights.⁸⁶ In *Beasley*, a robbery victim identified one of his assailants to police at the scene of the crime, but the identification was ruled inadmissible because the suspect did not have an attorney present. Although Nixon's campaign papers gave the impression that *Beasley* was another bad Supreme Court decision, in fact it was an "obscure, unreported" decision from a lower District of Columbia court.⁸⁷

Under the banner of law and order, Nixon succeeded in tapping discontent among white voters and countering George Wallace's appeal. The law and order theme struck such a chord that other candidates, even liberal Democrats, had to address it in some manner. Senator Robert Kennedy tried to convince middle-American voters that they could count on him to restore law and order, continually reminding audiences on the campaign trail that he "was, for three-and-a-half years, chief law-enforcement officer of the United States."⁸⁸ Hubert Humphrey, being the nation's current Vice President, was saddled with ties to the administration widely blamed by the other candidates for the disappearance of law and order, but he nevertheless tried to join the chorus by agreeing with Nixon's calls for more federal support for "local police forces."⁸⁹ Only the staunchly anti-war Minnesota progressive Eugene McCarthy strictly declined to play the law and order card, refusing even to use the phrase on the ground it was a code word for repression of black people's rights.⁹⁰

As Nixon cruised toward the GOP nomination, the Democratic race remained tight. In June 1968, hours after a victory in the California primary, Robert Kennedy fell victim to an assassin's bullet. The murder reinforced the sense of national crisis and pushed the country further to the right and into the arms of the more strident law and order candidates.

85. *Wade*, 388 U.S. at 236–37; *Gilbert*, 388 U.S. at 272–73.

86. See NIXON, *supra* note 78, at 144.

87. See Bickel, *supra* note 82, at 9 ("Mr. Nixon has a long reach in search of grist for the innuendo mill.").

88. LEWIS CHESTER ET AL., AN AMERICAN MELODRAMA: THE PRESIDENTIAL CAMPAIGN OF 1968, at 164 (1969).

89. See ENGLISH, *supra* note 69, at 343.

90. CHESTER ET AL., *supra* note 88, at 364. New York City Mayor John Lindsay, who flirted with launching a late bid for the Democratic nomination, also condemned the presidential contenders' rhetoric, asking, "Shall we forget what history has always taught us: that those who suppress freedom always do so in the name of 'law and order'?" ENGLISH, *supra* note 69, at 344.

Wallace, the person least likely to pick up any of a liberal candidate's supporters, nevertheless made a substantial jump in the polls after Kennedy's death.⁹¹

B. The Western Connection

Ten days after Robert Kennedy's death, California governor and GOP presidential hopeful Ronald Reagan spoke to an Indianapolis fundraising dinner crowd about the appalling "philosophy of permissiveness" that was turning America into a "sick society."⁹² He left his audience convinced, as one observer put it, "that Ronald Reagan, if not indeed Matt Dillon, was needed in the White House, speedily."⁹³

No character of American folklore was more suited to being invoked in times of crisis than the Western hero. The nation's frontier past continued to dominate both popular entertainment and political imaginations in the 1960s. Hollywood turned out a steady stream of Western movies, while programs like *Bonanza*, *Gunsmoke*, and *The Virginian* filled a large part of the prime-time television schedule. In the political arena, Lyndon Johnson's remarks continually revealed his romantic fascination with the images and myths of the Old West, particularly the Alamo legend of his native Texas.⁹⁴ Johnson interpreted America's experience in Vietnam through a Western lens, refusing to be the coward who abandoned the fort.⁹⁵

Westerns would have an equally significant association with the domestic political issues of the moment. The establishment of law and order was one of the basic themes of the Western tales recycled for generations in print and on film. Westerns harked back to an imagined time before the rule of law, or a legal system to enforce the law, had settled over the land. In the absence of statutory or other formal law imposed from an outside source, law for the Western hero had to come

91. CRONIN ET AL., *supra* note 4, at 70.

92. CHESTER ET AL., *supra* note 88, at 363.

93. *Id.* Marshal Matt Dillon was the lead character in the long-running *Gunsmoke* series on radio and television. See SUZANNE BARABAS & GABOR BARABAS, *GUNSMOKE: A COMPLETE HISTORY AND ANALYSIS OF THE LEGENDARY BROADCAST SERIES 3* (1990).

94. For an extensive discussion of the significance of the Alamo and other Western themes in Lyndon Johnson's thinking, see RONNIE DUGGER, *THE POLITICIAN: THE LIFE AND TIMES OF LYNDON JOHNSON: THE DRIVE FOR POWER, FROM THE FRONTIER TO MASTER OF THE SENATE 25-45*, 130-45 (1982).

95. See HUGH SIDEY, *A VERY PERSONAL PRESIDENCY: LYNDON JOHNSON IN THE WHITE HOUSE 20-23*, 211-13 (1968) (describing Johnson's "Alamo syndrome").

from within: The law was what was right, and what was right was the law.⁹⁶ The Western hero's function was to tame the uncivilized land, by grit and gun, clearing the way for the institutions of American law, politics, and society.⁹⁷

The transition from natural and individual law to an organized and institutional system of justice led to a second fundamental theme of Westerns: the right of revenge. Stories of vengeance have been a mainstay of Westerns since the genre's beginning.⁹⁸ While making it possible to have an organized legal system, the individualistic Western hero never relinquished his right to take the law into his own hands and enforce a personal form of justice, generating a constant tension between formal or institutional law and the hero's continuing natural law inclinations.⁹⁹

Violence was inevitably a third critical element of the Western mythos, for danger pervaded an uncivilized land and it took fists and guns to create order out of chaos or to exact revenge. Westerns minimized the anxiety associated with extreme violence by organizing it, creating a code about how, when, and why violence could be employed righteously.¹⁰⁰ The Indians or the men in black hats might ambush or shoot an unarmed cowboy in the back, but the Western hero never would.

The undisputed embodiment of America's Western mythology was John Wayne, star of dozens of cowboy pictures dating back to the 1930s. Wayne, who bore the nickname "Duke" since childhood, made no secret of his deeply conservative political views,¹⁰¹ and he was particularly

96. See JENNI CALDER, *THERE MUST BE A LONE RANGER: THE AMERICAN WEST IN FILM AND IN REALITY* 109 (1974) ("Formal law as an instrument of the state or even of the community had at times made only rare appearances in the Western. Even when our hero is a sheriff or marshal he usually becomes an instrument of an emotionally conceived justice rather than the arm of statutory law.").

97. See generally WILL WRIGHT, *SIXGUNS AND SOCIETY: A STRUCTURAL STUDY OF THE WESTERN* 57, 74–85 (1975) (describing the theme of transition from wilderness to civilization as one of the fundamental Western plots).

98. See *id.* at 59–74.

99. See *id.* at 68.

100. See CALDER, *supra* note 96, at 105–06.

101. Wayne made a brief appearance in "Choice," a notorious campaign film supporting Barry Goldwater in 1964. MICHAEL W. FLAMM, *LAW AND ORDER: STREET CRIME, CIVIL UNREST, AND THE CRISIS OF LIBERALISM IN THE 1960S*, at 44 (2005). He also made an ad supporting Ronald Reagan's 1966 run for governor of California. See *Historic Campaign Ads: "John Wayne" Reagan*, HULU, <http://www.hulu.com/watch/40611> (last visited Oct. 30, 2012).

passionate about the law and order issue.¹⁰² Perfectly reflecting the tenor of the times, Wayne's name surfaced during the 1968 campaign in talks about potential vice presidential candidates. George Wallace floated a number of names for his running mate slot, from FBI Director J. Edgar Hoover to fried chicken magnate Harland "Colonel" Sanders, but John Wayne was the possibility that caught the media's attention.¹⁰³ "I never lie to the press," Wallace told reporters one day, and "I told this feller one friend of mine thought John Wayne would be a great choice, and one friend of mine did—a feller I meet in the barbershop."¹⁰⁴ Rumors quickly spread that Wayne would be named Wallace's running mate,¹⁰⁵ but Wayne shot down the idea.¹⁰⁶

While John Wayne remained the king of cowboy movies, the rising star in Westerns was Clint Eastwood. After claiming fame first on the television Western series *Rawhide*,¹⁰⁷ Eastwood starred as the "Man With No Name" in three "spaghetti Westerns" made in Spain by director Sergio Leone and released to startling popular success in the United States.¹⁰⁸ Showing little concern for the Westerns' traditional codes and values, Eastwood's character in the Leone movies was an antihero, devoid of ideals except profit and survival.

With the success of the Leone films, Hollywood beat a path to Eastwood's door. His first American-made Western, *Hang 'Em High*,¹⁰⁹ appeared in movie theaters in the summer of 1968. It transplanted the character from the Leone pictures into a more traditional Western narrative involving the familiar themes of revenge and the opposition between natural justice and formal law. Eastwood played Jedediah Cooper, a cattle rancher who became a U.S. Marshal in the unruly Oklahoma Territory after nearly being lynched. *Hang 'Em High* opposes

102. See, e.g., *Playboy Interview: John Wayne*, PLAYBOY, May 1971, at 75, 82 ("When you allow unlawful acts to go unpunished, you're moving toward a government of men rather than a government of law; you're moving toward anarchy. And that's exactly what we're doing.").

103. CHESTER ET AL., *supra* note 88, at 694.

104. *Id.*

105. *Id.*

106. See RANDY ROBERTS & JAMES S. OLSON, JOHN WAYNE: AMERICAN 566–67 (1995).

107. *Eastwood: Biography: the Early Years*, CLINTEASTWOOD.NET, <http://www.clinteastwood.net/biography/> (last visited Oct. 30, 2012).

108. A FISTFUL OF DOLLARS (United Artists 1964); FOR A FEW DOLLARS MORE (United Artists 1965); THE GOOD, THE BAD, AND THE UGLY (United Artists 1966).

109. HANG 'EM HIGH (United Artists 1968).

Cooper, who signs on as a law officer only to carry out his own personal revenge against those who tried to kill him, with the head of the territory's legal system, Judge Adam Fenton, a zealot who believes mass public hangings are the way to bring law and order to the jurisdiction. The movie is ambivalent, never clearly endorsing Cooper's personal vendetta or Fenton's more formal brand of justice.¹¹⁰

Eastwood soon followed up with *Coogan's Bluff*,¹¹¹ where he played an Arizona deputy sheriff sent to New York City to extradite an escaped murderer. Clad in his cowboy hat and boots, the Western lawman is a fish out of water in the Manhattan concrete jungle. The movie represented a critical transition for Eastwood, from the Old West environment to a contemporary urban setting, and a key example of the ongoing assimilation of traditional Western stories and themes into other genres such as the urban crime drama. In his influential study of Western films, John Cawelti described how the big city became the new frontier by the late 1960s:

It's hard at first to understand how the city can be treated as a heroic frontier until one remembers that, in this suburban age, the inner city is a strange and frightening place associated primarily with increasing crime and violence by most middle-class white Americans. To these persons, the inner city is a dark and bloody ground, and it is comforting to imagine a lone individual hero acting out the Code of the West against gangsters, drug dealers, pimps and pornographers.¹¹²

Trying to bring back his man, Deputy Sheriff Coogan struggles to cut through the red tape of the city's police rules and regulations. The New York cop in charge of the case mocks Coogan's sense of honor and personal responsibility: "A man's gotta do what a man's gotta do. That it, Wyatt?"¹¹³ The movie depicts modern law enforcement and the legal system as naively liberal and treacherously bureaucratic, a far cry from the simple and effective frontier brand of justice that Coogan helped to

110. See PAUL SMITH, CLINT EASTWOOD: A CULTURAL PRODUCTION 27–30 (1993).

111. COOGAN'S BLUFF (Universal Pictures 1968).

112. JOHN CAWELTI, THE SIX-GUN MYSTIQUE 12 (2d ed. 1984); see also Toby Reed & R.J. Thompson, *The Six-Gun Simulacrum: New Metaphors for an Old Genre*, FILM CRITICISM, Spring 1996, at 52, 63–64 (discussing how *Coogan's Bluff* "consciously plays on the insertion of cowboy signs into modern police work").

113. COOGAN'S BLUFF, *supra* note 111.

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carry out in the West.

C. The National Conventions

In an election year full of talk about law and order, nothing drew a sharper contrast between the Republicans and Democrats than their presidential nominating conventions. When the Republican faithful assembled in Miami Beach in mid-August 1968, the atmosphere was pure American “Main Street.”¹¹⁴ Six hundred National Guard troops mobilized to put down a two-day riot in the black Liberty City section of Miami during the convention,¹¹⁵ but it did not disturb the pool parties and cocktail hours for the GOP delegates.

The highlight of the convention’s opening day was an inspirational address entitled “Why I Am Proud to Be an American,” delivered by none other than John Wayne.¹¹⁶ The Duke moseyed up to the podium in a dapper blue pinstripe suit¹¹⁷ and said, “Took me a long time to decide to stand up here,” and, “I’m about as political as a Bengal tiger.”¹¹⁸ Wayne went on to explain that he was there “because this is the party which cares. To use a good old American phrase this is the party which ‘gives a damn.’”¹¹⁹ After plugging his latest movie, *The Green Berets*, a Vietnam version of his old cavalry pictures,¹²⁰ Wayne turned and walked out of the hall as the audience cheered and the band played “You Ought to Be in Pictures.”¹²¹ He headed back to the bar at the Fontainebleau hotel and was heard to complain, “I think the trouble with this country is that we’ve got just a little too much permissiveness in here.”¹²²

114. WHITE, *supra* note 44, at 243.

115. BAKER, *supra* note 10, at 223–24.

116. WHITE, *supra* note 44, at 243.

117. ENGLISH, *supra* note 69, at 282.

118. *Id.*

119. *Id.*

120. THE GREEN BERETS (Warner Bros. 1968). John Wayne’s son described *The Green Berets* as a “cowboys and Indians film” where the “Americans are the good guys and the Viet Cong are the bad guys.” Lawrence Suid, *The Making of The Green Berets*, 6 J. POPULAR FILM 106, 121 (1977). Presaging the sort of rhetoric that would appear in later films, see *infra* Part II.E, Wayne’s character in *The Green Berets* at one point tells a newspaper reporter that “[o]ut here, due process is a bullet.” THE GREEN BERETS, *supra*. The movie “had the dubious distinction of being probably the only pro-war movie made in Hollywood during the Sixties.” *Playboy Interview: John Wayne*, *supra* note 102, at 75.

121. ENGLISH, *supra* note 69, at 282.

122. *Id.*

The convention offered plenty of red meat for crowds hungry for a crusade against the assorted muggers, creeps, and radicals threatening America. Nixon's surprise choice as his running mate, Maryland Governor Spiro Agnew, brought to the ticket a reputation for being tough on the law and order issue. Agnew first gained widespread attention when, after riots in Baltimore following the assassination of Martin Luther King, he upbraided black leaders for not standing up to black extremists.¹²³ The GOP platform promised an "all-out Federal-state-local crusade" against crime and declared, "We will not tolerate violence!"¹²⁴

When Richard Nixon went on stage to accept his party's nomination, he began by describing the current state of the nation: "As we look at America, we see cities enveloped in smoke and flame. We hear sirens in the night. We see Americans dying on distant battlefields abroad. We see Americans hating each other; fighting each other; killing each other at home."¹²⁵ Blending images of domestic and foreign violence, the cities and Vietnam, Nixon equated the need for respect for law and order at home with the need for renewed national respect abroad. Returning to his favorite targets, Nixon repeated his well-worn lines about courts weakening the peace forces and giving comfort to the criminal forces.¹²⁶ One of the loudest ovations of the night came at Ramsey Clark's expense, with Nixon vowing that, come 1969, "We're going to have a new Attorney General of the United States of America."¹²⁷ Nixon's campaign manager would later apologize to Clark, explaining that the attacks were just "a simplistic way to personalize" the law and order issue,¹²⁸ while Nixon privately admitted to aides that Clark was really a "fine fellow" who had "done a good job."¹²⁹

The Democratic convention in Chicago a few weeks later only provided more fuel for those who believed the nation was heading for anarchy. Inside the convention hall, the Democrats' presidential

123. HERBERT S. PARMET, *RICHARD NIXON AND HIS AMERICA* 512 (1990); WHALEN, *supra* note 42, at 203.

124. CHESTER ET AL., *supra* note 88, at 453.

125. *Transcripts of Acceptance Speeches by Nixon and Agnew to the G.O.P. Convention*, N.Y. TIMES, Aug. 9, 1968, at 20.

126. *Id.*

127. *Id.*; HARRIS, *supra* note 26, at 14; see WHITE, *supra* note 44, at 255.

128. HARRIS, *supra* note 26, at 107. President Johnson later said that appointing Ramsey Clark to be the Attorney General was his "biggest mistake," and that he "had to sit on [his] hands" to stop himself from joining in the cheers when Nixon gave speeches bashing Clark. CRONIN ET AL., *supra* note 4, at 57.

129. BAKER, *supra* note 10, at 230.

nominee, Hubert Humphrey, tried to strike a balance: “We do not want a police state,” he declared, “but we need a state of law and order.”¹³⁰ Outside, police clashed with thousands of anti-war demonstrators in a violent frenzy broadcast nationwide on television.¹³¹ The mayhem left few voters doubting which party looked more like it could actually deliver law and order to the country.

D. Nixon Takes Command

Back on the campaign trail, Nixon continued to beat the law and order drum. On a national radio broadcast devoted entirely to the issue, he complained of the “fog of permissiveness” blurring America’s moral vision¹³² and claimed that “[t]oday, all across the land, guilty men walk free from hundreds of court rooms. Something has gone terribly wrong in America.”¹³³ His campaign slogans played on voters’ fears: “This Time Vote As If Your Whole World Depended On It.”¹³⁴ Some Republicans began to worry that Nixon’s reactionary tone might go too far, and one, Senator Edward Brooke of Massachusetts, convinced Nixon late in the campaign to expand his pet phrase “law and order” to “law and order with justice,” a variation felt to be more conciliatory toward black Americans.¹³⁵

Few seemed to notice or care that Nixon’s campaign offered no concrete solutions to the crime problem. John Dean, a young lawyer working on Capitol Hill who volunteered to write position papers on crime for Nixon’s campaign, acknowledged that Nixon had no proposals that differed from what the Johnson administration was already doing; “We just made more noise about it,” he explained.¹³⁶ Late in the campaign season, Nixon grew nervous as his lead in the polls began to shrink.¹³⁷ His campaign staff dredged up a two-year-old remark by Hubert Humphrey who, talking about the urban riots, had said that he

130. WHITE, *supra* note 44, at 307.

131. *Id.* at 285–89, 294–300.

132. RICHARD M. NIXON, *Order and Justice Under Law*, in NIXON SPEAKS OUT, *supra* note 78, at 153, 161.

133. *Id.* at 154–55. The address aired over the Mutual Broadcasting System on September 29, 1968. *Id.* at 161.

134. KIM MCQUAID, *THE ANXIOUS YEARS: AMERICA IN THE VIETNAM-WATERGATE ERA* 41 (1989).

135. CRONIN ET AL., *supra* note 4, at 67.

136. JOHN W. DEAN III, *BLIND AMBITION: THE WHITE HOUSE YEARS* 386 (1976).

137. See JULES WITCOVER, *THE RESURRECTION OF RICHARD NIXON* 423 (1970).

“might have led a pretty good revolt” if he had been born in a slum.¹³⁸ Nixon flogged Humphrey with that quotation, declaring him the “do-nothing candidate on law and order.”¹³⁹ In the end, Nixon won a narrow victory and headed to Washington, soon to be sworn in by Earl Warren, the Chief Justice of the Court that Nixon had attacked so vigorously throughout the campaign.¹⁴⁰

Having won the election, Nixon faced the task of turning his campaign rhetoric into concrete actions that would advance the law and order cause. Nixon followed through on his promise to appoint a new Attorney General, tapping his friend and former law partner and presidential campaign manager John Mitchell.¹⁴¹ Earl Warren’s retirement gave Nixon the opportunity to nominate a new Chief Justice for the Supreme Court.¹⁴² Warren Burger, a conservative judge on the otherwise left-leaning U.S. Court of Appeals for the D.C. Circuit, landed at the top of Nixon’s list of potential nominees by dint of a speech he had made about the shortcomings of America’s criminal justice system.¹⁴³ In the speech, delivered at Ripon College in Wisconsin in 1967, Burger charged that delaying criminal trials and giving excessive protection to the rights of the accused undermines public confidence in the law and encourages criminals to think that technical loopholes can always be found by clever defense lawyers.¹⁴⁴ “[I]t is often very difficult,” Burger claimed, “to convict even those who are plainly guilty.”¹⁴⁵ The speech caught Nixon’s attention when it was reprinted in *U.S. News & World Report*, the most conservative of the nation’s weekly news magazines.¹⁴⁶

138. *Id.* at 424.

139. *Id.*

140. *See* BAKER, *supra* note 10, at 265–66.

141. *Id.* at 266–67.

142. Earl Warren announced his retirement in 1968, but it was to take effect only on the confirmation of his successor. President Johnson picked Abe Fortas to become the Chief Justice, but that nomination fell through because of a filibuster by Republicans and conservative Southern Democrats in the Senate. By that point, with the next presidential election just a month away, it was too late for Johnson to have another nominee considered, and so the chance to choose Earl Warren’s successor fell into Nixon’s hands. *See id.* at 213–16, 233–36, 251–55.

143. RICHARD NIXON, *THE MEMOIRS OF RICHARD NIXON* 419–20 (1978); BOB WOODWARD & SCOTT ARMSTRONG, *THE BROTHERS: INSIDE THE SUPREME COURT* 12 (1979).

144. WOODWARD & ARMSTRONG, *supra* note 143, at 12; *What to Do About Crime in U.S.: A Federal Judge Speaks*, U.S. NEWS & WORLD REP., Aug. 7, 1967, at 70, 70–72 (quoting address of Judge Warren E. Burger).

145. *What to Do About Crime in U.S.: A Federal Judge Speaks*, *supra* note 144, at 70.

146. NIXON, *supra* note 143, at 419–20; WOODWARD & ARMSTRONG, *supra* note 143, at

Nixon eventually would have the opportunity to select three other Supreme Court justices, significantly shifting the ideological balance of the Court.¹⁴⁷

Aside from the judicial appointments, the Nixon administration never went far in converting its law and order rhetoric into reality. Donald Santarelli, a young lawyer who had drafted the Nixon campaign's materials on crime, began working as a key anti-crime strategist for the Justice Department.¹⁴⁸ In a meeting with Nixon and Mitchell, Santarelli confessed that the administration simply could not do much about crime beyond exercising "vigorous symbolic leadership."¹⁴⁹ Slogans, dramatic gestures, and symbolism could bolster the President's image as a leader who was tough on crime, but they would have little substantive effect.

Nixon nevertheless kept talking about the need to do something about crime. At his first presidential press conference, just a week after the inauguration, a reporter posed a question about crime in the District of Columbia. Nixon responded by telling an odd story about how the issue personally affected him one recent night when he wanted to go out for cheesecake but was advised not to do so because of the crime problem on the city streets.¹⁵⁰ He also related how a White House employee had her purse snatched in a dark area near the White House gates. The President announced in no uncertain terms: "Therefore, we have turned on the lights in all of that area, I can assure you."¹⁵¹ It was not exactly the bold anti-crime initiative that Nixon's campaign had promised.

Nixon also kept up his speechmaking. He delivered his first key address on crime at the dedication ceremony for a South Dakota college library in June 1969.¹⁵² He described America as being on the verge of

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147. See JAMES F. SIMON, *IN HIS OWN IMAGE: THE SUPREME COURT IN RICHARD NIXON'S AMERICA* 217 (1973).

148. Edward Jay Epstein, *The Krogh File—The Politics of "Law and Order,"* PUB. INT., Spring 1975, at 99, 103.

149. *Id.*

150. Richard M. Nixon, *1969 Presidential News Conference: January 27, in CONG. Q., NIXON: THE FIRST YEAR OF HIS PRESIDENCY* 1-A, 2-A (1970).

151. *Id.*

152. *Richard Nixon: Address at the Dedication of the Karl E. Mundt Library at General Beadle State College, Madison, South Dakota (June 3, 1969)*, AM. PRESIDENCY PROJECT, <http://www.presidency.ucsb.edu/ws/index.php?pid=2080> (last visited Dec. 13, 2012).

insurrection, lumping together a variety of issues—“[d]rugs and crime, campus revolts, racial discord, draft resistance”—under one law and order banner.¹⁵³ It all boiled down to a “challenge to our values and to the moral base of the authority that sustains those values.”¹⁵⁴ In his first State of the Union address, Nixon announced:

We have heard a great deal of over-blown 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.¹⁵⁵

Nixon offered little explanation, however, as to how he would wage this war. Instead, he admitted that “[t]he primary responsibility for crimes that affect individuals is with local and state rather than with Federal government.”¹⁵⁶

Nixon grew increasingly frustrated by his administration’s inability to take significant actions. He ordered his Chief of Staff Bob Haldeman to “do something on crime *now*.”¹⁵⁷ When Nixon created a council within the White House to advise him on domestic policy issues, a junior staff member named Egil “Bud” Krogh, barely a year out of law school, was put in charge of coming up with an anti-crime program.¹⁵⁸ Krogh later explained the administration’s predicament:

The President had campaigned on his desire to reduce crime nationwide. Crime had to be stopped. I don’t think as a matter of intelligent politics he could have been in office for one year and then said, “I’ve discovered that the federal government has little

153. *Id.*

154. *Id.*

155. Richard M. Nixon, *Text of President Nixon’s State of Union Message* (Jan. 22, 1970), in CONG. Q., NIXON: THE FIRST YEAR OF HIS PRESIDENCY, *supra* note 150, at 5, 6.

156. *Id.*

157. MICHAEL A. GENOVESE, THE NIXON PRESIDENCY: POWER AND POLITICS IN TURBULENT TIMES 88 (1990).

158. Epstein, *supra* note 148, at 101–02. Krogh handled the famous White House meeting between Richard Nixon and Elvis Presley. *See generally* EGIL “BUD” KROGH, THE DAY ELVIS MET NIXON (1994). He later pled guilty to criminal charges for having authorized “the Plumbers,” a secret team of covert operatives, to break into a psychiatrist’s office to search for information about Daniel Ellsberg, the military analyst who leaked “The Pentagon Papers” to the press. *See* J. ANTHONY LUKAS, NIGHTMARE: THE UNDERSIDE OF THE NIXON YEARS 74, 99–101 (1973).

jurisdiction over street crime in the cities, towns, and counties; and therefore it is a matter for the states to handle. Good luck!”¹⁵⁹

The administration eventually generated proposals for federal legislation relating to drugs, obscenity, and organized crime, as well as bills that would overhaul the District of Columbia’s legal system and increase funding to states for anti-crime efforts.¹⁶⁰ The most controversial provisions were two proposed changes to the District’s laws: a “no-knock” rule that would allow police to enter a home unannounced when necessary to protect lives or preserve criminal evidence and a “preventive detention” scheme that would enable courts to jail an accused criminal for up to sixty days without bail before trial if he posed a danger to the community.¹⁶¹ Critics assailed both measures as dangerous violations of civil liberties.¹⁶²

Even those working within the White House saw these initiatives as aimed more at image creation than substantive crime reduction. Bud Krogh, the administration’s point man on crime policy, admitted in an internal memorandum that “nothing really was accomplished” by the administration’s anti-drug efforts.¹⁶³ Likewise, Krogh acknowledged that the no-knock and preventive detention rules were not serious proposals to aid police or courts; instead they were merely “law and order window dressing” meant to follow through on the rhetoric of the 1968 campaign and to help maintain the Nixon administration’s “tough law and order demeanor.”¹⁶⁴

Notes from White House meetings indicate that Nixon himself signed on to the idea that crime policy would be primarily a matter of public relations. In meetings with his chief of staff and the nation’s Attorney General John Mitchell, Nixon discussed how the “problem is not what we do—but the appearance” because the administration was “not getting the points we should on crime.”¹⁶⁵ Nixon and his men agreed that it was “time to go on [a] real crusade” and “put all PR effort we can

159. Epstein, *supra* note 148, at 108.

160. *Administration Proposes Broad Anticrime Program*, in CONG. Q., NIXON: THE FIRST YEAR OF HIS PRESIDENCY, *supra* note 150, at 53, 53–54.

161. CRONIN ET AL., *supra* note 4, at 84.

162. *Id.*

163. GENOVESE, *supra* note 157, at 89.

164. Epstein, *supra* note 148, at 104–05.

165. GENOVESE, *supra* note 157, at 89.

into this area,” with Mitchell and Vice President Spiro Agnew taking the lead at playing the “tough SOB role” of “crime fighter.”¹⁶⁶

The White House hoped to portray Nixon as a tough anti-crime leader whose hands were tied by the Democrats who controlled Congress. In a memorandum laying out the administration’s stance on crime issues, Krogh wrote that “the Administration position in the crime field depends on our ability to shift blame for crime bills inaction to Congress” while touting the administration’s efforts.¹⁶⁷ That strategy failed when Congress, afraid of looking soft on crime, enacted most of Nixon’s proposals.¹⁶⁸

The administration’s approach—elevating imagery over substance—actually made some sense given the administration’s view of crime. If the roots of crime lay in permissive attitudes and a weak moral climate, not social conditions and institutions, then changing societal attitudes could be an effective solution. If the tone of judicial decisions like *Miranda* gave a “green light” to the criminal forces, as Nixon claimed, the administration could give a “red light” to crime merely by adopting a tough law and order stance.¹⁶⁹ Aggressive rhetoric would at least create the appearance of an anti-crime effort, and it might even “spur local authorities to take . . . action.”¹⁷⁰ If that rhetoric suited Nixon’s public relations and political needs, so much the better.¹⁷¹

E. Law and Order in the Nixon-Era Cinema

Since Franklin Roosevelt’s day, a small room in the White House’s East Wing has served as a private movie theater for the president and his family.¹⁷² Lyndon Johnson, who was not interested in movies, converted the room into a studio from which he delivered televised speeches.¹⁷³

166. *Id.*

167. *Id.* at 90; JONATHAN SCHELL, *THE TIME OF ILLUSION* 47 (1975).

168. See Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, 84 Stat. 1236; Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922; District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. No. 91-358, 84 Stat. 473; Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197.

169. SCHELL, *supra* note 167, at 45–46.

170. Epstein, *supra* note 148, at 103–04.

171. See *id.* at 105–06.

172. Roland Flamini, *The Presidents and Their Movies*, AM. FILM, Sept. 1976, at 26, 26–27.

173. *Id.* at 29.

When Nixon became President, the White House movie theater was “back in business.”¹⁷⁴ Throughout his career, Nixon showed a strong desire to integrate what he saw in movies into his policymaking.¹⁷⁵ His favorite movies were Westerns and police thrillers, and his favorite actors were John Wayne and Clint Eastwood.¹⁷⁶ Their films soon would reflect ideas about crime and courts that paralleled Nixon’s own.

As Nixon took office, Western movies were in the midst of a significant transition, becoming darker and more complex. The new style of Westerns defied the genre’s traditional conventions and often turned outlaws into heroes while vilifying the official forces pursuing them.¹⁷⁷ The central characters in these revisionist Westerns often died by the movie’s end, sharpening the points being made about the destructiveness and aggression of American society. For example, the top grossing film of 1969,¹⁷⁸ *Butch Cassidy and the Sundance Kid*,¹⁷⁹ ended with the titular bandit duo charging out to face certain death from the guns of the Bolivian army surrounding them. The same year, director Sam Peckinpah took screen violence to new extremes with *The Wild Bunch*, the story of an outlaw gang that slaughters hundreds of Mexican soldiers before finally falling in the movie’s bloody finale.¹⁸⁰ In the startlingly successful *Easy Rider*, a modern Western with motorcycles instead of horses, the hippie heroes’ search for America ends in death at the hands of Southern rednecks.¹⁸¹

John Wayne remained the embodiment of the traditional Western. For *True Grit*, his first movie released after Nixon took office, Wayne put on an eye patch and let his belly hang out to play Rooster Cogburn, the meanest Deputy U.S. Marshal in Fort Smith, Arkansas, circa 1880.¹⁸² Rooster’s job is to track down criminals, and he is bloodily efficient at it.

174. *Id.* For a list of the movies that Nixon watched during his presidency, see MARK FEENEY, *NIXON AT THE MOVIES* 339–55 (2004).

175. FEENEY, *supra* note 174, at 290.

176. Flamini, *supra* note 172, at 29. John Wayne “was the president’s favorite actor” hands down, while Clint Eastwood “was the one contemporary star whose work Nixon relished.” FEENEY, *supra* note 174, at 84, 280.

177. See generally JOHN H. LENIHAN, *SHOWDOWN: CONFRONTING MODERN AMERICA IN THE WESTERN FILM* 148–76 (1980) (describing how Westerns of the 1960s and 1970s reflected “disillusionment” with society).

178. See SACKETT, *supra* note 38, at 202.

179. *BUTCH CASSIDY AND THE SUNDANCE KID* (Twentieth Century Fox 1969).

180. *THE WILD BUNCH* (Warner Bros. 1969).

181. *EASY RIDER* (Columbia Pictures Corp. 1969).

182. *TRUE GRIT* (Paramount Pictures 1969).

He is, in Wayne's words, a man "who'd been around long enough to know that you don't mess around with outlaws, but you use every trick in the book, fair or foul, to bring them to justice."¹⁸³ The movie was based on a novel published in 1968,¹⁸⁴ and Wayne knew that he wanted to play the Rooster role as soon as he read the book.¹⁸⁵

In an early scene in the movie, Rooster must sit on the witness stand and face the accusations of a slick lawyer who accuses him of violating criminals' rights. Judge Parker, who presides over the federal court for the Western District of Arkansas, is known as a "Hanging Judge" with no sympathy for wrongdoers,¹⁸⁶ but even he accuses Rooster of being too quick to kill suspects rather than hauling them into court. Relaxing with a few drinks after the hearing, Rooster stewes about how the judges and lawyers coddle criminals. Pointing his revolver at a rat eating some spilled grain in the corner of the room, Rooster mockingly declares that he has a writ ordering the rat to cease and desist forthwith. "[I]t's a rat writ, writ for a rat, and this is lawful service of same."¹⁸⁷ Making the analogy unmistakably clear, Rooster explains, "You can't serve papers on a rat You gotta kill him or let him be. . . . We had a good court goin' around here until them pettifoggin' lawyers moved in. The rat-catcher's too tough on the rats! 'Give them rats a fair show,' they say!"¹⁸⁸

True Grit comes upon Rooster Cogburn when he is, like John Wayne, a legend in the waning days of his career. As the reign of law settles over the West, Rooster sees that his time is coming to an end. The movie's plot surrounds a teenage girl who hires Rooster to track down the man that killed her father. The young woman, Mattie, epitomizes the civilization that is rendering Rooster obsolete. Rooster's brand of law is natural and personal, while hers is formal and institutional. Mattie draws up papers to formalize her agreements, and when she does not get her way, her stock response is to threaten a lawsuit by her esteemed lawyer

183. RONALD L. DAVIS, *DUKE: THE LIFE AND IMAGE OF JOHN WAYNE* 285 (1998).

184. See generally CHARLES PORTIS, *TRUE GRIT* (1968).

185. ROBERTS & OLSON, *supra* note 106, at 562.

186. The character is based on Judge Isaac Parker, a real federal judge in the days when Arkansas was at the edge of the wild Western frontier. See Richard W. Etulain, *Preface* to MICHAEL J. BRODHEAD, *ISAAC C. PARKER: FEDERAL JUSTICE ON THE FRONTIER*, at xi–xii (2003); ROGER H. TULLER, "LET NO GUILTY MAN ESCAPE": A JUDICIAL BIOGRAPHY OF "HANGING JUDGE" ISAAC C. PARKER 4 (2001).

187. *TRUE GRIT*, *supra* note 182.

188. *Id.* Wayne acknowledged that the scene "was a kind of reference to today's problems" and "was about less accommodation, and more justice." Roger Ebert, *Can That Fat Old Man Be John Wayne?*, N.Y. TIMES, June 29, 1969, at D15.

J. Noble Daggett. She brandishes his name like Rooster wields his trusty six-shooter. Much as Rooster detests her brand of dry, convoluted legality, he realizes that his role is to make the frontier safe for her society and its legal intricacies.

After a White House screening, Nixon wrote a fan letter to let John Wayne know how much he enjoyed the film.¹⁸⁹ Although some critics noted the movie's "very right-wing and authoritarian tang,"¹⁹⁰ Wayne's performance in *True Grit* won him praise from many who had long derided him and his movies.¹⁹¹ The film also earned him the crowning achievement of his long career, an Academy Award for Best Actor. In a congratulatory telephone call, Nixon told him, "I'm proud of you, on-screen and off."¹⁹²

Nixon openly acknowledged that John Wayne's Westerns influenced his thinking. Talking to news reporters in 1970 about his administration's support for state governments' anti-crime efforts, Nixon mentioned that he had recently seen *Chisum*,¹⁹³ Wayne's latest movie, and that it made him think about the enduring popularity of Westerns.¹⁹⁴ Nixon observed that people obviously like stories in which "the good guys come out ahead" and "the bad guys lose."¹⁹⁵ But he also noted that Westerns depicted "a time when there was no law."¹⁹⁶ Nixon went on to explain how a formal, organized system of law eventually emerged, seeking to strike a delicate balance between the need to prosecute and punish the guilty and the need to provide fair trials.¹⁹⁷ But moviegoers, Nixon suggested, still yearned for the earlier, simpler days when justice was a less complicated affair.¹⁹⁸

189. FEENEY, *supra* note 174, at 85.

190. Penelope Gilliatt, *The Current Cinema: Blinders*, NEW YORKER, July 26, 1969, at 67, 68; see also Vincent Canby, *The Ten Best of 1969*, N.Y. TIMES, Dec. 28, 1969, at D1 (calling *True Grit* "a classic frontier fable that manages to be most entertaining even when it's being most reactionary").

191. ROBERTS & OLSON, *supra* note 106, at 561-62, 571-72.

192. EMANUEL LEVY, JOHN WAYNE: PROPHET OF THE AMERICAN WAY OF LIFE 295 (1988).

193. CHISUM (Warner Bros. 1970).

194. *Richard Nixon: Remarks to Newsmen in Denver, Colorado (Aug. 3, 1970)*, AM. PRESIDENCY PROJECT, <http://www.presidency.ucsb.edu/ws/index.php?pid=2608> (last visited Dec. 13, 2012).

195. *Id.*

196. *Id.*

197. *Id.*

198. Right after discussing the John Wayne movie, Nixon turned to the subject of Charles Manson and his cult followers who were then on trial in California for murder.

As the 1970 mid-term congressional elections neared, Nixon went on the road to support Republican candidates. He once again blamed the Democrats' permissiveness for crime, drugs, and campus protests.¹⁹⁹ At a campaign stop in San Jose, a crowd of protestors turned violent. When Nixon "climbed on top of his car and flashed his trademark 'V for Victory' sign," a hail of rocks, eggs, and vegetables pelted the presidential motorcade.²⁰⁰ Television cameras were there to capture it all. The White House was jubilant, knowing riots on the evening news would shock voters and increase support for candidates promising safety and tougher law enforcement.²⁰¹

Two days later, Nixon gave his most hard-hitting speech of the campaign season at Sky Harbor airport outside Phoenix.²⁰² He described the San Jose protestors as "the same thugs and hoodlums that have always plagued the good people."²⁰³ He claimed that the cause of the nation's problems could be "summed up in a single word: appeasement."²⁰⁴ The country was falling apart because of a "creeping permissiveness in our legislatures, in our courts, in our family life, and in our colleges and universities."²⁰⁵ Nixon said "no band of violent thugs" would keep him hostage in the White House.²⁰⁶ He called for Congress to stop frustrating his crime-fighting efforts, for the Supreme Court to start interpreting laws with greater awareness for rights of crime victims, and

Id. Expressing concern about the glamorization of criminals, Nixon referred to Manson as "a man who was guilty, directly or indirectly, of eight murders without reason." *Id.* After the remark received widespread publicity, Nixon's press secretary rushed to clarify that Nixon meant to say that Manson was accused of murder and that Nixon was not trying to state a conclusion about Manson's guilt before his trial was complete. *Id.*

199. WHALEN, *supra* note 42, at 244; BAKER, *supra* note 10, at 308–09.

200. JOHN ROBERT GREENE, *THE LIMITS OF POWER: THE NIXON AND FORD ADMINISTRATIONS* 60 (1992); ROWLAND EVANS, JR. & ROBERT D. NOVAK, *NIXON IN THE WHITE HOUSE: THE FRUSTRATION OF POWER* 341 (1971).

201. Some suspected that Nixon deliberately provoked the protestors because he realized a violent incident would generate sympathy for him and support for his law and order message. See Kathryn Collins Philp, *The President, Politics, and the Police: Consequences of the 1970 'Stoning' of Richard M. Nixon at the San Jose Civic Auditorium*, 34, 40–41 (Apr. 15, 2005), available at <http://californiapioneers.com/NixonStoningbyPhilp.pdf>.

202. See *Richard Nixon: Remarks at Phoenix, Arizona (Oct. 31, 1970)*, AM. PRESIDENCY PROJECT, <http://www.presidency.ucsb.edu/ws/?pid=2797> (last visited Dec. 13, 2012).

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

for all Americans to show new respect for lawmen.²⁰⁷ Nixon even responded to the critics of his rhetoric: “‘Law and order’ are not code words for racism or repression,” he said.²⁰⁸ “‘Law and order’ are code words for freedom from fear in America.”²⁰⁹

Nixon thought the speech struck just the right hard-line chord, and he directed that the Republic National Committee buy time for it to be aired on each of the three national television networks during prime time on the night before Election Day.²¹⁰ It was a disaster. Nixon’s staff obtained a videotape of the speech that was in black and white and had very poor sound quality.²¹¹ Delivering a fire and brimstone harangue marred by static, Nixon looked and sounded crazed, particularly compared to the Democrats’ rebuttal broadcast of a soothing speech by Senator Edmund Muskie encouraging voters to reject the Republicans’ “politics of fear.”²¹² After Nixon’s speech aired, some Republicans assumed its broadcast had to be a work of “Democratic sabotage” and angrily called television stations to complain.²¹³

The congressional election results were mixed, with the Republicans losing nine seats in the House of Representatives but gaining two in the Senate.²¹⁴ It was not the resounding triumph that Nixon expected. White House aides conceded that the administration had failed to convince the public that “liberal permissiveness was the cause of violence and crime.”²¹⁵ Nixon had put his presidential prestige on the line and, as Attorney General John Mitchell described it, he came across looking like he was “running for sheriff.”²¹⁶

In some sense, Nixon *was* running for sheriff. Rather than viewing crime as a complex, multifaceted social phenomenon, he conceived of it in more personal, individualistic terms. He talked as though a lone brave lawman really could rescue the nation. For example, at a secret meeting

207. *Id.*

208. *Id.*

209. *Id.*; see DAN RATHER & GARY PAUL GATES, *THE PALACE GUARD* 261–62 (1974) (describing the Phoenix speech as having “all the classic ingredients of vintage Nixon: aggressive arm waving, the dark, glowering facial expressions and, of course, vituperative rhetoric”).

210. EVANS & NOVAK, *supra* note 200, at 343–44.

211. *Id.* at 344.

212. *Id.*

213. GREENE, *supra* note 200, at 61.

214. RATHER & GATES, *supra* note 209, at 262.

215. FLAMM, *supra* note 101, at 181.

216. LUKAS, *supra* note 158, at 4.

with Southern delegates at the 1968 GOP convention, Nixon promised that as president he would personally run the Department of Justice, explaining, "I am going to take charge of this, because I am a lawyer."²¹⁷ Likewise, just after the 1968 election, *Newsweek* reported that Nixon gave his team of advisors this simple prescription for restoring law and order: "We'll get a tough cop and tell him to go to work."²¹⁸

The fantasy of an extraordinarily tough super-cop on a crusade against crime appeared in movie theaters midway through Nixon's administration with the release of *Dirty Harry*,²¹⁹ one of the most influential films of its time. The movie's lead role nearly went to John Wayne, but after he declined, the producers decided to go with a younger, edgier star and turned to Clint Eastwood.²²⁰ The result was a movie that broke box-office records and was the "must-see film" of its time.²²¹

Eastwood played San Francisco police detective Harold Callahan, a cynical cop known as "Dirty Harry" because he does the dirty jobs that no one else in the department wants. When a sniper who calls himself "Scorpio" demands \$100,000 from the city to end his killing spree, the mayor and police chief reluctantly put Harry on the case. The movie poses no mystery; the audience knows the killer's identity from the opening scene. As a result, there is never any room for worry that Harry's brutal investigative tactics might be directed at an innocent person. Moreover, Scorpio is no mere criminal. He is the incarnation of everything wrong with America, "a sniggering psychopath, a blank-faced embodiment of evil who personifies all that the American tough mentality despises: long-haired, pacifistic, whiny, effeminate."²²² Conflating violent crime with political protest, the movie depicts Scorpio wearing a belt buckle in the shape of a peace sign.

To Harry's dismay, his superiors pair him with a younger officer who is a "college boy." After learning about his degree, Harry warns his new partner, "Sociology? Oh, you'll go far. That's if you live. Just don't

217. HARRIS, *supra* note 26, at 96.

218. *The Election: What Happened and Why*, NEWSWEEK, Nov. 11, 1968, at 31, 37–38.

219. DIRTY HARRY (Malpas Productions Co. 1971).

220. John Wayne explained that he turned down the role because he was insulted that it had previously been offered to Frank Sinatra, he did not want to play a rogue cop who goes too far outside the law, and he was too busy with other projects. MICHAEL MUNN, JOHN WAYNE: THE MAN BEHIND THE MYTH 308 (2003).

221. MARC ELIOT, AMERICAN REBEL: THE LIFE OF CLINT EASTWOOD 139 (2009).

222. Garrett Epps, *Does Popeye Doyle Teach Us How To Be Fascist?*, N.Y. TIMES, May 21, 1972, at D15.

let your college degree get you killed.”²²³ Harry’s scornful reference to studying sociology was an ingeniously concise way of mocking liberal thinking that treats poverty, racism, or other environmental factors as the root causes of criminal behavior. And in Harry’s dismissal of his partner’s educational credentials, audiences also surely heard echoes of the anti-intellectual attitude that had begun to creep into conservative politics, particularly Vice President Spiro Agnew’s characterization of anti-war protestors as an “effete corps of impudent snobs who characterized themselves as intellectuals.”²²⁴

Scorpio soon kidnaps a young girl, buries her alive, and demands the ransom money, which Harry will deliver. Although Scorpio escapes their initial confrontation, Harry learns his identity, searches his room without a warrant, and tracks him down. In the middle of a football field in a deserted stadium, ignoring Scorpio’s whining pleas for a lawyer, Harry grinds his heel into Scorpio’s wounded leg until the torture forces Scorpio to reveal the girl’s location. But it is too late; she is already dead by the time police arrive.

At that point, *Dirty Harry* begins its explicit critique of Warren Court jurisprudence. The district attorney sets Scorpio free because Harry illegally obtained the confession and evidence—including Scorpio’s rifle and the girl’s body—that flowed from it. The district attorney lectures Harry about infringing a criminal’s rights, asking, “Where the hell does it say you’ve got a right to kick down doors, torture suspects, deny medical attention and legal counsel? Where have you been? Does *Escobedo* ring a bell? *Miranda*? I mean, you must’ve heard of the Fourth Amendment. What I’m saying is, that man had rights.” Harry responds, “Well, I’m all broken up about that man’s rights.”²²⁵

The district attorney even brings in a Berkeley law professor to consult on the issue. “The suspect’s rights were violated under the Fourth and Fifth and probably the Sixth and Fourteenth Amendments,”²²⁶ the professor pontificates. It is hard to imagine a more blatant way for the film to illustrate how the left-wing intelligentsia’s excessive concern for criminals’ rights undermines effective law enforcement.²²⁷

223. DIRTY HARRY, *supra* note 219.

224. SCHELL, *supra* note 167, at 56; *see also* Nicholas D. Kristof, *Obama and the War on Brains*, N.Y. TIMES, Nov. 9, 2008, at 10 (describing Richard Nixon as a “self-loathing intellectual” who scrambled to hide his education and intelligence).

225. DIRTY HARRY, *supra* note 219.

226. *Id.*

227. Richard Leary, *The Straw Dogs Dirty Harry French Connection: The Answer is*

Harry continues his dogged pursuit of the killer. Scorpio pays to have himself beaten up so that he can use the bruises to charge Harry with police brutality. Once again, police officials and politicians tie Harry's hands, taking him off the case. After Scorpio hijacks a school bus loaded with children, Harry pursues him to a deserted, industrial area outside the city. Harry and his quarry wind up in a face-to-face showdown, guns drawn, with Scorpio cowardly using a child as a shield. Harry delivers the memorable line—"You've gotta ask yourself a question: 'Do I feel lucky?' Well, do you, punk?"—and answers his own question with a well-placed bullet.²²⁸ In a final move imitating Gary Cooper's gesture of contempt for the cowardly townspeople he protected in *High Noon*,²²⁹ Harry throws his badge away.

With *Dirty Harry*, Eastwood's transition from Westerns to the urban police thriller was complete. The cinematic tradition of the gunfighter or sheriff who enforces his personal code in the uncivilized West had been transformed into the rogue police officer who plays by his own rules to mete out justice in the big city when law enforcement bureaucracies and permissive judges cannot.²³⁰ Where the Westerns presented violent, personal justice as necessary in a time before law and society became civilized, the modern movie cop like *Dirty Harry* "takes the law into his own hands because the community is *too* civilized, the law too compassionate and understanding of the criminal."²³¹

Film critics were appalled by *Dirty Harry* and its popularity. Pauline Kael called it a "deeply immoral movie,"²³² while Anthony Chase called it a "sick and profoundly dangerous" film.²³³ Andrew Sarris observed

No, FILM CRITIC, Sept.–Oct. 1972, at 57, 68 (observing that "wishy-washy 'liberals,' the type responsible for decisions like *Miranda* or *Escobedo*, are society's *real* enemies, to Harry Callahan").

228. DIRTY HARRY, *supra* note 219.

229. HIGH NOON (Stanley Kramer Productions 1952).

230. See Pauline Kael, *The Current Cinema: The Street Western*, NEW YORKER, Feb. 25, 1974, at 100, 100 (declaring that the Western movie genre was dead, but the Western cowboy hero would not disappear because "he's moved from the mythological purity of the wide-open spaces into the corrupt modern cities and towns"); Leary, *supra* note 227, at 70 (describing *Dirty Harry* as "in many ways an urban Western").

231. JOAN MELLEN, BIG BAD WOLVES: MASCULINITY IN THE AMERICAN FILM 12 (1977); see also Timothy O. Lenz, *Conservatism in American Crime Films*, 12 J. CRIM. JUST. & POPULAR CULTURE 116, 120–24 (2005) (discussing how *Dirty Harry* reflects a shift from liberal to conservative thinking about crime).

232. Pauline Kael, *The Current Cinema: Saint Cop*, NEW YORKER, Jan. 15, 1972, at 78, 81.

233. Anthony Chase, *The Strange Romance of 'Dirty Harry' Callahan and Ann Mary*

that *Dirty Harry* “might have been written just as easily by Harold Renquist, John Mitchell, or J. Edgar Hoover.”²³⁴ And yet, the movie told its story so effectively that even those ideologically opposed to its message could not resist getting caught up in rooting for its hero. Even those segments of society who might be most likely to suffer mistreatment from police, like young people of color living in poor urban neighborhoods, could cheer Harry’s violations of constitutional rights because the movie deftly depicted those rights as “protection for evil abstracted from all social conditions—metaphysical evil, classless criminality.”²³⁵ *Dirty Harry* was “an almost perfect piece of propaganda for para-legal police power.”²³⁶

In interviews, Eastwood confirmed that he was sympathetic to his character’s view that the legal system had shifted too far toward protecting the rights of the accused and away from concern about crime victims.²³⁷ “The general public isn’t worried about the rights of the killer,” Eastwood said, “they’re just saying get him off the street, don’t let him kidnap my child, don’t let him kill my daughter.”²³⁸ With the success of *Dirty Harry*, Eastwood vaulted up to join John Wayne at the top of the list of America’s biggest box-office stars.²³⁹

Dirty Harry was a movie tailor-made for President Nixon. He had a “standing order to rush any new Eastwood picture to the White House as soon as a print was available.”²⁴⁰ Asked to confirm whether he really wanted to see *Dirty Harry* despite its rough language and violence, Nixon replied: “Eastwood can do no wrong, let’s see the picture.”²⁴¹ Impressed by what he saw, Nixon appointed Clint Eastwood to a seat on the National Council on the Arts, hoping that Eastwood would serve as a

Deacon, VELVET LIGHT TRAP, Spring 1972, at 2, 2.

234. Andrew Sarris, *Films in Focus*, VILLAGE VOICE, Jan. 20, 1972, at 55. Like Sarris, President Nixon reportedly had great difficulty remembering William Rehnquist’s name. See Jeffrey Rosen, *Renchburg’s the One!*, N.Y. TIMES BOOK REVIEW, Nov. 4, 2001, at 15, 15 (book review).

235. Kael, *supra* note 232, at 79.

236. *Id.* at 80.

237. *Playboy Interview: Clint Eastwood*, PLAYBOY, Feb. 1974, at 57, 68.

238. *Id.*

239. In an annual survey asking theater owners and film buyers to rank the top box-office draws, Clint Eastwood ranked second behind John Wayne in 1971 and then took over the top spot on the list the following year. Wayne and Eastwood also hold the top two spots on the all-time list of the greatest box-office stars. See INTERNATIONAL MOTION PICTURE ALMANAC 47A (1973).

240. Flamini, *supra* note 172, at 29.

241. *Id.*

conservative counterweight to the liberals that dominated that panel.²⁴²

The idea that courts excessively protect criminals' rights soon seeped more broadly into popular entertainment. The number of movies about police work surged during Nixon's presidency,²⁴³ while police shows proliferated on television as well.²⁴⁴ Many of these cops on movie and television screens were in the *Dirty Harry* mold. As one critic observed, police detectives had once been "so mild and reassuring," like "a cross between a high-school coach and a priest."²⁴⁵ But no more. The stereotypical detective had evolved "into a relentless avenger whose commitment to 'legality' has become ever more tenuous. Indeed, it has become harder and harder to tell him apart from the criminals he pursues."²⁴⁶

The hard-boiled New York City detectives in *The French Connection*,²⁴⁷ a box-office smash and the winner of the Academy Award for Best Picture of 1971, typified the new style. Gene Hackman played the movie's lead character, Popeye Doyle, a detective who is "[t]ough, abusive, resentful, racist," and "embodie[s] all the angers and frustration of the 'law and order' period."²⁴⁸ Although a perilously thin line separates the police from the criminals in the movie, the audience ultimately must cheer on the cops because their authoritarian, lawless, and brutal methods seem to be the only thing standing between society and horrifying villainy.²⁴⁹ At the film's end, the courts let the bad guys

242. RICHARD SCHICKEL, CLINT EASTWOOD: A BIOGRAPHY 286–87 (1996).

243. Guy Flatley, *Cheezit—Here Come the Cops!*, N.Y. TIMES, Nov. 25, 1973, at D13; Nora Sayre, *The Screen: Wayne, Off the Range*, N.Y. TIMES, Feb. 7, 1974, at 46 (observing that "[r]eactionary movies about villainous cops have been as plentiful as children's nosebleeds throughout the last year"); see, e.g., BADGE 373 (Paramount Pictures 1973); COPS AND ROBBERS (Elliott Kastner Productions 1973); FUZZ (Filmways Pictures 1972); THE LAUGHING POLICEMAN (Twentieth Century Fox 1973); THE NEW CENTURIONS (Columbia Tristar 1972); SERPICO (Artists Entertainment Complex 1973); THE SEVEN-UPS (Philip D'Antoni Productions 1973); THE SUPER COPS (MGM 1974).

244. Stephen Arons & Ethan Katsh, *How TV Cops Flout the Law*, SATURDAY REV., Mar. 19, 1977, at 11, 14; Stark, *supra* note 27, at 259–64.

245. David Denby, *Law and Disorder*, HARPER'S, Mar. 1974, at 82, 83.

246. *Id.*

247. THE FRENCH CONNECTION (Philip D'Antoni Productions 1971); see also THE FRENCH CONNECTION II (Twentieth Century Fox 1975).

248. Paul D. Zimmerman, *Popeye's Back*, NEWSWEEK, May 26, 1975, at 84, 84.

249. See Pauline Kael, *The Current Cinema: Urban Gothic*, NEW YORKER, Oct. 30, 1971, at 113, 114 (describing *The French Connection* as having "the latest-model sadistic cop" and "no good guys"); Michael Shedlin, *Police Oscar: The French Connection*, FILM Q., Summer 1972, at 2, 3 (describing *The French Connection* as "rightist propaganda").

off with little or no punishment.²⁵⁰

Talk of fascism swirled around these movies.²⁵¹ The *New York Times* reprinted a provocative essay from the Harvard newspaper in which a student, Garrett Epps, argued that movies like *Dirty Harry* promote a “fascist mentality.”²⁵² While *The French Connection* was “merely a celebration of authority, brutality and racism,” *Dirty Harry* went further and launched a “frontal assault on the concept of law” by encouraging society to “give its highest men—Nietzschean policemen—complete freedom to do as they see fit in a total war between good and evil.”²⁵³ Film journals soon debated whether the new wave of police movies truly deserved the fascist label.²⁵⁴ If these movies were fascist propaganda, their critique of the contemporary criminal justice system was a key element of the message. By claiming that police are routinely undercut by the legal system’s “fatally slow and cumbersome intricacies and the ease with which these may be exploited by criminals to evade justice,” the movies establish that an ultra-violent and “near superhuman” crime-fighting hero is “the only effective way to bypass the law’s niceties and

250. Off screen, Gene Hackman’s liberal politics earned him a spot on one of the Nixon administration’s “enemies” lists. *Latest White House Enemies List — Some Show Biz Names*, VARIETY, Dec. 26, 1973, at 2.

251. See Chase, *supra* note 233, at 2 (claiming that *Dirty Harry* is “an elegiac, necrophiliac, fascist love poem”); Roger Ebert, *Dirty Harry*, CHI. SUN-TIMES, <http://rogerebert.suntimes.com/apps/pbcs.dll/article?AID=/19710101/REVIEWS/101010307/1023> (last visited Aug. 24, 2012) (contending that *Dirty Harry*’s “moral position is fascist”); Kael, *supra* note 232, at 81 (saying that “this action genre has always had a fascist potential, and it has finally surfaced” in *Dirty Harry*).

252. Epps, *supra* note 222, at D15.

253. *Id.*

254. See James Damico, *Beasts and Angels: The Forebears of Dirty Harry and Clean Billy*, 6 J. POPULAR FILM 141, 141 (1977) (comparing fascist films of the early 1970s to similar spate of films in the early 1930s); Pierre Greenfield, *Dirty Dogs, Dirty Devils and Dirty Harry*, VELVET LIGHT TRAP, Fall 1976, at 34, 34–35 (disputing the critics’ characterization of *Dirty Harry* as fascist and observing that “it was the easiest thing in the world to smear the film as law-and-order propaganda” because it appeared as Richard Nixon was in the White House and preparing to run for re-election); Leary, *supra* note 227, at 67 (arguing that *Dirty Harry* is a “highly conservative” and “consistently moral” film but not fascist); John Simon, *From Fake Happyendings to Fake Unhappyendings*, N.Y. TIMES MAG., June 8, 1975, at 18, 24 (describing *Dirty Harry* as fascist in its notion “that the powers of law enforcement are corrupted by wishy-washy liberalism and misguided humanitarianism, and only when the hero realizes that creeps are creeps and fit only for instant extermination by himself does goodness come into its own”); Jack Shadoian, *Dirty Harry: A Defense*, 28 W. HUMAN. REV. 165, 167 (1974) (arguing that critics oversimplified *Dirty Harry* by dubbing it a fascist movie based on “Eastwood’s Republicanism and his movie might-makes-right persona”).

remedy the lawlessness that threatens to rend the fabric of society.”²⁵⁵

With cops replacing cowboys as America’s central folk heroes, Westerns declined in popularity. Even John Wayne, the quintessential Western leading man, rushed to shoot a pair of movies, *McQ*²⁵⁶ and *Brannigan*,²⁵⁷ that retread *Dirty Harry*’s ground. Wayne’s character in *McQ* is a Seattle police lieutenant who disdains hippie radicals, clashes with his commanders because he plays by his own rules, and quits the force because police work involves “too much politics.” He disregards the law when justice needs to be done, and he favors brutal investigative methods even when he knows it will bring on a pack of lawyers screaming about the suspect’s civil rights.²⁵⁸ In *Brannigan*, about a Chicago detective who travels to London to extradite an American mobster, Wayne likewise “gets his man, proving his rough-riding American vigilantism superior to the civil-rights protocol” of European police.²⁵⁹

F. Watergate and the End of the Nixon Era

Even as it rose to new prominence on movie screens, the law and order theme receded in importance for Nixon. After having campaigned in 1968 as the man who would boost law enforcement and restore order, Nixon faced a dilemma because crime rates continued to rise during his time in office.²⁶⁰ In his State of the Union address in January 1972, the best that Nixon could claim was that the nation’s “rate of increase in crime has been slowed.”²⁶¹ In other words, crime was still going up under his watch, but at least it was going up more slowly than before. As he geared up for his 1972 re-election campaign, Nixon downplayed the law and order theme, realizing that Vietnam had eclipsed all other subjects in importance and that the sense of crisis that surrounded the crime issue in

255. Damico, *supra* note 254, at 142.

256. *MCQ* (Batjac Productions 1974).

257. *BRANNIGAN* (Wellborn Ltd. 1975).

258. See Vincent Canby, *Will Duke Wayne Survive ‘McQ’?*, N.Y. TIMES, Mar. 10, 1974, § 2, at D1 (describing the “easy willingness with which [*McQ*] would suspend civil rights in the name of law-and-order” as “a true reflection of our times” but also a “philosophy inherited” from Westerns).

259. Paul D. Zimmerman, *Duke in London*, NEWSWEEK, Apr. 14, 1975, at 92, 92.

260. See James Vorenberg, *The War on Crime: The First Five Years*, ATLANTIC, May 1972, at 63, 63–64.

261. Richard M. Nixon, *State of Union Text I* (Jan. 20, 1972), in CONG. Q., NIXON: THE THIRD YEAR OF HIS PRESIDENCY 3, 3 (1972).

1968 had passed.²⁶² When John Mitchell resigned his job as Attorney General to take over Nixon's re-election campaign, it sent a clear signal that law and order was no longer going to be a critical issue for the administration.²⁶³

On a warm Saturday night in June 1972, Nixon campaign officials rubbed elbows with John Wayne and other stars at a "Celebrities for Nixon" party in Hollywood.²⁶⁴ While John Mitchell and the campaign's deputy director, Jeb Magruder, tried to look as though they were enjoying the festivities, they had just received gravely troubling news.²⁶⁵ Five men, including the campaign's security director, had been arrested early that morning while burglarizing the Democratic National Committee's headquarters in the Watergate apartment complex on the banks of the Potomac River.²⁶⁶ It was the beginning of the end for President Nixon.

At the Republican National Convention later that summer, John Wayne made an appearance to introduce a film, *Richard Nixon: Portrait of a President*, saying, "I've made enough pictures in my life to know the good guys from the bad guys, and I've sure seen enough in these last couple of years to know that Richard Nixon is a *good* guy. A *great* President and a *good* guy."²⁶⁷ In his nomination acceptance speech, Nixon offered just a touch of the old law and order rhetoric, renewing his pledge to appoint judges to "strengthen the peace forces as against the criminal forces in the United States" and promising an "all-out offensive against crime, against narcotics, against permissiveness in our country."²⁶⁸

262. Nixon said virtually nothing about law and order in his released statements and press conferences in 1972. See generally CONG. Q., NIXON: THE FOURTH YEAR OF HIS PRESIDENCY (1973). A rare exception was when, in an interview with a reporter from the *Washington Star-News* conducted shortly before the 1972 election, Nixon talked about how "the whole era of permissiveness ha[d] left its mark" on America and reiterated the need for more conservative Supreme Court justices. Garnett Horner, *President Outlines Goals and Concept of Government*, in CONG. Q., NIXON: THE FOURTH YEAR OF HIS PRESIDENCY, *supra*, at 21, 25.

263. Epstein, *supra* note 148, at 123.

264. LUKAS, *supra* note 158, at 217; THEODORE H. WHITE, BREACH OF FAITH: THE FALL OF RICHARD NIXON 160–61 (1975).

265. See LUKAS, *supra* note 158, at 217.

266. See WHITE, *supra* note 264, at 161.

267. JAMES M. PERRY, US & THEM: HOW THE PRESS COVERED THE 1972 ELECTION 216–17 (1973).

268. *Transcript of Nixon's Acceptance Address and Excerpts from Agnew's Speech*, N.Y. TIMES, Aug. 24, 1972, at 47.

A month later, Nixon hosted a reception for his Hollywood supporters on the lawn of his home in San Clemente, California.²⁶⁹ The guests included John Wayne and Clint Eastwood.²⁷⁰ The press reported that Nixon seemed “tickled to death” to be surrounded by his cinematic heroes.²⁷¹ “I like my movies made in Hollywood,” Nixon remarked. “This is something that is typically American . . . something that means a lot in presenting America to the world.”²⁷² *Life* magazine observed that “[t]he evening was symbolic of something that has become pretty big in our national life, the fusion of Hollywood and Washington. The Nixon party was the grandest manifestation of the phenomenon.”²⁷³

Nixon won re-election in November in a landslide.²⁷⁴ As his second term began, he started mentioning the law and order issue again but this time to claim credit for law and order being successfully restored in America under his command.²⁷⁵

The Watergate scandal soon eclipsed everything else for Nixon, making a mockery of his administration’s supposed devotion to law and order. As the scandal unfolded, Nixon’s approval ratings plummeted.²⁷⁶ John Wayne initially stood by Nixon, outraged that the liberal press was trying to tear down an honorable man.²⁷⁷ At a White House dinner in May 1973 in honor of former prisoners of war returning from Vietnam, the entertainment included Bob Hope, Irving Berlin, and Sammy Davis, Jr.²⁷⁸ But John Wayne got the most applause, telling the POWs “I’ll ride

269. Hugh Sidey, *The Night Those Stars Came Out*, LIFE, Sept. 8, 1972, at 14, 14.

270. ELIOT, *supra* note 221, at 139.

271. Sidey, *supra* note 269, at 14; *see also* ELIOT, *supra* note 221, at 139 (describing how “Nixon fawned over Clint [Eastwood] as if the president were the fan and Clint were the president”).

272. *Republicans: The Presidential Hat*, NEWSWEEK, Sept. 11, 1972, at 21, 21.

273. Sidey, *supra* note 269, at 14.

274. *Nixon Landslide Victory of Historic Proportions*, in CONG. Q., NIXON: THE FOURTH YEAR OF HIS PRESIDENCY, *supra* note 262, at 8.

275. *See, e.g.*, Richard M. Nixon, *State of the Union, Crime and Law Enforcement* (Mar. 14, 1973), in CONG. Q., NIXON: THE FIFTH YEAR OF HIS PRESIDENCY 30-A, 30-A to 31-A (1974) (describing the success of the administration’s “all out attack” on crime); Richard M. Nixon, *Legislative Goals* (Sept. 9, 1973), in CONG. Q., NIXON: THE FIFTH YEAR OF HIS PRESIDENCY, *supra*, at 135-A, 137-A (touting the nation’s “renewed respect for law, order and justice”).

276. *See Nixon’s Fifth Year: From Triumph to National Doubt*, in CONG. Q., NIXON: THE FIFTH YEAR OF HIS PRESIDENCY, *supra* note 275, at 1 (stating that between February and November of 1973, Nixon’s approval rating sank from 68% to 27%).

277. ROBERTS & OLSON, *supra* note 106, at 605.

278. *See* NIXON, *supra* note 143, at 867.

into the sunset with you anytime.”²⁷⁹ As he left the stage, Wayne stopped to tell Nixon, “I want to thank you, Mr. President, not for any one thing, just for everything.”²⁸⁰ Later that year, meeting privately with Wayne at Nixon’s home in San Clemente, Nixon promised that he was not guilty of any wrongdoing in relation to the Watergate incident.²⁸¹

In his last months in office, in the summer of 1974, Nixon ordered a movie to be screened in the White House almost every night. He seemed to find “temporary refuge” from his troubles in the darkness of the White House’s small theater room.²⁸²

It was a great irony; the law and order administration toppled by a bungled burglary. The Supreme Court even got the opportunity to exact a revenge of sorts for all the criticism that Nixon had leveled against it. Under Warren Burger’s leadership, the Court had cautiously retreated from the decisions on criminal rights that Nixon so despised.²⁸³ But when it came time to stand up to Nixon over production of the audiotapes of Nixon’s conversations relating to Watergate, the Court was unanimously resolute in its unwillingness to bend to the pressure of presidential power.²⁸⁴ Listening to news reports about the tapes and realizing that they exposed Nixon’s complicity in the Watergate cover-up, John Wayne turned to a friend and simply said, “Damn. He lied to me.”²⁸⁵

Shocked by the scandal but unchanged in his fundamental views, Wayne headed off to familiar Western surroundings to shoot *Rooster Cogburn*,²⁸⁶ a sequel that extended *True Grit*’s critique of judicial liberalism. Stripped of his badge for carrying out his duties with “excessive zeal” and killing too many suspects that he was supposed to arrest, Rooster lectures the judge who accuses him of abusing justice. “I abuse justice? There ain’t no justice in the West no more! Men with sand

279. *Id.*

280. *Id.* Among other things, Wayne apparently owed thanks to Nixon for helping him out of difficulties with the IRS. The Nixon administration had intervened to convince the IRS to turn down the heat in an investigation of Wayne’s taxes. See LUKAS, *supra* note 158, at 24; WHITE, *supra* note 264, at 151.

281. ROBERTS & OLSON, *supra* note 106, at 606.

282. Flamini, *supra* note 172, at 26.

283. See SIMON, *supra* note 147, at 252–67.

284. See generally *United States v. Nixon*, 418 U.S. 683 (1974).

285. ROBERTS & OLSON, *supra* note 106, at 606. Wayne nevertheless threw a party for Nixon after his resignation. “You know, Mr. President,” Wayne said, giving Nixon a statue of a horse as a gift, “it’s kinda ironic giving this horse to you after the rough ride you’ve been having in Washington.” AITKEN, *supra* note 46, at 537.

286. ROOSTER COGBURN (Universal Pictures 1975).

in their craws bein' pushed aside by duded-up Yankee lawyers who won spelling bees back home."²⁸⁷ Rooster derides the court's other deputies as "lily-livered law bookers" and rants about "all these new-fangled laws" getting in the way of his work.²⁸⁸ Pauline Kael vividly summed up the movie as "a belch from the Nixon era."²⁸⁹

IV. THE VIGILANTES

Behind the obsession with law and order, in politics as well as popular entertainment, lurked the threat of vigilantism. When fear of crime and disorder grows so intense that legitimate forms of law enforcement seem inadequate, the idea of private violence protecting the established order becomes increasingly palatable.²⁹⁰ During the riot-plagued summers of the late 1960s, fearful citizens stockpiled weapons.²⁹¹ Richard Nixon, while helping to feed the hysteria, warned in his submission to the GOP's 1968 national platform committee that America threatened to become "an armed camp of two hundred million people, with vigilante justice as one of its hallmarks."²⁹² To some, Watergate represented the "triumph of a vigilante mentality in the presidency" as Nixon's henchmen carried out an illegal campaign in pursuit of purportedly patriotic objectives.²⁹³

A cycle of notable films with vigilante themes appeared during Nixon's years in office. Vengeance through extra-legal violence had long been a familiar motif in the Western genre,²⁹⁴ from light-hearted adventure stories about the Lone Ranger to more serious dramas like *The Ox-Bow Incident*.²⁹⁵ Police movies like *Dirty Harry* and *The French Connection* technically did not depict vigilantism because their protagonists were officers of the law. But these movies effectively

287. *Id.*

288. *Id.*

289. Pauline Kael, *The Current Cinema: Horseplay*, NEW YORKER, Nov. 3, 1975, at 140, 140. Kael added that the movie gave Wayne a chance to pontificate "like a frontier Spiro Agnew." *Id.*

290. *See Damico, supra* note 254, at 142.

291. *See supra* note 54 and accompanying text.

292. RICHARD M. NIXON, *The Crusade Against Crime*, in NIXON SPEAKS OUT, *supra* note 78, at 131. This was submitted to the Republican National Convention Committee on Resolutions on July 31, 1968. *Id.* at 134.

293. Alan Wolfe, *Extralegality and American Power*, SOCIETY, Mar.–Apr. 1976, at 44, 47.

294. *See supra* note 98 and accompanying text.

295. THE OX-BOW INCIDENT (Twentieth Century Fox 1943).

verged on being vigilante stories, with their emphasis on the unsanctioned and often brutal methods of officers frustrated by their lack of support from society and especially courts.²⁹⁶ Other films went even further down the vigilante path and proved to be wildly popular with moviegoers.

Oddly enough, the first of the vigilante blockbuster hits of the era was a left-wing fantasy, not a conservative screed. *Billy Jack* was a virtually homemade film from the husband-wife team of Tom Laughlin and Delores Taylor.²⁹⁷ Laughlin starred as Billy Jack, a semi-mystical “half-breed” Cherokee Indian, a Green Beret veteran of the Vietnam War, and a master of martial arts. Fighting with furious fists and feet, he is the protector of all that is good and innocent—the noble Indians, the wild horses, and a hippie school for castaway children—in his corner of the Arizona desert. With a hero equally at home on a horse or a motorcycle, the movie mixed elements of the Western genre with a large dose of the contemporary youth counterculture. The movie draws simple lines between good and evil, with the latter embodied by the bigoted townsfolk, the local sheriff’s corrupt deputies, and the bullying son of the county’s wealthiest businessman. After the rape of the school’s administrator and the murder of one of its Indian students, Billy Jack exacts revenge before finally surrendering to a battalion of state police who have him surrounded. The movie is an unpolished but oddly compelling amalgam of mixed messages, preaching peace and pacifism while still reveling in Billy’s explosive use of violence to avenge injustices.

Having no idea what to make of the curious film on its hands, Warner Brothers launched *Billy Jack* in New York City theaters, marketed it as a kung fu B-movie, pulled it quickly when the reviews and box-office results were terrible, and then “booked it into porno houses and drive-ins” in backwater markets.²⁹⁸ Laughlin sued the studio and got the right to distribute the movie himself, turning it into one of the most

296. See Kanti C. Kotecha & James L. Walker, *Vigilantism and the American Police*, in *VIGILANTE POLITICS* 158, 159 (H. Jon Rosenbaum & Peter C. Sederberg eds., 1976) (“Police vigilantism can be defined as acts or threats by police which are intended to protect the established socio-political order from subversion but which violate some generally perceived norms for police behavior.”); see also Denby, *supra* note 245, at 84 (describing how recent movies presented a police officer as “a sort of publicly subsidized vigilante, with a license to kill the various undesirables, the *others*”).

297. *BILLY JACK* (National Student Film Corp. 1971).

298. Jack Kroll, *Out of the Sun*, *NEWSWEEK*, Aug. 30, 1971, at 76, 76.

unexpectedly profitable movies of the decade.²⁹⁹ While young people loved its progressive, anti-establishment attitude, critics wondered what hope remained if liberals embraced vigilante justice as passionately as conservatives. If the movie's central theme is that "a gun is better than a constitution in the enforcement of justice," Roger Ebert asked, "[i]s our only hope that the good fascists defeat the bad fascists?"³⁰⁰

Vigilante justice was likewise the central focus of *Straw Dogs*,³⁰¹ one of the most controversial films of its day. But *Straw Dogs* took the idea a step further, suggesting that even the most timid, intellectual, American liberal could be capable of the most gruesome violence if pushed too far by villainous threats to home and family. The movie's director, Sam Peckinpah, had already broken new ground with extreme violence in Western movies like *The Wild Bunch*.³⁰² Moving to a modern setting for *Straw Dogs*, Peckinpah brought with him the central thematic concerns of the Westerns—vengeance, violence, masculinity—because, as he put it, "[e]very story is a Western."³⁰³ Dustin Hoffman starred in *Straw Dogs* as David Sumner, a fastidious American mathematician who comes to realize and even relish his capacity for primitive, animalistic violence. Although set in a Cornish village, the hometown of David's young British wife, *Straw Dogs* expressly connects itself to the turmoil plaguing the United States in the Nixon era, with the English villagers quizzing David about all the "bombing, rioting, sniping," and "shooting of blacks" going on back in America.³⁰⁴ Local thugs rape David's wife and later lay siege to his house when he gives shelter to the "village idiot" who accidentally killed a teenage girl.³⁰⁵ The movie's only figure of formal authority, local magistrate Major Scott, arrives on the scene but is killed by the hooligans, leaving David to take matters into his own hands.³⁰⁶ Playing into a crime-fearing public's fantasies, David turns into a savage king of his castle, telling his previously rebellious wife to do as she is told and declaring, "This is where I live. This is me. I will not allow violence against this house. No way."³⁰⁷ With a shotgun, a fireplace

299. SACKETT, *supra* note 38, at 218.

300. Roger Ebert, 'Billy Jack,' CHI. SUN-TIMES, Aug. 2, 1971, at 54.

301. STRAW DOGS (ABC Pictures 1971).

302. See *supra* note 180 and accompanying text.

303. Rory Palmieri, *Straw Dogs: Sam Peckinpah and the Classical Western Narrative*, 16 STUD. LITERARY IMAGINATION 29, 29 (1983).

304. *Id.* at 32; STRAW DOGS, *supra* note 301.

305. Palmieri, *supra* note 303, at 38–42; STRAW DOGS, *supra* note 301.

306. See Palmieri, *supra* note 303, at 33–34; STRAW DOGS, *supra* note 301.

307. See Palmieri, *supra* note 303, at 37.

poker, a large steel-jawed trap, and a few pots of boiling oil, David repels the invasion, finally stopping to survey the carnage and declaring, “Jesus! I got ’em all.”³⁰⁸ In contrast to the traditional Western narrative, where order is ultimately achieved, the result of David’s vigilantism is “a state closer to anarchy than to civilization.”³⁰⁹

At its first public screening, “[a] third of the audience walked out,” horrified, before the movie was over, while “[m]any who remained cheered Dustin Hoffman on to each escalating act of brutality.”³¹⁰ Critical reaction to *Straw Dogs* was equally polarized, with some pronouncing it a brilliant film and others “denounc[ing] it as depraved, misogynistic and fascist.”³¹¹ The extreme violence was somehow far more disturbing outside a mythic Western setting. One critic observed that “[w]hen one bunch of desperadoes shoots it out with another, that’s an event (maybe) for song and story; but when a civilized community stoops to slaughter, that’s a tragedy.”³¹² Peckinpah sought to show, however, that the human capacity for violence knows no bounds of time or place. “It’s about the violence within all of us,” he explained, “[t]he violence which is reflecting on the political condition of the world today.”³¹³

Straw Dogs depicted vigilante violence with at least some degree of moral ambiguity, but other movies soon offered more simplistic accounts. None was less sophisticated or more astonishingly popular than *Walking Tall*,³¹⁴ a movie loosely based on the true story of Buford Pusser, a sheriff who vigorously cracked down on crime in a rural Tennessee county in the 1960s and who survived repeated attempts on his life, one of which resulted in his wife’s death.³¹⁵ Pusser first gained national notice when CBS News did a story comparing his law enforcement heroics to those of Wyatt Earp, and newspapers soon “proclaim[ed] him one with Earp, Bat Masterson, and Wild Bill

308. *Id.* at 40.

309. *Id.* at 35.

310. David Weddle, *Straw Dogs: They Want To See Brains Flying Out?*, SIGHT & SOUND, Feb. 1995, at 20, 25.

311. *Id.*

312. Peter Schjeldahl, *Can Blood Baths Make Men of Us?*, N.Y. TIMES, Feb. 20, 1972, at D11.

313. Weddle, *supra* note 310, at 20.

314. WALKING TALL (Bing Crosby Productions 1973).

315. Judith Crist, *Hick, Hack, Hokum, Ho-Hum*, NEW YORK, Feb. 18, 1974, at 74, 74. The movie took substantial liberties with the truth to heroicize Pusser. *See id.*

Hickock.”³¹⁶

Directed by Phil Karlson, a Loyola Marymount law school graduate,³¹⁷ the movie begins as Pusser, played by Joe Don Baker, has just given up his career as a professional wrestler and returned to his hometown. He finds that crime has become a way of life there, with roadside joints offering gambling and prostitution. The vice rackets have the local politicians and law enforcers in their pockets, and the corruption extends all the way up the line to the state capitol. When Pusser reveals that the Lucky Spot roadhouse cheats its customers at its craps tables, he gets himself beaten, cut, and left for dead in a roadside gully. But Pusser shows an almost superhuman ability to absorb injury and survive. When the local sheriff refuses to act, Pusser takes the law into his own hands. He carves himself a giant wooden club, returns to the Lucky Spot, and wields the big stick to pay back the beating he took and to recover his money.

The sheriff finally perks up and arrests Pusser for assaulting and robbing the Lucky Spot crew. Judge R.W. Clarke, the local jurist, is a sour man who is as corrupt as the other authorities in town. Against Judge Clarke’s advice, Pusser insists on pleading not guilty and going to trial without counsel. The judge tells him in advance how the trial will end: “You’re ignorant of the law, Pusser. You refuse to hire counsel. So suffer the consequences of your foolishness.”³¹⁸ As his trial begins, Pusser learns that his only witness was just found dead at the bottom of a river. Taking the witness stand, Pusser rips open his shirt to show the jury the knife scars on his chest. The jury returns with a verdict of acquittal after less than five minutes of deliberations.

Crossing over from private vigilante to public law enforcer, Pusser wins election as the new sheriff. Even so, his power remains essentially unofficial and personal. Unlike his deputies, for example, Pusser does not wear a uniform. As Pusser’s power rises, the authority of the law declines. After bad moonshine poisons young blacks at a civil rights picnic, Pusser rounds up the men who ran the illegal still. When he hauls them into court, Judge Clarke immediately sets them free because Pusser conducted an illegal search and did not advise the suspects of their constitutional rights upon arrest. “You can’t just let them go because of

316. *Id.*

317. Charles Higham, *A Mild and Modest Man and His Very Violent Movie*, N.Y. TIMES, May 12, 1974, at D13.

318. WALKING TALL, *supra* note 314.

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some little technicalities,”³¹⁹ Pusser cries, but Judge Clarke responds that the Supreme Court does not consider them technicalities. After another defendant gets only a ten dollar fine for nearly killing a deputy, Pusser confronts the judge:

Judge Clarke: You run the streets. I run the courts.

Pusser: I bring ’em in, you let ’em go, the whole thing just becomes a big joke. And I don’t care to trade lives for laughs. From now on, I want maximum penalties.

Judge Clarke: You want? You want? Why you self-appointed dictator. All you know is force and violence. You don’t understand the simplest things about the law.³²⁰

Taking Judge Clarke’s copy of the criminal code, Pusser reads up to learn the law. The first thing he discovers is that the sheriff has the authority to assign the location of judges’ chambers, and he promptly relocates Judge Clarke’s desk to the men’s bathroom. As the brutality of his confrontations with the county’s crime bosses escalates, Pusser stops bothering to argue legal niceties with Judge Clarke. When the crooks ask if Pusser has a warrant authorizing him to search a saloon’s storeroom for illegal liquor, he replies, “Yeah, I keep it in my shoe,”³²¹ as he kicks down the door. In another scene, Pusser beats a criminal to a bloody pulp while sarcastically advising him that he has a right to make a phone call and to have a lawyer. The movie eliminates any doubt about the legitimacy of Pusser’s resort to extra-legal violence, before and after he became the sheriff, by drawing lines between good and evil in the starkest possible terms. The movie’s villains are so bad they even shoot Pusser’s dog. The movie ends with a salute to justice achieved by mob violence. After an ambush leaves Pusser seriously wounded and his wife dead, the townsfolk head from her funeral to make a bonfire out of the gambling tables and bar stools at the Lucky Spot.

Walking Tall at first seemed destined to be a box-office flop.³²² The

319. *Id.*

320. *Id.*

321. *Id.*

322. Peter Funt, *For Some Films, It’s No, No, New York!*, N.Y. TIMES, Mar. 10, 1974, at D9.

initial advertising emphasized the skull-cracking violence,³²³ but a theater owner in Ogden, Utah, created his own ads comparing the movie to *Billy Jack*, and new national ads soon emphasized the film's inspirational aspects.³²⁴ Reports filtered back that audiences in some locations were standing up and applauding after the movie.³²⁵ The real Buford Pusser toured the nation, promoting the film and, as he put it, "calling attention of the young people to law and order."³²⁶ The film slowly grew into a phenomenal nationwide success, grossing tens of millions of dollars and spawning two sequels and a television show.³²⁷ The movie had managed to strip the vigilante theme of its nihilistic connotations and link it to a quaint portrayal of traditional, rural society built around church, home, and family.³²⁸ The story "appeals to a deep-seated belief in a simple kind of justice—perfect, swift, Biblical justice."³²⁹ Pusser "can be trusted with his fists, his stick, and his gun because he has absolute knowledge of innocence and guilt."³³⁰ He is a "one-man lynch mob," but one who has "the judgment of a god."³³¹

The fantasy of vigilante violence as a solution to the crime problem soon reached its apotheosis in *Death Wish*,³³² a movie that drew record crowds upon its release in the summer of 1974.³³³ Made under the working title "Sidewalk Vigilante,"³³⁴ the film starred Charles Bronson,

323. *Id.*

324. Frank Segers, 'Walking Tall' Fresh Proof a Distrib Should Resist 'Drop-Dead' Psychology, VARIETY, Aug. 1, 1973, at 16.

325. Funt, *supra* note 322, at D9.

326. Earl Wilson, *It Happened Last Night*, N.Y. POST, Feb. 20, 1974, at 20.

327. See WALKING TALL PART II (Bing Crosby Productions 1975); FINAL CHAPTER: WALKING TALL (Bing Crosby Productions 1977); *Walking Tall* (NBC television broadcasts Jan. 17, 1981–Mar. 31, 1981).

328. See Peter Biskind, *Vigilantes, Power and Domesticity: Images of the 50's in Walking Tall*, 3 J. POPULAR FILM 219, 226 (1974) (describing how the movie "resolutely faces backward towards the good old days, when home and family rested secure in the bucolic splendor of the countryside, safe from the miasma of the cities"); Jon Landau, 'Walking Tall' Beats 'Dirty Harry,' ROLLING STONE, Apr. 26, 1973, at 64, 65 (comparing *Walking Tall*'s sympathetic depiction of traditional rural society to *Dirty Harry*'s bleak view of contemporary urban society).

329. Kael, *supra* note 230, at 101.

330. *Id.* at 105.

331. *Id.* at 106.

332. DEATH WISH (Dino De Laurentiis Co. 1974).

333. See Judy Klemesrud, *What Do They See in 'Death Wish'?*, N.Y. TIMES, Sept. 1, 1974, § 2, at 1.

334. Michele Wallace, *Charles Bronson Is Still Pleading Poverty*, VILLAGE VOICE, Jan. 12, 1976, at 12.

an actor best known for tough-guy roles in Westerns.³³⁵ He played Paul Kersey, a mild-mannered architect who seeks vengeance after a violent crime against his family.

The movie is carefully calculated to hammer home its blunt point. Paul is not a frontier ruffian or a rural redneck, but a self-described “bleeding-heart liberal” from Manhattan’s Upper West Side, not to mention a pacifist who served in the medical corps as a conscientious objector during the Korean War. The movie begins by making the audience witnesses to the graphic murder of Paul’s wife and the sexual assault of his daughter by a gang of creeps who break into the family’s apartment. In search of relief from the city and his grief, Paul takes a westward trip to Arizona. Ostensibly there to look at the site of a building project, Paul gets a quick education on American traditions, first by watching a little crime and revenge drama staged by actors in a tourist trap re-creation of an Old West town. Paul’s client gives him advice and a gift to take back home—a pearl-handled .32 caliber revolver. “A gun is just a tool—like a hammer or an axe,”³³⁶ the client explains, echoing lines often found in Western movies and novels.³³⁷ “You can’t even own a handgun in New York City,” he continues, “but here I hardly know one man that doesn’t own one. . . . Unlike your city, we can walk our streets and through our parks at night and feel safe.”³³⁸

Paul returns to New York and goes on a revenge spree, taking midnight subway rides and strolls through parks, looking for lowlifes to dispatch with his gun. He does not have to look far, for a mugger lurks in nearly every shadow in *Death Wish*’s New York City. Paul’s version of vengeance is one step more abstract than that of *Billy Jack*, *Straw Dogs*, or *Walking Tall*. He has no way to find his wife’s real killers, so he takes his revenge on any bad guys he can find. He describes his conduct as “the old American custom of self-defense.”³³⁹ While the police soon figure out his identity, they are reluctant to arrest him because his late-night prowling has cut the city’s crime rate and made him an anonymous modern folk hero. The police chief finally confronts Paul and tells him to

335. See, e.g., *ONCE UPON A TIME IN THE WEST* (Finanzia San Marco 1968); *THE MAGNIFICENT SEVEN* (Mirisch Co. 1960). Bronson turned down an offer to play the “Man With No Name” character that made Clint Eastwood famous. See *supra* note 108 and accompanying text; SCHICKEL, *supra* note 242, at 130.

336. *DEATH WISH*, *supra* note 332.

337. See CALDER, *supra* note 96, at 112.

338. *DEATH WISH*, *supra* note 332.

339. *Id.*

be out of town by sundown. Paul complies and heads off to Chicago, but before he has even made his way out of the train station there, he sees a gang of delinquents hassling a woman. In the movie's final shot, Paul smiles and points his hand at the young ruffians as though it were a gun, a wry signal that his vigilante work will continue. "I could imagine George Wallace applauding from his wheelchair, and Richard Nixon cheering from his San Clemente sanctuary," film critic Andrew Sarris wrote.³⁴⁰ "See, see, we were right all along, they would cry out in unison, and now even the mealy-mouthed liberals see it our way."³⁴¹

Based on a book by an author of formula Western novels,³⁴² *Death Wish* is the straightforward transplant of a Western revenge narrative into a contemporary urban setting, suggesting "the real and true answer to street crime lies in a return to Old West-style heroics, with every decent citizen totin' his own six-shooter."³⁴³ In interviews about the film, Bronson made the connection explicit: "In New York, of course, the situation in the streets is nearly like it was in the Old West, violence, robbing, lack of law and order which makes open season on the private citizen who obeys the law."³⁴⁴

While *Death Wish* was an enormous success at the box office,³⁴⁵ critical reaction was mixed. Vincent Canby of the *New York Times*, for example, called it a "despicable movie" that "raises complex questions in order to offer bigoted, frivolous, oversimplified answers"³⁴⁶ and that "exploits very real fears and social problems and suggests simple-minded remedies by waving the American flag much in the same fashion that former Vice President Agnew used to do."³⁴⁷ Others acknowledged that even though the movie was "somewhere to the right of Attila the Hun," it was so "cleverly constructed" as a work of entertainment that "[e]ven the

340. Andrew Sarris, *Death Wish: The Final Solution?*, VILLAGE VOICE, Aug. 29, 1974, at 65.

341. *Id.*

342. See generally BRIAN GARFIELD, *DEATH WISH* (1972).

343. David Sterritt, *Two New Charles Bronson Epics*, CHRISTIAN SCI. MONITOR, Sept. 18, 1974, at 14.

344. Wallace, *supra* note 334, at 13.

345. See Klemesrud, *supra* note 333, § 2, at 1.

346. Vincent Canby, *Screen: 'Death Wish' Hunts Muggers*, N.Y. TIMES, July 25, 1974, at 27; see also Bill Davidson, *America Discovers a 'Sacred Monster'*, N.Y. TIMES MAG., Sept. 22, 1974, at 18, 19 (describing *Death Wish* as a "morally abhorrent film").

347. Vincent Canby, *'Death Wish' Exploits Fear Irresponsibly*, N.Y. TIMES, Aug. 4, 1974, § 2, at D1.

most militant liberals” could not resist applauding it.³⁴⁸ The movie made vigilantism attractive, and it depended squarely on the notion that law, police, and courts had become fundamentally incapable of controlling crime. *Death Wish* was the culmination of the fantasy, which had been breeding in movies for the previous half-dozen years, “that the problem of crime in the streets is so far out of control that vigilantism is the only way to bring about a final solution.”³⁴⁹

Perhaps the most clever twist on the vigilante theme came in *Magnum Force*,³⁵⁰ the 1973 sequel to *Dirty Harry*. Inspired by news stories about right-wing “death squads” killing suspected criminals in Brazil,³⁵¹ the bombastically ultra-conservative screenwriter John Milius suggested a plot in which Harry Callahan would take on a team of vigilante officers within his own police department.³⁵² Clint Eastwood liked the idea, seeing it as a clever way to rebut the accusations about *Dirty Harry* being fascist propaganda.³⁵³

348. Rex Reed, ‘*Death Wish*’—*Explosive, Controversial Message*, N.Y. DAILY NEWS, July 26, 1974, at 62.

349. Richard Schickel, *Mug Shooting*, TIME, Aug. 19, 1974, at 72, 72; see also Lenz, *supra* note 231, at 124–30 (discussing how *Death Wish* provides insights into modern conservative thinking about law, criminal punishment, and vigilantism).

350. MAGNUM FORCE (Warner Bros. 1973).

351. See, e.g., Editorial, *Brazil’s Pledge on Vigilantes*, N.Y. TIMES, Aug. 1, 1970, at 22 (describing accusations that vigilante “death squads” of off-duty police had murdered 500 to 1,000 people in six years).

352. SCHICKEL, *supra* note 242, at 299. John Milius also wrote the screenplay for *The Life and Times of Judge Roy Bean*, a quirky film that toyed with the notion of how law and order settled over the western frontier. Paul Newman, at the height of his fame after *Butch Cassidy and the Sundance Kid*, starred as Roy Bean, a bank robber who opens his own court in the desolate desert of southwest Texas. An opening title card explained that west of the Pecos River in the late nineteenth century “there was no law, no order, and only bad men and rattlesnakes lived there.” THE LIFE AND TIMES OF JUDGE ROY BEAN (First Artists 1972). After finding a thick book containing the “Revised Laws and Statutes of the State of Texas,” Bean decides that God has called him to become a judge. He turns a brothel into a courthouse, promising the local peasants that “[t]here will be law. There’s going to be order, progress, civilization, peace.” *Id.* Judge Bean’s brand of justice turns out to be thoroughly capricious; he flippantly sentences men to be hanged without regard to evidence or legal procedures. He makes a mockery of law and is essentially a vigilante, for he has no formal source of authority. The movie was very loosely based on the real Roy Bean, who was a justice of the peace operating out of a saloon in west Texas in the 1880s and 1890s. See generally JACK SKILES, JUDGE ROY BEAN COUNTRY (1996).

353. SCHICKEL, *supra* note 242, at 299–300. Vigilantism would also be a central theme of one of the later *Dirty Harry* sequels, with Harry assigned to the case of a woman who tracks down and murders the men who raped her and her younger sister. Harry becomes romantically involved with the woman and conceals her crimes. See SUDDEN IMPACT (Warner Bros. 1983).

Magnum Force opens with a labor union racketeer leaving court after using a legal technicality to escape murder charges, a reminder of the original *Dirty Harry*'s pointed critique of the legal system's shortcomings. The crook soon becomes the first in a string of criminals—a mob boss, a pimp, a drug dealer—exterminated by vigilante police officers. The killer cops eventually ask Harry Callahan to join their secret assassination squad, but Harry explains that they have misjudged him. He hates “the system” too, but “until someone comes along with some changes that make sense, I’ll stick with it.”³⁵⁴ While he does not always play by the rules, Harry is not a fascist after all, the movie says, and instead he is the only thing standing between us and the real fascists.

Magnum Force was another enormous financial success,³⁵⁵ although critics accused it of being a hypocritical “muddle of morality” that merely “thickens the soup of confusion” about the role of police.³⁵⁶ Despite the movie’s “superficial obeisance to the rule of law,” the underlying message was still the same: Dirty Harry is a great cop because “he knows the guilty from the innocent, and in this action world there’s only one thing to be done with the guilty—kill them.”³⁵⁷

More than anything else, *Magnum Force* illustrated popular culture’s knack for predicting, detecting, and reflecting shifts in the political climate. While *Dirty Harry* represented the peak of “Hollywood’s flirtation” with the political patter of law and order, *Magnum Force* radiated post-Watergate anxiety about the perils of right-wing authoritarianism taken too far.³⁵⁸ The movie hit theaters while the Nixon administration was still feeling the aftershocks of Spiro Agnew’s resignation, amid charges of bribery and tax evasion, and the public backlash brought on by the “Saturday Night Massacre” firing of the Watergate special prosecutor.³⁵⁹ Critics noted that the vigilante team of clean-cut conservatives in *Magnum Force* seemed eerily familiar, for there was an irresistible Watergate metaphor in a movie depicting “a

354. MAGNUM FORCE, *supra*, note 350.

355. See *Franchises: Dirty Harry*, BOX OFF. MOJO, <http://boxofficemojo.com/franchises/chart/?id=dirtyharry.htm> (last updated Aug. 20, 2012) (indicating that with ticket prices adjusted for inflation, *Magnum Force* was the most successful of the five Dirty Harry movies).

356. Nora Sayre, *Screen: 'Magnum Force,'* N.Y. TIMES, Dec. 26, 1973, at 60.

357. Pauline Kael, *The Current Cinema: Killing Time*, NEW YORKER, Jan. 14, 1974, at 84, 88–89.

358. *Id.* at 87.

359. See LUKAS, *supra* note 158, at 399–412, 423–41.

group of young, personable, attractive and overzealous young men who abuse the power entrusted to them by committing crimes in the name of law and security at the direction of their superior.”³⁶⁰ Even on his way out of office, Nixon continued to provide intriguing grist for the Hollywood mill.

V. “GETTING OFF ON A TECHNICALITY” BECOMES A CLICHÉ

By the middle of the 1970s, law and order had run its course as a national political issue. Disillusioned by Vietnam and Watergate, the public was cynical about government and skeptical that anything could be done about crime.³⁶¹ Crime rates continued to climb despite a decade of politicians’ tough talk.³⁶² The law and order President had broken the law, and the light punishments imposed on the Watergate conspirators and the pardon given to Nixon by the new President Gerald Ford smelled like crooked deals.³⁶³ In the 1976 presidential election, the paramount issue was the character and integrity of the candidates, and crime policy issues received little attention.³⁶⁴ During Jimmy Carter’s term in office, the crime issue was overshadowed by rising energy prices, economic malaise, and foreign dangers such as the hostage crisis in Iran and the Soviet invasion of Afghanistan.³⁶⁵ Although Ronald Reagan had skillfully used the law and order issue in his gubernatorial and presidential campaigns in the late 1960s, his 1980 campaign “sounded much more moderate and reassuring” and emphasized cutting federal spending rather than ramping up ambitious new efforts to crack down on criminals.³⁶⁶ The Reagan administration initially made noise about the need to get tough on street crime but soon shifted its emphasis to the “war on drugs” after realizing that curbing street crime was primarily a local law enforcement task over which the federal government had little

360. Paul D. Zimmerman, *Slippery Harry*, NEWSWEEK, Jan. 7, 1974, at 60, 60.

361. CRONIN ET AL., *supra* note 4, at 117–18, 170; see Dena Kleiman, *Crime May Not Be the Best of All Issues*, N.Y. TIMES, Apr. 17, 1977, at E5 (explaining that anti-crime rhetoric had lost credibility because many voters were convinced that politicians could not do anything about crime).

362. CRONIN ET AL., *supra* note 4, at 118.

363. *Id.*; FLAMM, *supra* note 101, at 181; Laura Kalman, *Gerald Ford, the Nixon Pardon, and the Rise of the Right*, 58 CLEV. ST. L. REV. 349, 360–61 (2010).

364. CRONIN ET AL., *supra* note 4, at 118.

365. *Id.* at 130–31; FLAMM, *supra* note 101, at 181–82.

366. CRONIN ET AL., *supra* note 4, at 131.

control.³⁶⁷

While law and order faded as a national political issue, its echoes continued to reverberate in popular entertainment. In particular, the idea that criminals routinely go free because of legal technicalities had been firmly cemented in the public imagination, becoming a cliché that would endure on movie and television screens.³⁶⁸ Even films with a decidedly liberal slant would unskeptically embrace the notion that courts frequently release unquestionably guilty defendants for pointless technical reasons. For example, Al Pacino portrayed a criminal defense lawyer in *...And Justice for All*,³⁶⁹ a movie that hit theaters in the summer of 1979 and that strongly reflected post-Watergate cynicism about law and authority figures.³⁷⁰ The film depicts a criminal justice system that gets the wrong result every time, convicting the innocent and letting the guilty go free. A young man stopped for driving with a broken taillight winds up in prison, mistakenly convicted of stabbing a prison guard, and the judge refuses on procedural grounds to hear evidence that would prove the man's innocence. A lawyer suffers a mental breakdown after a murderer he once freed on a technicality kills again. A judge who is guilty of rape will get away with it because he knows how to tilt the system in his favor. The movie strikes a perverse sort of balance, showing that legal formalities can work for or against an accused person, but nevertheless wholeheartedly assumes that the legal system cares far more about technicalities than truth and justice.

Perhaps no movie could take the cliché of legal technicalities further in the service of a purportedly liberal message than *The Star Chamber*,³⁷¹ a 1983 movie about judges turned vigilantes. The movie begins with grainy close-up images of a television news broadcast about a killer who targets elderly women for their social security checks. As the voiceover continues, the visual cuts to show a rough, dirty man casting nervous glances around him as he walks quickly along a city street early in the morning. Two cops, thinking he looks suspicious, begin to follow, and he leads them on a chase down alleys and over fences. The man flees into his house, stopping first to deposit something in the garbage can at the

367. BECKETT, *supra* note 2, at 44–58.

368. See *Off on a Technicality*, TV TROPES, <http://tvtropes.org/pmwiki/pmwiki.php/Main/OffOnATechnicality> (last visited Oct. 30, 2012).

369. *...AND JUSTICE FOR ALL* (Columbia Pictures 1979).

370. See Allen Rostron, *Mr. Carter Goes to Washington*, 25 J. POPULAR FILM & TELEVISION 57, 60 (1997) (comparing Pacino's character to President Jimmy Carter).

371. *THE STAR CHAMBER* (Twentieth Century Fox 1983).

curb. The two officers, well-versed in Fourth Amendment law, know they cannot look in the can without obtaining a warrant.³⁷² At that moment, the garbage truck arrives. After watching a sanitation worker empty the can into the scoop on the rear of the truck, the officers step in to search the trash. They find a gun, the one used to kill the elderly women. On that basis, they obtain a warrant to search the house, where they find the women's handbags, jewelry, and identification. To cement the case, the suspect confesses to the murders. But when Judge Steven Hardin, played by Michael Douglas, hears pretrial motions in the case, he reluctantly must grant the defense motion to exclude the gun and all the other evidence stemming from it. The police erred by searching the trash in the garbage truck scoop, rather than waiting until it mixed with the other trash inside the truck. "I don't have a choice,"³⁷³ Judge Hardin declares grimly, as the killer goes free. Judge Hardin complains to his mentor, former law professor and fellow jurist Benjamin Caulfield. "Listen, you think my court is any different?" Judge Caulfield responds.³⁷⁴ "You think I don't set guys free every goddamn week who have raped entire school districts?"³⁷⁵ It seems to be no coincidence that Judge Caulfield is played by Hal Holbrook, the actor who, a decade earlier, was also the leader of the vigilante cops in *Magnum Force*.³⁷⁶

Judge Hardin's next case is a replay of the first. A half-dozen young boys have been kidnapped, raped, tortured, and murdered in the production of pornographic films. Two police officers on a late-night patrol spot a van driving slowly, and they suspect something is amiss. After a computer check on the van's license plate number turns up warrants for unpaid parking tickets, the officers stop the van. Claiming to smell marijuana, the officers search the van and find a boy's bloody

372. The Supreme Court would later rule that the Fourth Amendment does not prohibit the warrantless search of a trash bag left on the curb in front of a house, because a person has no reasonable expectation of privacy about the contents of garbage left out for collection. *See California v. Greenwood*, 486 U.S. 35, 39–40 (1988). But *The Star Chamber* accurately depicted how California courts would have ruled at the time the movie was made. *See People v. Krivda*, 486 P.2d 1262, 1269 (Cal. 1971) (suppressing evidence from warrantless search of trash can), *vacated*, 409 U.S. 33 (1972), *reiterated by* 105 Cal. Rptr. 521 (1973); *People v. Greenwood*, 227 Cal. Rptr. 539 (Cal. Ct. App. 1986) (suppressing evidence from warrantless search of trash can), *rev'd*, 486 U.S. 35 (1988).

373. *THE STAR CHAMBER*, *supra* note 371.

374. *Id.*

375. *Id.*

376. *See supra* note 350 and accompanying text.

shoe. When it turns out that the parking tickets had already been paid and the motor vehicle department was behind schedule in getting that data entered into the computer system, Judge Hardin must throw out all the evidence and release the suspects.³⁷⁷ When another boy is murdered, Judge Hardin believes the two men he set free have killed again. In despair, he learns from Caulfield that a group of the city's judges have established a modern "Star Chamber" that hires professional assassins to execute criminals who slip through the legal system's fingers.³⁷⁸ After a contract has been put on the lives of the two men from the van, Hardin discovers that someone else killed the boys. Realizing that he has arranged for two men to be killed as punishment for crimes they did not commit, Hardin manages to save their lives before the hit man can complete his assignment. As the movie ends, Judge Hardin helps police gather evidence that will be used to prosecute the vigilante judges.

While ostensibly taking an anti-vigilante position, *The Star Chamber* wholeheartedly buys into premises that could justify the judges' extra-legal efforts. The movie unequivocally accepts that the criminal justice system is hideously slanted in defendants' favor and that criminals routinely go free because of legal rules and requirements that serve no valid purpose.³⁷⁹ Rather than merely acknowledging that the legal system is imperfect, *The Star Chamber* treats law as some sort of arbitrary, inexplicable phenomenon that has been imposed on society and that does not even aim to achieve sensible results. When a murder victim's father demands justice, the best that Judge Hardin can say is "I only deal with

377. Although this ruling may have been correct at the time the movie was made, the Supreme Court would later create an exception to the Fourth Amendment exclusionary rule for situations in which police relied in good faith on information that turned out to be erroneous. See *Herring v. United States*, 555 U.S. 135, 136–37 (2009) (holding that exclusionary rule did not apply where bookkeeping error led police officers to think the subject of the search had an outstanding arrest warrant); *Arizona v. Evans*, 514 U.S. 1, 15–16 (1995) (holding that exclusionary rule did not apply where mistaken information in court's database led police to think the subject of the search had an outstanding arrest warrant); *United States v. Leon*, 468 U.S. 897, 900, 922 (1984) (holding that exclusionary rule did not apply where police reasonably relied on magistrate's finding of probable cause and issuance of search warrant).

378. The Star Chamber, an English court that existed until 1641, lacked the procedural safeguards afforded to accused people in regular courts and became synonymous with "secrecy, severity and extreme injustice." Daniel L. Vande Zande, *Coercive Power and the Demise of the Star Chamber*, 50 AM. J. LEGAL HIST. 326, 326 (2008-2010).

379. See William Wolf, *Films: The Star Chamber*, NATION, Aug. 20–27, 1983, at 155, 155–56.

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the law,³⁸⁰ as though no one should expect justice to be part of that. Characters in the movie repeatedly diminish the whole idea of law, calling it a “little crossword puzzle” or “a giant Rubik’s Cube which anyone can twist,”³⁸¹ and the movie never tries to rebut those assessments. Moreover, while admitting that vigilante justice is not infallible, the movie never permits an ounce of sympathy for anyone targeted by the vigilante judges. Everything about every person assassinated at the judges’ behest is repulsively unpleasant.³⁸² Even the two suspects wrongly blamed for the child murders turn out to be running an illegal drug manufacturing operation, making it hard to resist agreeing with Caulfield’s rationalization that “if they’re not guilty of this one particular crime . . . [they] are certainly guilty of God knows how many others.”³⁸³

Critics rightly saw *The Star Chamber* to be a “poisonously fake serious film.”³⁸⁴ It pretends to be defending the criminal justice system while leaving gullible viewers “convinced that legal process is a horrible farce” because “[n]ot one word is spoken in the whole film as to why the exclusionary rule was brought into existence, what rights it protects, how it sustains the principles of law and the idea of presumed innocence.”³⁸⁵ Rather than taking a genuine stand against vigilantism, the movie subtly makes the case for it.³⁸⁶ It is “a cheap, vicious, pseudo-populist

380. THE STAR CHAMBER, *supra* note 371.

381. *Id.*

382. See Janet Maslin, *Film: Peter Hyams Directs ‘Star Chamber,’* N.Y. TIMES, Aug. 5, 1983, at C8 (describing how the movie achieves a “thoroughly stacked deck” by depicting all criminals as “jumpy, wild-eyed mad-dog types”); David Sterritt, *A Message Against Vigilante Justice That Lands with a Thud,* CHRISTIAN SCI. MONITOR, Aug. 11, 1983, at 16 (describing how the movie’s “targets aren’t just criminals, they’re monsters: child-rapers, old-lady killers, and the like — bug-eyed from dope, forever foul-mouthed, and never, ever decently shaved”).

383. THE STAR CHAMBER, *supra* note 371.

384. Stanley Kauffmann, *Stanley Kauffmann on Films: Flash and Fraud,* NEW REPUBLIC, Sept. 19 & 26, 1983, at 22, 23; see also Philip French, *Unholy Claptrap,* OBSERVER (London), Nov. 6, 1983, at 34 (describing the movie as having “so much crude rabble-rousing manipulation of the audience against Los Angeles’s debased under-class” that the “overall thrust” of the “confused, deeply offensive film is essentially fascistic”); Sterritt, *supra* note 382, at 16 (questioning why the filmmakers “attack the legal system so gleefully, then make such a pallid case against the vigilante ‘solution’ they dangle before us”); Bruce Williamson, *Movies,* PLAYBOY, Oct. 1983, at 28, 28 (describing the movie as offering a “whiff of fascism” and “sheer exploitation of our fears about killers in the streets, with some tidy liberal thoughts tacked on after we’ve all enjoyed the sweet taste of vengeance”).

385. Kauffmann, *supra* note 384, at 23.

386. See David Ansen, *Settling Out of Court,* NEWSWEEK, Aug. 15, 1983, at 64, 64

distortion.³⁸⁷

Television made matters even worse. For three years in the mid-1980s, the ABC network aired *Hardcastle & McCormick*,³⁸⁸ an action series founded on the premise that legal technicalities allow a continual parade of criminals to escape punishment. The show's central character was a former Los Angeles judge who decided to dedicate his retirement years to going after each of the hundreds of criminals he saw getting off on technicalities during his years on the bench.³⁸⁹ The program was a surprise hit in its first season, something its creators attributed to public frustration with the impotence of the criminal justice system.³⁹⁰

Even the most earnestly liberal television programs eagerly perpetuated these stereotypes. The absurdity may have reached its height with a 1983 episode of *Quincy, M.E.*, a socially conscious dramatic series about the exploits of a Los Angeles coroner played by Jack Klugman. In an episode entitled simply "The Law Is a Fool," Quincy squares off against a psychopath who abducts the seven-year-old daughter of a law school's dean.³⁹¹ Angry because the stress of attending law school killed his girlfriend, the kidnapper went to work as a paralegal at a law firm just long enough to learn how to manipulate the legal system. After stashing the kidnapped girl in a hidden homemade prison, he turns himself in to the police and demands to be brought swiftly to trial for the kidnapping. He lets the prosecutor know that he will reveal the girl's location only if the jury acquits him. At that point, he expects to walk away with a generous ransom, safely protected from any further prosecution by his constitutional protection against double jeopardy. "The law is a fool, and I'm gonna prove it to you and to everyone else," he raves to the assistant district attorney.³⁹²

To save the girl's life, the prosecutor goes along with the plan and

("[T]hough it ultimately argues against the vigilante spirit, those are the feelings it most powerfully arouses.").

387. Kauffmann, *supra* note 384, at 23.

388. *Hardcastle & McCormick* (ABC television broadcasts Sept. 18, 1983–May 5, 1986).

389. See Tom Shales, *Bench Mark: Brian Keith as the Grand Judge 'Hardcastle,'* WASH. POST, Sept. 17, 1983, at C1 (describing the tough judge as "an awfully attractive American folk type").

390. Colin Dangaard, *Frustration and Anger Create a Hit*, GLOBE & MAIL (Canada), Aug. 11–17, 1984, at 10, 10.

391. *Quincy, M.E.: The Law Is a Fool* (NBC television broadcast Jan. 5, 1983).

392. *Id.*

intentionally loses the case. The kidnapper is set free, but just when it seems that his evil scheme has succeeded, police arrive to arrest him again because Quincy managed to deduce the girl's location by analyzing mud on the kidnapper's boots. And because the kidnapper hid the girl on federal land, he committed a federal crime for which he can still be prosecuted under the dual sovereignty exception to the right against double jeopardy.³⁹³ The show ends on a positive note of praise for the law as the old dean returns to expound on the virtues of the American justice system for a new crop of law students.

Quincy was among the most bleeding-heart liberal programs on television. And yet, rather than illustrating how constitutional rights might actually protect some deserving person, the program readily endorsed the idea that legal safeguards are merely technicalities to be exploited. The law is a foolish jumble of meaningless rules, the show said, and our only hope is that the good guys will find technicalities that trump the bad guys' loopholes.

Given what emerged from the liberal end of the entertainment spectrum, it would come as no surprise that some productions hit the criminal justice issue with an even cruder cudgel. Among the most exploitative was *10 to Midnight*,³⁹⁴ a film in which Charles Bronson played a Los Angeles police detective named Leo Kessler. Although Kessler has a badge, the movie taps into Bronson's close association with vigilante violence from his *Death Wish* role.³⁹⁵ Fearing that a depraved serial killer will get away with murder thanks to clever construction of false alibis, Kessler fabricates forensic evidence to use against the psychopath. Kessler's idealistic rookie partner will not go along with framing a person, even a horribly guilty one, so Kessler loses his job and the mad slasher is set free to continue his killing spree. When Kessler finally corners him, the killer boasts that he will escape punishment because he is insane. He vows that when he is released, the world will hear from him again. "No, we won't," Kessler snarls, as he puts a bullet through the killer's head.³⁹⁶

393. The prohibition of double jeopardy does not prevent two sovereigns from separately seeking to enforce their laws, and therefore the federal government may prosecute a person for a federal crime even though the defendant has been previously tried by a state for the same act. *See* United States v. Lanza, 260 U.S. 377, 381–82 (1922); Moore v. Illinois, 55 U.S. 13, 19–20 (1852).

394. 10 TO MIDNIGHT (Cannon Group 1983).

395. *See supra* notes 332–49 and accompanying text.

396. 10 TO MIDNIGHT, *supra* note 394.

If movies like *Dirty Harry* dipped their toes in fascist waters, *10 to Midnight* dived in with both feet. The hero's "principles and practice would qualify him to roam the streets of Berlin with Hitler's Brownshirts, to patrol downtown San Salvador with a right-wing death squad, or work on the reception desk at the Lubianka."³⁹⁷ The movie paints good and evil in the broadest possible strokes. The villain is not just a cold-blooded murderer but a perverted fiend who commits his bloody crimes while nude, believing that will reduce the likelihood that he leaves behind incriminating evidence.³⁹⁸ Naturally, the movie laments how courts exist only to protect criminals. "The way the law protects those maggots out there," Detective Kessler growls, "you'd think they were an endangered species."³⁹⁹ The movie unequivocally endorses its hero's extra-legal methods. Even when Kessler gets caught planting false evidence, the movie is not content to suggest that he got a little carried away and made a regrettable but understandable mistake. Instead, the message is that he did the right thing, and it is simply too bad that it did not work. As the tagline on the movie's promotional poster put it, "Forget what's legal... Do what's right..."⁴⁰⁰ The movie is slick, suspenseful, and thoroughly "rancid stuff."⁴⁰¹

After making *10 to Midnight* and one sequel to *Death Wish*,⁴⁰² Charles Bronson was apparently ready to move on to other things, but real-life events intervened. On a Saturday afternoon in New York City, just a few days before Christmas in December 1984, an unassuming electronics repairman named Bernhard Goetz boarded the No. 2 subway train headed toward downtown Manhattan.⁴⁰³ When four young men surrounded him and asked for five dollars, Goetz pulled out a .38 caliber revolver and shot them.⁴⁰⁴ Goetz was arrested and tried for attempted

397. Philip French, *The Master's Last Movie?*, OBSERVER (London), Apr. 24, 1983, at 32.

398. See Richard F. Shepard, *Screen: '10 to Midnight'*, N.Y. TIMES, Mar. 13, 1983, at 62 (calling the movie a "propaganda piece" that stacks the cards so "that one must approve the vengeful finale that defies the law").

399. *10 TO MIDNIGHT*, *supra* note 394.

400. The poster can be found at *File: Ten to Midnight.jpg*, WIKIPEDIA, http://en.wikipedia.org/wiki/File:Ten_to_midnight.jpg (last visited Oct. 30, 2012).

401. French, *supra* note 397, at 32; see also Roger Ebert, *Movies: Bronson Film Lacks Humanity*, CHI. SUN-TIMES, Mar. 15, 1983, at 45 (calling it "a scummy little sewer of a movie").

402. See *DEATH WISH II* (Cannon Films 1982).

403. GEORGE P. FLETCHER, *A CRIME OF SELF-DEFENSE: BERNHARD GOETZ AND THE LAW ON TRIAL 1*, 10 (1988).

404. *Id.* at 1.

murder, but convicted only on a lesser charge of illegal firearm possession.⁴⁰⁵ The incident became a media sensation. Dubbed the “subway vigilante” and the “Death Wish gunman” by the press,⁴⁰⁶ Goetz sparked a nationwide debate about vigilantism and became a folk hero in the eyes of many.

With controversy about the Bernhard Goetz case at a fever pitch, Charles Bronson rolled out a third *Death Wish* picture.⁴⁰⁷ The vigilante formula had become cartoonish by this point. No longer acting alone and using a mere revolver, Bronson’s character hefted a machine gun, hand grenades, and a rocket launcher to help an entire Brooklyn neighborhood take on a vicious street gang. Even those who made the movie publicly denounced it.⁴⁰⁸ While promoting the film, Bronson declared that it was unoriginal and needlessly violent,⁴⁰⁹ adding that he felt sorry for the young men shot by Bernhard Goetz and that he initially resisted making another *Death Wish* movie after the Goetz shootings.⁴¹⁰ The movie’s director, Michael Winner, added that he disliked the film’s whole “philosophy of taking the law into one’s own hands.”⁴¹¹

Hollywood’s denigration of the justice system and glorification of ultra-violent crime fighters finally reached its ridiculous extreme in *Cobra*, a 1986 movie in which Sylvester Stallone stars as a Los Angeles police officer who battles a murderous cult.⁴¹² Stallone, who wrote the screenplay, went out of his way to link the picture to its cinematic forebears. His character goes by the nickname “Cobra” because his given name, Marion, sounds too effeminate. This was a sly nod to John Wayne, whose real first name was Marion.⁴¹³ Through its casting, the movie also paid tribute to Clint Eastwood’s *Dirty Harry*. *Cobra*’s sidekick is played

405. *Id.* at 4–6, 198. The case had significant racial overtones because Goetz was white, and the four men he shot were black. See Stephen L. Carter, *When Victims Happen To Be Black*, 97 YALE L.J. 420, 420, 423–24 (1988).

406. *Justice in the Wrong Hands*, CHI. TRIB., Jan. 6, 1985, § 5, at 2.

407. *DEATH WISH 3* (Cannon Group 1985).

408. See Gene Siskel, ‘*Death Wish 3*’ *Just a Stale Imitation*, CHI. TRIB., Nov. 5, 1985, § 5, at 3.

409. Robert Basler, *Tempo: Another ‘Death Wish’ Comes to Life*, CHI. TRIB., Oct. 31, 1985, § 5, at 13A; Margot Hornblower, *Bang! Pow! It’s the Sultan of Scowl!: Charles Bronson, Getting Even Again in ‘Death Wish 3,’* WASH. POST, Nov. 23, 1985, at G1; Vernon Scott, *Violent Movies Getting Deadlier with Each Sequel*, MODESTO BEE, Nov. 1, 1985, at C-3.

410. Hornblower, *supra* note 409, at G1.

411. Siskel, *supra* note 408, at 3.

412. *COBRA* (Cannon Group 1986).

413. Jack Kroll, *Dressed to Kill*, NEWSWEEK, June 9, 1986, at 78, 78.

by the same actor, Reni Santoni, who was Harry's sociology-minded partner.⁴¹⁴ And Andrew Robinson, who played the serial killer Scorpio in *Dirty Harry*,⁴¹⁵ appears in *Cobra* as a mealymouthed liberal detective who is a stickler for following the rules and repeatedly scolds Cobra for being too violent and not respecting the rights of criminals. *Cobra* also borrows a tactic from the *Dirty Harry* playbook by making the villains a neo-fascist group that believes in killing the weak so the strong survive, thereby insulating the movie from criticism by making its villains worse fascists than the film's hero.⁴¹⁶

Implying that it has some connection to serious social issues, the movie opens with a Stallone voiceover reciting a litany of alarming crime statistics. But the image of an enormous handgun then appears and fires at the camera, setting the tone for the mayhem that follows. Between action scenes, Cobra spews venom about constitutional rights that echoes the dialogue of *Dirty Harry* and its many imitators. When a reporter suggests that a police officer should not act as judge and jury, Cobra snarls back, "You think a maniac who just blew a kid's heart out for nothing should have rights?"⁴¹⁷ When a crime witness asks why the police cannot protect people from dangerous criminals, "Tell it to the judge," is Cobra's retort.⁴¹⁸ Pouring gasoline over a thug and striking a match, Cobra sneers, "You have the right to remain silent," as he tosses the match to incinerate the brute.⁴¹⁹

At the end of the film, Cobra corners the murderous cult leader, known as the Night Slasher, in an abandoned yet fully operational steel foundry. The Night Slasher vows that he will elude punishment because he is insane, taunting Cobra with a speech much like that of the killer cornered at the end of *10 to Midnight*:

Night Slasher: You won't do it, pig. You won't shoot. Murder is against the law. You have to take me in, if you can. Even I have rights, don't I, pig? Take me in. They'll say I'm insane, won't they? The court is civilized, isn't it, pig?

414. See *supra* note 223 and accompanying text.

415. See *supra* note 222 and accompanying text.

416. See *supra* notes 350–53 and accompanying text.

417. *COBRA*, *supra* note 412.

418. *Id.*

419. *Id.*

Cobra: But I'm not. This is where the law stops, and I start.⁴²⁰
Sucker.⁴²¹

Although Cobra is quite willing to shoot rather than make an arrest, one of the Night Slasher's allies bursts in just in time to save Cobra from crossing that line, giving Cobra the chance to fight the Night Slasher and eradicate him in a more gruesome but also more legally justifiable way.

Cobra was the point where the law and order movie genre finally jumped the shark.⁴²² Critics saw that the film "shows such contempt for the most basic American values embodied in the concept of a fair trial that Mr. Stallone no longer, even nominally, represents an ideology that is recognizably American."⁴²³ But the movie's rants about the legal system seem not just wrong, but meaningless. They are empty clichés, so unthinking and monotonous that they do not seem intended to actually express anything. Cobra complains about the courts simply because that's what a character like him, in a movie like this, is supposed to do. What was controversial and thought-provoking a decade or two earlier, in movies like *Dirty Harry* or *Death Wish*, had been turned into something too vacuous to be dangerous.⁴²⁴

420. Stallone got the inspiration for this particular line of dialogue from *The Reivers*, a movie based on William Faulkner's last novel. See THE REIVERS (Cinema Center Films 1969); WILLIAM FAULKNER, THE REIVERS: A REMINISCENCE (1962). Stallone saw the film while working as an usher in a movie theater before his acting career took off. See Gene Siskel, *Stallone Wields a Pen with Rambonian Power*, CHI. TRIB., May 18, 1986, § 13, at 4. But Stallone badly misunderstood or grossly twisted the meaning of Faulkner's words. *The Reivers* is set in the Deep South in the early 1900s. Ned McCaslin, a poor black stablehand, stands up to the harassment of a despicably racist constable and declares, "There's somewhere you stops" and then reiterates, "There's somewhere the Law stops and just people starts." FAULKNER, *supra*, at 415. In both Faulkner's novel and the movie, it is clear that Ned used the phrase "the Law" to mean the constable. He was not talking about "law" in the broader sense of the entire legal system or the legal principles governing the situation. Stallone thus took an inspiring line from Faulkner, about how even law enforcers must respect individual liberty and the limits of their power, and turned it into a pithy remark for Cobra that expressed precisely the opposite sentiment.

421. COBRA, *supra* note 412.

422. "Jumping the shark" is a phrase "indicating the moment in its evolution when a brand, design, or creative effort moves beyond the essential qualities that initially defined its success, beyond relevance or recovery." *Jumping the Shark*, WIKIPEDIA, http://en.wikipedia.org/wiki/Jumping_the_shark (last visited Oct. 30, 2012).

423. Nina Darnton, *Film: Sylvester Stallone as Policeman, in 'Cobra,'* N.Y. TIMES, May 24, 1986, at 11.

424. See Sheila Benson, *Movie Review: The 'Cobra' that Saved L.A.*, L.A. TIMES, May 24, 1986, § 5, at 1 (observing that *Cobra*'s "pretentious emptiness, its dumbness, its two-faced morality make it a movie that begs to be laughed off"); Richard Schickel, *A Man of*

Moviegoers and filmmakers alike finally seemed burned out by the formula. After having a big opening weekend at the box office, audiences soured on *Cobra* and ticket sales quickly plummeted.⁴²⁵ A year later, Charles Bronson's fourth installment in the *Death Wish*⁴²⁶ series was met mostly with yawns, and Bronson promised that it was the last time he would play the famed vigilante character.⁴²⁷ In his fifth and final *Dirty Harry* movie, released early in the summer of 1988,⁴²⁸ Clint Eastwood looked downright bored, and audiences generally felt the same way.⁴²⁹ The political point of view that pervaded the earlier *Dirty Harry* films, including the attacks on the criminal justice system and constitutional rights, was gone. In its place, the movie offered only some tepid criticism of the media for sensationalizing violence. After nearly two decades, blaming courts for coddling criminals seemed to have finally gone out of style.

VI. LAW AND ORDER'S LAST GASP?

As the presidential election of 1988 drew near, the crime issue reared its head one more time. George H.W. Bush, looking to succeed Ronald Reagan and maintain Republican control of the White House, resurrected Richard Nixon's old rhetoric and tactics "to cast himself as the modern-day champion of law and order."⁴³⁰ Running way behind the Democratic contender Michael Dukakis in early polls, the Bush campaign considered the possibility of picking Clint Eastwood for the vice presidential slot on

Few Grunts and No Beeps, TIME, June 2, 1986, at 80, 80 ("The best one can say for *Cobra* is that it is too dopey to pose any threat to the highest values of the republic.").

425. Aljean Harmetz, *Blockbuster Lull No Problem at Box Office*, CHI. TRIB., July 30, 1986, at 9A, available at http://articles.chicagotribune.com/1986-07-30/features/8602240970_1_top-three-movies-labor-day-karate-kid-part-ii.

426. DEATH WISH 4: THE CRACKDOWN (Cannon Group 1987); Ted Mahar, 'Death Wish IV: Movie-by-Numbers', OREGONIAN, Nov. 11, 1987, at B6 ("This series is so tiresome and tired, it's pointless to raise ethical issues."); *Box Office History for Death Wish Movies*, NUMBERS, <http://www.the-numbers.com/movies/series/DeathWish.php> (last visited Oct. 30, 2012) (indicating that *Death Wish 4* grossed less than half of what each of its three predecessors earned).

427. Desmond Ryan, *Bronson Has a Wish to End 'Death Wish'*, PHILA. INQUIRER, Nov. 8, 1987, at 2G. Bronson broke his promise. See DEATH WISH V: THE FACE OF DEATH (21st Century Film Corp. 1994).

428. THE DEAD POOL (Warner Bros. 1988).

429. See *Franchises: Dirty Harry*, supra note 355 (indicating that *The Dead Pool* was by far the least commercially successful of the Dirty Harry movies).

430. Reginald Stuart, *Bush Copies Nixon on 'Law and Order' Hits Dukakis as Soft on Crime*, PHILA. DAILY NEWS, July 1, 1988, at 13.

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its ticket.⁴³¹ While that idea never went far, Bush managed to overtake Dukakis by “unload[ing] his conservative law-and-order agenda with both barrels” and making crime a major issue in the campaign.⁴³² Bush blasted Dukakis for being a card-carrying member of the American Civil Liberties Union,⁴³³ while the notorious “Willie Horton” ads told voters that Dukakis favored letting convicted murderers out of prison on weekend furloughs.⁴³⁴

Reflecting the impact of Hollywood’s treatment of the topic over the past twenty years, Bush’s approach to the issue seemed to be inspired as much by imagery from popular entertainment as by anything happening in the real world. Speaking to a crowd of law-enforcement officials in Texas, Bush boasted that the Reagan administration had overcome the “permissive philosophy” of the 1960s and 1970s and helped America go from being a society that savored *Easy Rider* to one preferring *Dirty Harry*.⁴³⁵ “Clint Eastwood’s answer to violent crime is ‘Go ahead, make my day,’” Bush said, quoting a memorable line from one of the *Dirty Harry* sequels.⁴³⁶ “My opponent’s answer is slightly different: His motto is ‘Go ahead, have a nice weekend.’”⁴³⁷

Bush promised a crackdown on street gangs. “These are not gangs out of ‘West Side Story,’” he warned.⁴³⁸ Promising to intensify the war

431. *Interview with James A. Baker, III*, GEORGE H.W. BUSH ORAL HIST. PROJECT, 13–14 (Jan. 29, 2000), http://web1.millercenter.org/poh/transcripts/ohp_2000_0129_baker.pdf. Eastwood would go on to have a memorable role in the 2012 presidential race, delivering a much-mocked speech at the Republican convention in which he spoke to an empty chair that represented President Obama. See James Rainey, *Good, Bad or Ugly? Eastwood Didn’t Exactly Make Team Romney’s Day*, L.A. TIMES, Sept. 1, 2012, at A1.

432. Cathleen Decker, *Bush Scores Dukakis Ties to ACLU*, L.A. TIMES, June 23, 1988, § 1, at 18.

433. *See id.*

434. After failing to return from a weekend furlough from the Massachusetts prison where he was serving a life sentence for murder, Willie Horton brutally raped a woman and stabbed her fiancé. Ten years earlier, as governor of Massachusetts, Dukakis had pocket-vetoed a bill that would have excluded murderers from the state’s prison furlough program. See Dick Kirschten, *How the ‘Furlough Issue’ Grew and Dominated the Campaign*, NAT’L J., Oct. 29, 1988, at 2718, 2719. Horton was black, his victims were white, and debate ensued about whether the Bush campaign was subtly exploiting racial tension. See Jonathan Kaufman, *Bush Ads Draw Charges of Racism; Some Say It’s Just Politics*, BOS. SUNDAY GLOBE, Oct. 23, 1988, at 1.

435. Maureen Dowd, *Bush Boasts of Turnaround from ‘Easy Rider’ Society*, N.Y. TIMES, Oct. 7, 1988, at B7.

436. *Id.*

437. *Id.*

438. *Id.*

on illegal drugs as well, Bush recalled how “people used to talk like those movies of the 60’s,” and “[t]hey thought drug use was ‘cool’ and advised you to ‘Do your own thing.’”⁴³⁹ “Well, if someone said that to you today,” Bush added, “you’d probably think they got lost in a time-warp during one of the original runs of ‘Star Trek.’”⁴⁴⁰

While Bush’s revival of law and order themes helped him win the election, it was Bush who soon seemed to be caught in a time warp.⁴⁴¹ His administration’s policies were just “‘modestly reworked Richard Nixon.’”⁴⁴² After pouring tens of millions of dollars into anti-drug efforts, Bush had little to show for it.⁴⁴³ Likewise, Bush struggled without success for four years to push anti-crime legislation through Congress, including reforms that would roll back legal protections for accused criminals.⁴⁴⁴ Like Nixon, Bush learned that talking about crime on the campaign trail was much easier than actually doing something about it once in office.

Meanwhile, crime rates continued to climb during Bush’s presidency until reaching a peak in 1991.⁴⁴⁵ In the two decades since then, crime rates have plunged dramatically.⁴⁴⁶ And as a national political issue, crime has faded from view, eclipsed by an array of other controversial topics like the economy, budget deficits, foreign policy, terrorism, climate change, and “values” issues like abortion or gay rights. As recently as 1994, over half of Americans told pollsters that “crime was the most important issue facing the country,” but today only one percent give that answer.⁴⁴⁷

Several significant films from the Nixon era have been remade in recent years. Comparing the old and new versions reveals some intriguing differences in content and tone. For example, a change of scenery made a significant difference for the 2011 remake of *Straw*

439. *Id.*

440. *Id.*

441. See Richard L. Berke, *No Change in Basics*, N.Y. TIMES, Sept. 6, 1989, at B7.

442. *Id.* (quoting Jack A. Blum, “former special counsel on narcotics for the Senate Foreign Relations Committee”).

443. Ronald J. Ostrow, *Crime Takes It on Lam in '92 Campaign*, L.A. TIMES, Oct. 31, 1992, at A15.

444. See GEST, *supra* note 25, at 223.

445. Steve Chapman, *For Public Safety, It’s a Golden Age*, CHI. TRIB., Dec. 25, 2011, at C31.

446. See *id.*; see generally FRANKLIN E. ZIMRING, *THE GREAT AMERICAN CRIME DECLINE* (2006) (analyzing the long, steep drop in crime rates).

447. Charles Lane, *Triumph over Crime*, WASH. POST, Dec. 27, 2011, at A13.

Dogs.⁴⁴⁸ Although the new movie was quite faithful in copying the original film's plot and even some shots and dialogue, it shifted the location of the events from England to rural Mississippi. That switch substantially altered perceptions about the movie's message. In the original, the protagonist was simply an American, and the movie thus seemed to be making a general statement about the capacity for barbarous violence lurking beneath society's seemingly civilized surface.⁴⁴⁹ The remake instead has a preppy Los Angeles screenwriter, with an Ivy League education and a condescending liberal attitude, accompanying his television-actress wife back to her Mississippi home town. The movie depicts the local yokels as the crudest sort of Southern redneck brutes. By becoming a story about a blue state intellectual in a red state nightmare, the remake dodges the more universal implications about human nature and society that made the original movie more deeply disturbing and controversial.⁴⁵⁰

Another way to exploit the visceral thrills of vigilante violence while disavowing their troubling ideological or political implications can be found in 2007's *Death Sentence*,⁴⁵¹ a movie loosely connected to Charles Bronson's *Death Wish* series.⁴⁵² In *Death Sentence*, a mild-mannered suburban father seeks revenge after the random and brutal murder of his son by a gang member. The movie has a dose of grumbling about the legal system, with the father shocked to find that his son's killer will be able to plead his way down to a sentence of only three to five years in prison. But when the father opts to take the law into his own hands, the result is a grim spiral of violent retribution that only multiplies the father's grief. While flirting with the fantasy of righteous, bloody vengeance, the movie ultimately preaches the old maxim that "an eye for an eye leaves everyone blind."⁴⁵³ Critics complained that the movie sent

448. STRAW DOGS (Screen Gems 2011).

449. See *supra* notes 301–13 and accompanying text.

450. See Wesley Morris, 'Straw Dogs' Spits up a Queasy Mess, BOS. GLOBE, Sept. 16, 2011, at G15 ("The movie is like being waterboarded by liberals outside a Democratic National Committee event."); A.O. Scott, *His Credit Cards and Fancy Words Can't Help Him Here*, N.Y. TIMES, Sept. 16, 2011, at C4 ("There is an obvious political allegory here, and it's possible that 'Straw Dogs' will find a cult following among frustrated Democrats going into the next electoral cycle.").

451. DEATH SENTENCE (Twentieth Century Fox 2007).

452. *Death Sentence* was based on a novel that was a sequel to the original *Death Wish* story. See BRIAN GARFIELD, DEATH SENTENCE (1975).

453. This saying is often attributed to Mohandas Gandhi, but it is unclear whether he ever really used the expression. See *An Eye for an Eye Will Make the Whole World Blind*,

such mixed messages that “[t]he right-wing machismo and liberal guilt cancel each other out.”⁴⁵⁴ But Brian Garfield, who wrote the books that inspired both *Death Wish* and *Death Sentence*, said that he preferred the latter because it at least attempted to show “the stupidity of vengeful vigilantism.”⁴⁵⁵

Other new takes on old cinematic material have gone even further in turning the tables on their predecessors. The new *Walking Tall*,⁴⁵⁶ released in 2004, portrayed courts in an unequivocally positive light. In the original movie, the hero was acquitted by a jury for his vigilante efforts, got himself elected sheriff, and then clashed with a judge who stubbornly resisted his efforts to bring the county’s crooks to justice.⁴⁵⁷ The remake omitted the story line about a judge frustrating the hero’s law enforcement efforts. As a result, the remake’s only courthouse scenes are those in which the jury acquits the hero for taking the law into his own hands. The trial is once again an emotional high point in the film, with the hero dramatically ripping open his shirt to reveal the knife scars across his chest. The jury makes the right decision, enabling the hero not only to escape unjust punishment but also to obtain the sheriff’s badge that will give him legal authority to continue his anti-crime crusade. In sharp contrast to the original movie, the remake shows courts to be firmly on the side of truth and justice.

Likewise, the law’s effectiveness was a remarkably prominent theme in the Coen brothers’ 2010 remake of *True Grit*.⁴⁵⁸ While never straying

QUOTE INVESTIGATOR (Dec. 27, 2010), <http://quoteinvestigator.com/2010/12/27/eye-for-eye-blind/>.

454. Lisa Rose, *Deadly for Viewers: Right-Wing Machismo and Liberal Guilt Cancel Each Other out in Violent ‘Death Sentence,’* STAR-LEDGER (Newark, NJ), Aug. 31–Sept. 6, 2007, at 27.

455. Nikki Tranter, *Historian: Interview with Brian Garfield*, POPMATTERS (Mar. 5, 2008), <http://www.popmatters.com/pm/feature/historian-interview-with-brian-garfield>.

456. WALKING TALL (MGM 2004).

457. See *supra* notes 314–31 and accompanying text. The remake changed the main character’s name from Buford Pusser to Chris Vaughn. It also relocated the events from rural Tennessee to a small town in Washington state, apparently so that the movie could be shot in Canada at a lower cost. See Dave Kehr, ‘*Walking Tall*,’ N.Y. TIMES, Apr. 2, 2004, at E25.

458. TRUE GRIT (Paramount Pictures 2010). A number of blogs about law marveled at the surprising sophistication of the movie’s treatment of legal issues. See, e.g., Colin Miller, *The Wicked Run Away: The Surprising Legal Focus of the Coen Brothers’ ‘True Grit,’* EVIDENCEPROF BLOG (Dec. 26, 2010), <http://lawprofessors.typepad.com/evidenceprof/2010/12/yesterday-i-saw-thecoen-brotherslatest-movietrue-gritthe-remake-of-the-1969-film-starring-john-wayne-with-both-being-base-1.html>.

far from the original film or the novel on which it was based,⁴⁵⁹ the new version of *True Grit* illustrates how small shifts in a movie's details can add up to substantial differences in tone and emphasis. Mattie Ross, the young woman who hires grizzled old Deputy Marshal Rooster Cogburn to track down her father's killer, deftly uses legal knowledge to her advantage. "She is forever citing law-book principles, invoking lawyers and affidavits, and threatening to go to court."⁴⁶⁰ In scene after scene, she brings up the fact that she has an excellent lawyer. For example, arguing with a merchant about who should bear the cost of a horse that was stolen from the merchant's stable, she not only threatens to litigate the matter but specifies the remedy—a writ of replevin—that will entitle her to recover. "I will take it to law," she vows, squeezing a favorable settlement out of the merchant after noting that a jury's sympathies will surely tilt toward the widow and children of a murdered man.⁴⁶¹ In later scenes, she tries to gain the trust of outlaws by promising that she has a good lawyer who will help those who help her. Legal technicalities can be good, the movie suggests, in the right hands.

Mattie is relentlessly legalistic even when it comes to avenging her father's death. She is concerned not just about whether the murderer is caught and killed but where and how it happens. When she learns that Rooster has joined forces with a Texas Ranger pursuing the same man for other crimes, she balks at the idea that the man might wind up being hanged in Texas for a Texas crime. "This is fraud," she declares, telling the Ranger to back off and explaining, "My agreement with the Marshal antedates yours. It has the force of law."⁴⁶²

While the original *True Grit* movie had some of this material, it portrayed Mattie as more of a shrewd businesswoman than a true legal expert. For example, the opening scene in the original movie establishes Mattie as her father's "little bookkeeper," and later scenes dwell on her discontent about being charged too much for meals or a room in a boarding house. The re-make drops that material while inserting legalistic details, like Mattie's reference to a writ of replevin, that were absent in the original. The effect is to shift Mattie toward sounding like more of a lawyer than an accountant.

459. PORTIS, *supra* note 184; *see supra* notes 182–91 and accompanying text.

460. Frank Rich, *The One-Eyed Man Is King*, N.Y. TIMES, Jan. 20, 2011, at 10 (describing how the movie "emphasizes Mattie's precocious, almost obsessive preoccupation with the law").

461. TRUE GRIT, *supra* note 458.

462. *Id.*

Moreover, although Mattie's lawyer, J. Nobel Daggett, is mentioned many times in both movies, only in the original does he actually make an appearance. When he shows up to meet Rooster Cogburn at the end of the original *True Grit*, he turns out to be a small, bookish, and thoroughly unintimidating fellow. Rooster towers over him and gently mocks him for not living up to the expectations created by Mattie's frequent reliance on his reputation as a fierce litigator. By depicting the lawyer as a pipsqueak, the original *True Grit* gently mocked and diminished the law and lawyers in a way that the re-make never does.

Likewise, the re-make's Rooster Cogburn remains uncomfortable with the courts and their legal formalities, just as he was in the original *True Grit* movie, but the new film blunts his complaints. Testifying in court about why he shot several suspects, Rooster undergoes a tough cross-examination and leaves the stand muttering about the defense lawyer being a "pencil-necked son of a bitch."⁴⁶³ Several scenes that appear in the new movie, but were not in the original, make Rooster's disdain seem more personal than ideological. In one, Rooster recalls how his second wife tried to persuade him to become a lawyer. She purchased "a heavy book called *Daniels on Negotiable Instruments* and set me to reading it," Rooster recalls, "[but I] never could get a grip on it."⁴⁶⁴ In another, Rooster complains about not being able to follow a discussion of the distinction between *malum in se* and *malum prohibitum*.⁴⁶⁵ The law works for those who understand it, the new movie suggests, but Rooster just isn't one of those people.

The new *True Grit* never accuses courts or society of being soft on criminals. In particular, the Coen brothers chose not to include the scene in which Rooster Cogburn, in the original movie and the underlying novel, analogizes himself to a rat-catcher blamed for being too tough on the rats.⁴⁶⁶ To be sure, the new *True Grit* reflects the Western's traditional theme of the personal or individual brand of justice being replaced by an organized system of law.⁴⁶⁷ But by treating Mattie's legalistic tendencies as a charming and clever way to achieve just results, the movie celebrates the emergence of formal law rather than

463. *Id.*

464. *Id.*

465. *Malum in se* crimes are intrinsically evil, while *malum prohibitum* acts are not morally wrong but are nevertheless "prohibited by statute." BLACK'S LAW DICTIONARY 1045 (9th ed. 2009).

466. See PORTIS, *supra* note 184, at 64–65; *supra* note 187–88 and accompanying text.

467. See *supra* notes 96–97 and accompanying text.

condemning it. While John Wayne might have disapproved, the new *True Grit* provides great hope for those wishing movies would offer a more nuanced portrait of law's role in society.

VII. CONCLUSION

Reflecting the spirit of their times and shaping audiences' beliefs, movies provide a rich record of shifting cultural attitudes toward crime, courts, and law. David Puttnam, a Hollywood producer and studio executive, once said, "Movies are powerful. Good or bad, they tinker around inside your brain. They steal up on you in the darkness of the cinema to form or confirm social attitudes. . . . In short, cinema is propaganda."⁴⁶⁸ The importance of movies is magnified by the sheer number of viewers they reach. Far more people, for example, heard what *Dirty Harry* or *True Grit* had to say about the rights of criminals "than [would ever] read any Supreme Court opinion."⁴⁶⁹

Hollywood, of course, is routinely accused of having a strong liberal bias.⁴⁷⁰ But for an issue like crime and constitutional rights, the basic nature of feature films may inevitably tend to pull the message to the right. Movies tell stories. Indeed, narrative is the defining characteristic of what we think of as "the movies." While some types of documentaries or experimental films may lack a story, plot is the central element of everything that most moviegoers see. In telling stories, movies necessarily focus on characters. Depicting an abstract concept like due process is much more difficult than presenting an individual character,

468. CHARLES KIPPS, *OUT OF FOCUS: POWER, PRIDE, AND PREJUDICE—DAVID PUTTNAM IN HOLLYWOOD* 48 (1989).

469. See Allen K. Rostron, *Lawyers, Law & the Movies: The Hitchcock Cases*, 86 CALIF. L. REV. 211, 217 (1998) (book review). For example, a substantial body of sociological research has explored how television significantly alters viewers' perceptions about crime and law enforcement. See, e.g., JAMES M. CARLSON, *PRIME TIME LAW ENFORCEMENT: CRIME SHOW VIEWING AND ATTITUDES TOWARD THE CRIMINAL JUSTICE SYSTEM* 41–51 (1985) (finding that television exaggerates the effectiveness of police, diminishes viewers' support for civil liberties, and overstates crime levels); Valerie P. Hans & Juliet L. Dee, *Media Coverage of Law: Its Impact on Juries and the Public*, 35 AM. BEHAV. SCIENTIST 136, 140–42 (1991) (finding that television disproportionately depicts violence, arrests, and police work, rather than trials and due process, cultivating an exaggerated sense of danger and a perception that the legal system is too lenient); Linda Heath & Kevin Gilbert, *Mass Media and Fear of Crime*, 39 AM. BEHAV. SCIENTIST 379, 379–81 (1996) (reviewing the implications of studies looking at television's effect on fear of crime).

470. See, e.g., BEN SHAPIRO, *PRIMETIME PROPAGANDA: THE TRUE HOLLYWOOD STORY OF HOW THE LEFT TOOK OVER YOUR TV* (2011).

like Harry Callahan or Rooster Cogburn, as the tangible personification of law. Explaining complex matters like the strengths and weaknesses of the criminal justice system is much more difficult than presenting simple and emotionally satisfying solutions like a powerful and charismatic individual who can singlehandedly wipe out crime. Movies thus may have a strong natural tendency to suggest that society's security depends on the rule of strong men, not the rule of law.⁴⁷¹

Tough rhetoric about crime has inevitable appeal in the political realm as well. Treating crime as a simple "conflict between good and evil," to be solved by imposing swift and severe punishment, is emotionally satisfying and resonates with the deeply held American ideal of "individual responsibility."⁴⁷² Politicians face an uphill battle trying to base a campaign on relatively dispassionate concepts like the rule of law, due process, and the need for the criminal justice system to balance a complex array of competing interests.

Politics, entertainment, and the news media therefore tend to join forces in exaggerating fears and distorting perceptions about crime and the legal system. Indeed, political and media representations about crime typically have a greater effect on public thinking than actual facts about crime do.⁴⁷³ Public opinion polls, for example, show that about seventy percent of Americans think crime has been on the rise in recent years even though the reality is that crime rates have continued to plummet.⁴⁷⁴

Nearly half a century has now passed since "law and order" first became a prominent rallying cry in America. It was a powerful message, whether coming from performers like Clint Eastwood and John Wayne or politicians like Barry Goldwater, George Wallace, and Richard Nixon.

471. See generally Ethan Katsh, *Is Television Anti-Law?: An Inquiry into the Relationship Between Law and Media*, 7 *ALSA FORUM* 26 (1983) (arguing that television is hostile to the concept of law because it shows conflicts being resolved by individual action and fails to encourage the public to believe in the effectiveness of abstract, intangible rules of law).

472. STUART A. SCHEINGOLD, *THE POLITICS OF LAW AND ORDER: STREET CRIME AND PUBLIC POLICY* 60–62 (1984).

473. See, e.g., Katherine Beckett, *Setting the Public Agenda: "Street Crime" and Drug Use in American Politics*, 41 *SOC. PROBS.* 425, 425 (1994) (arguing that politicians and the mass media play crucial roles in generating public concern about crime); Mark Fishman, *Crime Waves as Ideology*, 25 *SOC. PROBS.* 531, 531 (1978) (arguing that "crime waves" are largely creations of the news media); Jerome H. Skolnick, *Passions of Crime*, *AM. PROSPECT*, Mar.–Apr. 1996, at 89, 89 (claiming that policymaking on crime is driven more by symbolism, culture, and politics than by evidence or logic).

474. Lydia Saad, *Most Americans Believe Crime in U.S. Is Worsening*, *GALLUP* (Oct. 31, 2011), <http://www.gallup.com/poll/150464/americans-believe-crime-worsening.aspx>.

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After echoing through political and popular culture for many years, talk of law and order now has faded, but it is hard to believe it will not be heard again someday.