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Rough Justice

Julian Petley

Introduction: the emerging Republican majority

Most of the chapters in this book are concerned with films which, at the time of their making, tackled taboo-busting subjects of one kind or another, and, in doing so, frequently shocked conservative sensibilities. In this chapter, however, I want to examine a number of films which shocked *liberal* sensibilities in the 1970s because of the manner in which they dealt with the issues of law, order and justice. Foremost amongst such films are *Dirty Harry* (Don Siegel, 1971) and *Death Wish* (Michael Winner, 1974), but as Bill Gombash has dealt with the latter in his chapter, I will concentrate on analysing the elements in the former that outraged liberal opinion.

First, however, it is necessary to sketch in a certain amount of historical context, and in particular to focus on the roots of the right-wing reaction against 1960s liberalism in the States.

Writing in 1969, Kevin Phillips, who at that time worked for the new Republican administration, argued that the 'great political upheaval' of the 1960s was not

> Senator Eugene McCarthy's relatively small group of upper-middle-class and intellectual supporters, but a populist revolt of the American masses that have been elevated by prosperity to middle-class status and conservatism. *Their* revolt is against the caste, policies and taxation of the mandarins of Establishment liberalism.[1]

This may be to understate the extent of liberalism's spread and influence in the first half of the 1960s, but it is nonetheless the case that President Lyndon B. Johnson's Great Society programmes, civil rights reforms and War on Poverty led many Democrats, particularly those hostile to the anti-war movement and the whole counter-culture phenomenon, into the arms of the Republicans.

However, the Republican party itself was changing, as a new right which had developed within it began to push against the 'Modern Republicanism' exemplified by President Dwight D. Eisenhower and in the direction of its own brand of populist conservatism. In Phillips's words, this was a 'popular upheaval' which spanned 'Middle America – from sharecroppers and truckers to the alienated lower middle class' and which would 'do far more for the entire nation than the environmental manipulation, social boondoggling, community agitation and incendiary promises of the Nineteen-Sixties'.[2] What he called the emerging Republican majority

> spoke clearly in 1968 for a shift away from the sociological jurisprudence, moral permissiveness, experimental residential, welfare and educational programming and massive federal spending by which the Liberal (mostly Democratic) Establishment sought to propagate liberal institutions and ideology[3].

Culture wars

This new right viewed American electoral politics as an arena of primarily *cultural* warfare. Whereas many conventional Republicans understood political alignments chiefly in class or regional terms, the new right grasped the centrality of ethnicity, religion and national origins in shaping political allegiances. Thus they set out to build grass-roots coalitions across existing party lines and to mobilise new groups around various single issues and causes – particularly ones which concerned apparent threats to the 'American way of life'. As Gillian Peele argues:

> Almost all Americans will react to campaigns which mention the 'destruction of innocent life', the control of pornography, the defence of the family, and, in a slightly different sphere, the issues of law and order and busing. And indeed it was in the very reluctance of the two regular parties to use these issues that the new right found a vacuum to be filled, because new-right spokesman have argued that it is precisely on these issues that the legislative elite and the mass public are at odds and that the public most needs to make its voice heard[4].

Law and order issues proved particularly fertile for the new right, and especially for its claim that the liberalism of the 1960s, whether in its Democratic or Republican iteration, had turned away from the interests and values of the broad mass of the middle and working classes. In the 1960s, crime rates had risen, detection rates had fallen and suspects had been given new rights on account of the Miranda and Escobedo judgments (both of which are mentioned in *Dirty Harry*). In 1966 in *Miranda v. Arizona*, the U.S. Supreme Court established the principle that all criminal suspects must be advised of their right to consult an attorney, and of their right against self-incrimination before police questioning. Failure to do so would mean that the prosecution could not use in court any statements made by the accused during interrogation. And in 1964, in *Escobedo v. Illinois*, the Court ruled that, under the Sixth Amendment, criminal suspects had a right to counsel during police questioning.

Crime, along with civil unrest, such as anti-Vietnam war demonstrations, thus became 'wedge' or 'cut through' issues in the 1960s. The Republican Barry Goldwater made lawlessness and crime in the streets a major issue in the 1964 presidential campaign, as did George Wallace of the Independent Party in the 1968 campaign. As he famously put it: 'Liberals, intellectuals, and long hairs have run the country for too long. The average American is sick and tired of all those over-educated ivory tower folks with pointed heads looking down their noses at us'[5]. The political establishment was initially wary of Wallace's rhetoric because it was so closely linked with his stance on race, but it proved so popular, particularly with those outraged by levels of street crime, that Richard Nixon made the law and order theme central to the Republican campaign in an overt attempt to wrest the issue from Wallace. Significantly, he was repeatedly critical of the Escobedo and Miranda judgements.

In the event, Nixon won the campaign, but nonetheless more than 9.9m. people voted for Wallace, representing 13.5% of the total vote. Nixon was inaugurated on 20 January 1969 and immediately declared war not only on crime but also on 'elite groups' and the 'Establishment'.

His appeal was squarely aimed at what he called in a television broadcast of 3 November 1969 'the great silent majority' (although the term was not original to him, having first been used in a conservative political context in 1919 during Calvin Coolidge's campaign for the 1920 Republican presidential nomination). And in his State of the Union Address on 22 January 1970, he reinforced his conservative crime control message, pledging to create 'respect for law rather than lawlessness'. In comments directed squarely at what were known as 'due process' liberals, Nixon argued:

> We have heard a great deal of overblown rhetoric during the sixties in which the word 'war' has perhaps too often been used—the war on poverty, the war on misery, the war on disease, the war on hunger. But if there is one area where the word 'war' is appropriate it is in the fight against crime. We must declare and win the war against the criminal elements which increasingly threaten our cities, our homes, and our lives[6].

Significantly, the issue of *Time* published on 5 January 1970 named Middle Americans as their Men and Women of the Year. It stated:

> Everywhere they flew the colours of assertive patriotism. Their car windows were plastered with American-flag decals, their ideological totems. In the bumper-sticker dialogue of the freeways, they answered MAKE LOVE NOT WAR with HONOR AMERICA or SPIRO IS MY HERO. They sent Richard Nixon to the White House and two teams of astronauts to the moon … While the rest of the nation's youth has been watching Dustin Hoffman in *Midnight Cowboy*, Middle America's teen-agers have been taking in John Wayne for the second or third time in The *Green Berets*[7].

'Patriotic insurgents'

Quite clearly, then, major political, ideological and cultural changes were afoot. Meanwhile civil unrest of various kinds continued unabated. For example, on 15 October 1970, in an eerie prefiguring of the events of 6 January 2021, some 3,000 police officers from 44 states massed on

the steps of the Capitol, attacking institutions such as the American Civil Liberties Union and the Supreme Court, and again Escobedo and Miranda were singled out for specific criticism. In May 1971 (when *Dirty Harry* was in production), 7,000 anti-war protestors were arrested when they attempted to march on the Pentagon: 5,000 police, reinforced by 1,500 National Guardsmen and 10,000 soldiers, including paratroopers, were involved in the largest such operation in US history. The killing of protesting students at Kent State and Jackson State universities by National Guardsmen and police in 1971 marked increasing intolerance of dissent on the part of the authorities. And in the 1972 presidential election, the Nixon campaign painted the Democrat candidate, the liberal George McGovern, as the representative of the three A's: abortion, acid and amnesty (for draft resisters).

Nixon was duly re-elected on 7 November 1972. Significantly, in a manner common to right-wing incumbents in both the US and the UK, they presented themselves exactly as if they were in opposition – what J. Hoberman aptly calls 'patriotic insurgents'[8]. As Theodore H. White points out, there was a considerable culture gap, not to say war, between the Nixon administration on the one hand, and, on the other, not just the McGovern camp but the whole Washington environment:

> They were talking from the cultures of two entirely different Americas; style, purpose, values – all separated them. The McGovern people were always more sure of themselves and their rhetoric; the White House people were always defensive. The McGovern people were expansive, trusting, romantic; the White House people were wary, never quite sure that they weren't being lured into ridicule, contempt or exposure. Though they controlled the government of the United States, the White House staff men regarded Washington as a hostile place[9].

Their wariness extended to the media too:

> The men and the White House were, at once, shy and cold; life in the capital had made them gun-shy of the vocalizers. The predominant idiom of Washington journalism was not

> their idiom, and the White House staff saw the gap in communications and dialogue as positively hostile, if not conspiratorial[10].

In this respect, White quotes Victor Gold, then press secretary to Vice President Spiro Agnew, as complaining that 'they own the word factory, they make the words. The White House tries to argue it out with them in their words – but they own the ammunition dump'[11]. And on the social front, Nixon's special assistant, Pat Buchanan, observed resentfully:

> This hasn't been our own town. They live in Georgetown, with their parties; they never invited us; they ignored us. We were the vanguard of Middle America and they were the liberal elite. It's a schism that's cultural, political, social, emotional[12].

The parallel with the Trump administration raging about the 'swamp' is too obvious to need labouring.

Joe: the New Republican infantryman

1960s Hollywood cinema being a largely liberal institution, it was rare to see the right-wing values of the emerging Republican majority lionised or endorsed – *The Green Berets* (John Wayne, 1968) being an exception that proves the rule. When they did appear, particularly in the then fashionable youth-oriented movies, they tended to be embodied in the kind of rednecks who harass, and eventually murder, the bikers of *Easy Rider* (Peter Fonda, 1969). However, with the turn of the decade came a film which placed these values centre stage. This was the independently-produced *Joe* (1970), directed John G. Avildsen and written by Norman Wexler, who were both unknown at the time, although the former would later direct *Rocky* (1976) and the latter write *Saturday Night Fever* (1977). Significantly, the film was released just a couple of months after what came to be known as the Hard Hat Riot, when helmeted construction workers waving enormous American flags and chanting 'All the Way, U.S.A.' tore through an anti-war demonstration in Manhattan's financial district[13]. This was just a few days after the killing of four students by National Guardsmen during a peaceful protest at Kent State University, Ohio.

After Melissa Compton (Susan Sarandon) has overdosed on amphetamines and nearly died, her father, Bill (Dennis Patrick), an advertising executive, beats to death her drug-dealing boyfriend, Frank Russo (Patrick McDermott). Taking refuge in a local bar after the murder, he meets Joe Curran (Peter Boyle), a racist, hippy-hating factory worker, and tells him what he's just done. At first Joe thinks he's joking, but after the death is reported on television, he contacts Bill and tells him how much he admires him. Subsequently they meet up again and become friends. When Melissa leaves hospital, she discovers what her father has done, runs away and seeks refuge amongst the hippies in Greenwich Village. Bill and Joe search for her there, and end up participating in a hippie party, during which their wallets are stolen. Armed with guns from Joe's considerable collection, they track the thieves to a commune in the countryside. Joe kills one of the hippies, and, so that there will be no living witnesses to the murder, they embark on killing the rest. However, in the course of the shooting spree, Bill unwittingly kills his daughter.

The film's plot reads almost as if it was intended to illustrate Phillips's thesis. Joe is from lower-middle-class Queens and Bill from upper-middle-class Manhattan. As Peter Lev points out, they are

> unlike in speech, dress, and income, but alike in conservatism, patriotism, and their definition of masculinity. Both fear social change and demonize the Other – in this case, hippies and drug dealers. Both rely on subordinate, compliant women but allocate to themselves a realm of masculine freedom (drinks after work, sex with hippie women). Both are willing to use violence to 'protect' freedom – their own freedom, not necessarily the freedom of others[14].

When we first meet Joe, who Hoberman aptly calls the 'infantryman' of the emerging republican majority (2003: 284), he is engaging in a long, drunken monologue in the nudgingly-named American Bar. Almost the first word we hear him utter is 'niggers':

> The niggers are getting all the money. Why work? You tell me, why the fuck work when you can screw, have babies and get paid for it? Welfare – they've got all that welfare money, they get free rubbers. Think they use 'em? Hell no, the only way they make money is making babies. They sell the rubbers, and then they use the money to buy booze.

Next up in Joe's demonology are social workers: 'The ones in welfare, how come they're all nigger lovers? You ever noticed that? All those social workers are nigger lovers. You find me a social worker who ain't a nigger lover and I'll massage your arse for you – and I ain't queer'. Then rich white young people:

> They're the worst. Hippies. Sugar tit [dummy] all the way. The cars, the best colleges, vacations, augies [sic]. They go some place like a fancy resort and have augies. Easter augies! They day Christ rose they're all screwing one another. And the poor kids, the middle-class kids, they're all copying the rich kids. They're all going the same goddam screw America way.

And finally students:

> The college kids, they're acting like niggers. They got no respect for the President of the United States. A few heads get bashed and the liberals behave like Eleanor Roosevelt got raped, The liberals – 42 per cent of the liberals are queer, and that's a fact. Some Wallace people took a poll.

Such sentiments are absolutely calculated to shock liberals, but although the film does give Joe a convincing background which shows why he is as he is (greatly aided by Peter Boyle's disturbingly credible performance, which made his name), it does not endorse his point of view, and is not as 'incoherent' as Lev suggests[15]. The film's plot is sparked off by one of its two main protagonists dishing out rough justice (Bill killing Frank) and culminates in both of them committing mass murder. Along the way, Joe's racist bigotry is revealed as being complemented by his oppressive chauvinism in the domestic sphere and his outright hypocrisy in participating in the hippy 'augy'. However, it's important to note that although the film was a

considerable hit, audiences were deeply divided between those who did indeed read it as a critique of the values represented by Joe and those who cheered him on[16]. Boyle himself certainly saw the film as an attack on blue-collar conservatism but was equally concerned, for differing reasons, that both hardhats and liberals would identify Joe's values with his own[17].

'I'm all broken up about that man's rights'

Joe concerned rough justice meted out by ordinary citizens, but *Dirty Harry* sees it administered by a cop. Briefly, the film concerns Inspector Harry Callahan (Clint Eastwood) of the San Francisco Police Department who has earned the nickname 'Dirty Harry', partly because, in his own words, he gets 'every dirty job that comes along' and partly because of his tendency to bend the rules of police and legal procedure. As the film progresses it focuses increasingly on Callahan's pursuit of the serial killer, Scorpio (Andy Robinson), which becomes absolutely relentless after he kidnaps and then murders a young girl, Ann Mary Deacon (Debralee Scott). In his efforts to locate her before she is killed, Callahan captures and tortures Scorpio; as a result he does learn where she's being held, but his methods render inadmissible all the evidence against him which he had extracted. Scorpio is released, Callahan shadows him and eventually shoots him before throwing away his police badge.

Dirty Harry was a film that absolutely outraged liberal opinion, which saw it as not only endorsing Callahan's illegal methods but also pouring scorn on the legal establishment and the liberal principles by which it operated. In this respect it's important to note that *Dirty Harry* is very specifically a San Francisco film, as were its successors. At the time the city absolutely epitomised the liberal culture, and indeed counter-culture, that conservatives regarded as 'permissive' and one of the major causes of crime and disorder.

Chief amongst its liberal critics was Paul Kael, herself from San Francisco, whose review in the *New Yorker*, 15 January 1972[18], sharply sums up the main points in the liberal critique of the film, which she calls a hard-hat version of Ayn Rand's *The Fountainhead*. In her view, '*Dirty*

Harry is not about the actual San Francisco police force; it's about a right-wing fantasy of that police force as a group helplessly emasculated by unrealistic liberals'. Harry Callahan himself is a

> Camelot cop, courageous and incorruptible and the protector of women and children. Or at least he would be, if the law allowed him to be. But the law coddles criminals; it gives them legal rights that cripple the police. And so the only way that Dirty Harry – the dedicated troubleshooter who gets the dirtiest assignments – can protect the women and children of the city is to disobey orders.

Those, she argues, are the terms of the film, and because it is so skilfully and effectively constructed, it is admittedly difficult not to want to see

> the maniac get it so it hurts … It has such sustained drive toward this righteous conclusion that it is an almost perfect piece of propaganda for para-legal police power. The evil monster represents urban violence, and the audience gets to see him kicked and knifed and shot, and finally triumphantly drowned. Violence has rarely been presented with such righteous relish.

However, the scene which particularly shocked liberal sensibilities was not one involving violence inflicted by Callahan on Scorpio, but that in the Assistant District Attorney's office after the arrest. Here the D.A. (Josef Sommer) tells Callahan:

> You're lucky I'm not indicting you for assault with attempt to commit murder. Where the hell does it say that 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 have heard of the Fourth Amendment. What I'm saying is – that man had rights.

To which Callahan replies: 'Well, I'm all broken up about that man's rights', before being informed that Scorpio will be freed as soon as he's well enough to leave hospital, as there is no evidence against him that can be presented to a court and 'I'm not wasting half a million dollars

of the taxpayers' money on a trial we can't possibly win'. Told that, under the law, the evidence against Scorpio is inadmissible, Callahan retorts: 'Well, then the law's crazy'. At this point, the D.A. introduces Judge Bannerman (William Paterson) of the Appellate Court, who also holds classes in Constitutional Law at Berkeley, and asks his opinion. As Kael notes:

> Such a perfect touch for the audience. Anyone who knows San Francisco knows that in the highly unlikely circumstance that a law professor were to be consulted, he would be from the University of San Francisco, a Catholic institution closer in location and nearer in heart to the S. F. Police Department—or, if not from there, from Hastings College of the Law, a branch of the University of California that is situated in San Francisco. But Berkeley has push-button appeal as the red center of bleeding-heart liberalism; it has replaced Harvard as the joke butt and unifying hatred of reactionaries[19].

One might also note that in the 1960s Berkeley had been the site of numerous student uprisings and home to the Free Speech Movement. During his 1966 gubernatorial campaign Ronald Reagan promised to 'clean up the mess in Berkeley' and would later order the National Guard onto the campus.

All too predictably, then, Bannerman tells Callahan that 'the search of the suspect's quarters was illegal. Evidence obtained thereby, such as that hunting rifle, is inadmissible in court. You should have gotten a search warrant'. Harry responds that there wasn't time because he was concerned that the kidnapped girl's life was in danger, to which Bannerman replies that a court would have to recognise the police officer's legitimate concern for the girl's life, 'but there is no way they can legitimately condone police torture. All evidence concerning the girl, the suspect's confession, all physical evidence, would have to be excluded'. He also tells Callahan that 'the suspect's rights were violated, under the Fourth and Fifth, and probably the Sixth and Fourteenth Amendments', to which he replies: 'And Ann Mary Deakin? What about her rights? I'm mean, she's raped and left in a hole to die. Who speaks for her?'

Even though the D. A. and the judge are not represented as caricature liberals – the former telling Callahan that 'I've got a wife and three kids, I don't want him on the streets any more than you do' – the film clearly plays in such a way that the spectator is encouraged to share Callahan's extreme impatience with and incredulity at the legal situation which is explained to him here and to want to see Scorpio apprehended by any means possible. And in this sense, the film can indeed be read as a critique of 'due process' and rights-based liberalism and as supporting its antithesis, namely a crime control model of justice. As noted earlier apropos Nixon's policies on law and order, at a time when lawyers, judges and legal academics were committed to using due process to regulate police behaviour and to ensure that suspects' rights were respected, many lay people, and especially conservatives, were more concerned with the effective apprehension and punishment of criminals, which they regarded as a 'common sense' matter of substantive justice.

Harry Callahan meets John Locke

It does need to be pointed out, however, that Callahan is not represented as being engaged in a concerted campaign of organised vigilante action, like the rogue cops in *Dirty Harry*'s sequel, *Magnum Force* (Ted Post, 1973), to which we will turn shortly. Indeed, when asked at one point why he stays in the job, he replies: 'I don't know. I really don't', and the film doesn't provide any answers either. His motivation remains largely inchoate, although a clue may lie in his remark that 'I don't know what the law says, but I do know what's right and wrong'. But, via Callahan and his travails with the legal system, the film can convincingly be read as suggesting that when that system is weak or compromised it is permissible to act against the law of the land in the interests of 'natural justice'.

Such an idea stems from the contract theory of government which originated, albeit in differing ways, in Thomas Hobbes's *Leviathan* (1651) and John Locke's *Second Treatise of Government* (1689). According to this theory, individuals living in society consent to surrender

some of the freedoms that they once enjoyed in the state of nature and agree to submit to some form of higher authority in exchange for the protection of their remaining rights and the maintenance of the social order under a system of laws. Among the rights that individuals surrender is their right to prosecute or punish criminal acts, and they do so in exchange for the government assuming responsibility for providing public safety. But citizens retain the right to take the law back into their own hands if the government is unwilling or unable to provide public order, safety, or justice. Thus in section 19 of his *Second Treatise of Government*, Locke argues quite explicitly that in situations where the police and courts can't or won't do their jobs it is permissible for people to take the law into their own hands[20].

As Timothy Lenz argues, *Dirty Harry* challenges liberal assumptions about the efficacy of law as an instrument of justice, and when Callahan threw away his badge

> he symbolically threw away the law that had effectively disarmed society by forgetting that law was just a means to an end, that due process was the means to achieve justice rather than an end in itself … Callahan is outraged that rights and law were actually frustrating justice, and he is willing to violate both to do justice. *Dirty Harry* voices the conservative belief that due process liberals have misplaced priorities insofar as they treat law and justice as equal values. In fact, conservatives consider law an instrumental value that can be dispensed with when necessary to achieve other, more important values[21].

One of these is social order, and Callahan is represented as acting against existing laws but in the interests of social order. But this would appear to be an order of a distinctly conservative kind, as conventionally encapsulated in the phrase 'law and order'. As Rebecca Solnit states[22]: '"Law and order" as a right-wing slogan means that they are the law, and they impose their version of order. Authoritarianism is always an ideology of inequality : I make the rules, you follow them'.

Dirty Harry also raises the issue of the relationship between law and violence, and, in particular, as Lenz puts it,

> directly challenged the prevailing liberal orthodoxy that violence was an atavistic impulse that needed to be controlled by law …. Liberals tended to measure human progress by law's displacement of violence as an instrument of social control. *Dirty Harry* portrays violence as a legitimate solution to the problem of too much law, and advocates the justice and social utility of violence[23].

Of course, none of this is to argue that the screenwriters (Harry Julian Fink, Rita M. Fink and Dean Riesner, along with the uncredited Terence Malick, Jo Heims and John Milius), director Don Siegel and star Clint Eastwood deliberately embarked on making an all-out attack on due process liberalism, still less one that would be excoriated as fascist and advocating vigilantism. Action movies such as this are, after all, not legal tracts, but, on the other hand, they are most certainly capable of being read through a legal lens. But, whatever the case, the criticism from Pauline Kael and others clearly hit home, as the sequel to *Dirty Harry*, *Magnum Force*, pits Callahan *against* a group of cops who really are vigilantes.

'Nothing wrong with shooting as long as the right people get shot'

Callahan is still on the San Francisco force, even though he threw away his police badge at the end of the previous film. Here he investigates the murders by unknown assailants of a number of San Francisco criminal suspects who have been found not guilty by the courts on various technicalities. At first he suspects a fellow officer and friend, Charlie McCoy (Mitchell Ryan), who appears to be going over the edge because of the strains of the job, but eventually discovers that the killers are a group of rookie traffic cops who were once Army Rangers together and have now formed themselves into a vigilante force within the police. Eventually they confront Callahan and ask him to join them, telling him:

> We're simply ridding society of killers that would be caught and sentenced anyway if our courts worked properly … It's not just a questions of whether or not to use violence, there simply is no other way. You of all people, Inspector, should understand that[24].

But Callaghan refuses, and then finds his life in danger. He tells his superior, Lt. Briggs (Hal Holbrook) what he has discovered, but it then transpires that Briggs is actually the leader of the vigilantes and is intent on killing Callahan now that he has discovered who the murderers are. However, in the course of a lengthy pursuit, Callahan manages to dispatch both Briggs and the vigilantes.

In his commentary on the Warner Home Video Blu-ray of *Magnum Force*, John Milius, who co-wrote the screenplay with Michael Cimino, calls the film 'the flipside of the coin of the first one' and states that it shows

> what happens when you take vigilantism too far, when people start to abuse the power of the vigilante and they say '*we* are going to clean up society and *we* know what is best for society. And so there's a curious line, and the idea that that line is difficult and fuzzy.

In *Dirty Harry*, Callahan obsessively pursues one particular criminal, but he is not involved in a deliberate campaign of vigilante action, as are the traffic cops in the sequel. Nor is he thwarted here by over-cautious superiors and due process liberals. On the contrary, his immediate boss is himself a vigilante. As he says to Callahan in defence of his actions: '100 years ago in this city people did the same thing[25]. History justified the vigilantes. We're no different. Anyone who threatens the security of people will be executed. Evil for evil, Harry. Retribution'. In response. Harry explains why he himself has not joined the vigilantes:

> That's just fine, but how does murder fit in? When the police start becoming their own executioners, where's it going to end? Pretty soon you'll start executing people for jaywalking, then executing people for traffic violations, then you end up executing your neighbour because his dog pisses on your lawn.

Here, in contrast to his position in *Dirty Harry*, Callahan states that he believes in upholding the law, to which Briggs responds: 'What the hell do you know about the law? You're a great cop, Harry, you had a chance to join the team but you'd rather stick with the system', to which

Callahan angrily retorts: 'I hate the goddam system. But until someone comes along with some changes that make sense, I'll stick with it'.

However, this isn't exactly convincing, as, earlier in the film, in a scene in the city morgue filled with the bodies of the vigilantes' victims, when Callahan is told by Captain Avery (Joe Miksak) that 'someone's trying to put the courts out of business' he responds: 'So far you've said nothing wrong', later adding: 'Nothing wrong with shooting as long as the right people get shot'. It becomes even less convincing when the film is read through Milius's commentary[26]. Thus after a series of murders by the vigilantes, Milius says: 'So far you haven't got a lot to quarrel with these guys', and at another point he actually assigns this attitude to Callahan:

> Harry is obviously still sympathetic to the [vigilante] idea … In fact they've done nothing wrong, they're just serving out justice, even though it's not the system's justice. It's what this movie is about. The whole *Dirty Harry* idea is the questioning of modern justice – otherwise why do we have a vigilante? The whole idea of the vigilante cop is that we need him. And there is another side to it, I mean, how far can you go? The moral ambiguity was in the idea that you had to draw a line and that was what made all of this stuff interesting … Where is it that you go bad, where is it that this stuff starts to come apart?

The answer appears to be: when the vigilantes kill a fellow cop, as happens in the case of Charlie McCoy.

Having established the identity of the killers, Callahan tells his sidekick, Earlington 'Early' Smith (Felton Perry), that the death squads in Brazil should serve as a warning of what could happen in the US. He doesn't indicate *why* he thinks that this might happen, but Milius himself is in little doubt:

> It's not too hard to understand how this could happen nowadays, the way things are … The whole *Dirty Harry* concept comes from people are sick of the fact that the law doesn't

work, and I have to say that things haven't gotten any better. That's why these films, the idea of the vigilante cop, always works.

In the final 1970s chapter, *The Enforcer* (James Fargo, 1976), Callahan's superior, Captain McKay (Bradford Dillman), transfers him to personnel on account of his use of excessive rce in a hostage situation but soon reinstates him to homicide when he and the mayor (John Crawford) become concerned about a particularly violent crime wave engulfing San Francisco. This, they are convinced, is the work of the black militant organisation, Uhuru, when in fact the 'People's Revolutionary Strike Force' is behind it . However, the radical-sounding name is simply a cover for a purely criminal gang, as the Uhuru leader, 'Big Ed' Mustapha (Albert Popwell) enables a grateful Callahan to discover. Indeed, a grudging respect develops between the two, as the following exchange shows:

Mustapha: Callahan, you're on the wrong side.

Callahan: How do you figure that?

Callahan: You go out and put your ass on the line for a bunch of dudes who'd no sooner let you in the front door than they would me.

Callahan: I'm not doing it for them.

Mustapha: Who then?

Callahan: You wouldn't believe me if I told you.

Thus the mystery of Callahan's real motivation is usefully spun out for further sequels, but the important point here is that after the police arrest the Uhuru members and try to pin the crime wave on them, the mayor and McKay arrange a public commendation for Callahan and his new partner, Inspector Kate Moore (Tyne Daly), for their alleged role in the operation. In particular, they are hopeful that the commendation of a female officer will impress the electorate. However, they refuse to take part in this charade, and McKay suspends Callahan. After the mayor is kidnapped by the 'Strike Force', who demand $5m for his release, McKay tries to enlist Callahan's help in negotiating with them (shades here of *Dirty Harry*), but he refuses to co-operate. However, by interrogating a priest, Father John (M.G. Kelly), who used to give

rehabilitation seminars on Alcatraz, he and Moore discover that the gang is holding the mayor on the island, where its leader, Bobby Maxwell (DeVeren Bookwalter), was once imprisoned. By the time McKay arrives to pay the ransom, Callahan and Moore have killed the gang, but the latter has paid with her life. Callahan frees the mayor – who offers him yet another letter of commendation.

Penal populism

As Milius sees the *Dirty Harry* cycle:

> The captains are forces of civilised law and order, and they always represent the liberal, bureaucratic morass that we all live in. They are the Gordian knot and Harry has to cut that knot all the time. Harry has to go through to get to justice always by semi-illegal means, otherwise he ain't Harry.

The problem with this formulation, however, is that of the 1970s *Dirty Harry* films, only the first one specifically critiques liberalism *per se*. In the second, although Briggs initially earns Callahan's scorn when he reveals that he's never unholstered his gun in his life as a cop, he turns out to be anything but a liberal, and Briggs's superior, Captain Avery, is merely over-cautious and over-burdened by procedure rather than hamstrung by liberal principles. Finally, in *The Enforcer*, Captain McKay and the mayor appear to be motivated primarily by PR concerns, namely protecting and burnishing the image of the San Francisco police. Anti-liberalism does admittedly raise its head briefly in Father John's seemingly naïve and misguided belief in the powers of rehabilitation, and at first seems to be present in the fact that Moore is promoted because the powers-that-be want the police to be seen to be more diverse, as well as in Callahan's initial hostility towards her. However, she proves herself to be extremely able and he ends up treating her as an equal. Finally, McKay's payment of the ransom money is largely a matter of political expediency in the face of a campaign of crime that has made the police look hopelessly out of their depth.

It is indeed true that *Dirty Harry* sparked off a series of films in which police officers had to take the law into their own hands in order to fight crime, but for the most part this was because they were stymied not by due process liberalism but by either apathy or corruption, or both, within their own ranks and also at City Hall level. Systemic police corruption is almost the entire subject of *Serpico* (Sidney Lumet, 1973), based on the real-life events which led to the setting up of the Knapp Commission[27] in April 1970, which delivered its final report in December 1972, but it also hinders the 'good' cops in carrying out their duties in films such as *The French Connection* (William Friedkin, 1971), *The Supercops* (Gordon Parks Jr., 1973), *Busting* (Peter Hyams, 1973) and *McQ* (John Sturges, 1974). One might also note a number of films in which civilians have to take the law into their own hands because the forces of law and order are, for various reasons, unable or unwilling to help them. These include *Gordon's War* (Ossie Davis, 1973), *Walking Tall* (Phil Karlson, 1973), *Framed* (Phil Karlson, 1974), *Vigilante Force* (George Armitage, 1975), *Fighting Mad* (Jonathan Demme, 1976), *Delirium* (Peter Marris, 1979) and *The Exterminator* (James Glickenhaus, 1980). But insofar as the protagonists of all of these films are forced to step outside the law in order to achieve justice – albeit of an extremely rough kind – the films do fit within the *Dirty Harry/Death Wish* mould, even if shorn of these two films' overt critique of due process liberalism.

What these films ultimately express, albeit to different degrees and in different ways, is a form of penal populism. As John Pratt explains, this

> speaks to the way in which criminals and prisoners are thought to have been favoured at the expense of crime victims in particular and the law-abiding public in general. It feeds on expressions of anger, disenchantment and disillusionment with the criminal justice establishment. It holds this responsible for what seems to have been the insidious inversion of commonsensical priorities : protecting the well-being and security of law-abiding 'ordinary people', punishing those whose crimes jeopardize this[28].

From this perspective, elites of various kinds within the criminal justice system are seen as standing in the way of the more legitimate demands of the public at large, or, in populist parlance, 'the people'. To quote Pratt:

> Penal populism attempts to reclaim the penal system for what it sees as the oppressed *majority* and harness it to *their* aspirations rather than those of the establishment, or those of liberal social movements that pull in the opposite direction to which it wants to travel. When rights are referred to in penal populist discourse, it is usually the rights of the public at large to safety and security, and the withdrawal of rights from those very groups (immigrants, asylum seekers, criminals, prisoners) on whose behalf other social movements are campaigning for. In these ways it claims to represent the rights of the general public, not fringe groups or minorities, against what is perceived to be the privileged, highly educated, cosmopolitan elite whose policies have put its security at risk[29].

Redemptive violence

From such a perspective, it becomes easier to understand why audiences who in real life might well have found themselves on the receiving end of the rough justice meted out in these films enjoyed them so much. As Pauline Kael noted in her review of *Dirty Harry*:

> The movie was cheered and applauded by Puerto Ricans in the audience, and they jeered—as they were meant to—when the maniac whined and pleaded for his legal rights. Puerto Ricans could applaud Harry because in the movie laws protecting the rights of the accused are seen not as remedies for the mistreatment of the poor by the police and the courts but as protection for evil abstracted from all social conditions—metaphysical evil, classless criminality[30].

Equally, the anti-authority elements of these films, limited and compromised though they are, could well have an appeal to such audiences. As Eric Patterson argues, Eastwood's crime films, and the *Dirty Harry* films in particular,

> tap a widespread and deep reservoir of resentment against existing forms of authority, but their effect is ultimately repressive rather than progressive since they channel this feeling, which potentially could precipitate radical structural change, in directions which will not lead to disruption of existing structures[31].

Patterson usefully draws on Herbert Marcuse's *One Dimensional Man* to back up his point. In this at one time highly influential book, first published in 1964, Marcuse notes that modern societies offer people a degree of sexual freedom which helps them to accommodate themselves to the otherwise repressive conditions under which they live. Marcuse calls this a form of 'repressive desublimation' which serves as 'a prop for the status quo'[32]. But although he concentrates almost entirely on sexuality, he also suggests briefly[33] that the dominant culture allows a similar liberation of aggressiveness, and to similar ends, thus unleashing aggressive impulses in a selective manner, releasing the frustration and hostility generated by the existing order in ways which pose no serious threat to that order. Building on this insight, Patterson suggests that films such as *Dirty Harry*

> depict a reality close enough to the lives of the audience to allow them an intensely satisfying imaginative experience, but far enough from them that the true locus of economic, social and political power never is identified or questioned. The audience is allowed a fantasy of revolt, a dream of recapturing autonomy, but no general critique of authority is made and no call for its transformation is issued[34].

Violence is frequently redemptive or regenerative in conservative crime films, which serves only to endorse the cathartic effect of vengeance as an alternative to law. As Michael Ryan and Douglas Kellner argue, films which depict the failure of liberal solutions to the problem of crime and disorder portray more accurately than liberal films the real exercise of force that constitutes the manner in which the problem is conventionally dealt with. And in their view, in the absence of measures that

> address the structural sources of the problem in the capitalist maldistribution of wealth, only conservative solutions to crime will succeed politically, precisely because they offer images of power and just punishment to people rendered fearful, insecure, and resentful by the same unstable social and economic conditions that fuel crime[35].

Priti Patel MP meet Harry Callahan

At a time when liberalism in general, and due process liberalism in the legal sphere in particular, is in retreat, films such as *Dirty Harry* and *Death Wish* still have considerable resonance. Indeed, it is no coincidence that *Death Wish* was re-made in 2018 (by Eli Roth). During his time in office, Donald Trump repeatedly and violently castigated judges and court judgements that he regarded as overly liberal[36], and his more than 200 appointments to the federal judiciary moved it heavily to the right[37]. His three appointments to the Supreme Court also shifted its centre of gravity considerably to the right by giving conservatives six of the nine seats. The most controversial of these was the ultra-conservative Judge Amey Coney Barrett, who, in highly controversial circumstances, replaced the well-known and highly regarded liberal Justice Ruth Bader Ginsburg after her death.[38]

Meanwhile, in the United Kingdom, Priti Patel, the home secretary appointed by Boris Johnson in July 2019, has made a specialism of attacking due process liberalism, taking aim in particular at legal professionals defending migrants to the UK. For example, this gem taken from her speech to the Tory party conference in October 2020:

> No doubt those who are well-rehearsed in how to play and profit from the broken system will lecture us on their grand theories about human rights. Those defending the broken system – the traffickers, the do-gooders, the lefty lawyers, the Labour party – they are defending the indefensible[39].

The same sentiments were expressed by Johnson himself at the conference, and these and other similar remarks resulted in over 800 former judges and senior legal figures publishing an open

letter[40] in which they accused the prime minister and home secretary of undermining the rule of law and effectively risking the lives of those working in the justice system. Given that this is the same government which wants to limit judicial review, weaken the Human Rights Act 1997 and quite possibly withdraw altogether from the European Convention on Human Rights, it is all too clear that the matters raised by films such as *Dirty Harry* and *Death Wish* are by no means of only historical or cinematic relevance and concern.

Notes

[1] Kevin Phillips, *The Emerging Republican Majority* (Princeton, NJ: Princeton University Press, 2015), pp. 549-50.
[2] Ibid.: xxxiv.
[3] (Ibid.: 552).
[4] Gillian Peele, *Revival and Reaction: The Right in Contemporary America* (Oxford: Oxford University Press, 1984), p.72.
[5] Quoted in Richard Polenberg, *One Nation Divisible: Class, Race, and Ethnicity in the United States since 1938* (Harmondsworth: Penguin, 1980), p. 221.
[6] State of the Union Address: Richard Nixon (22 January 1970). Available at https://www.infoplease.com/primary-sources/government/presidential-speeches/state-union-address-richard-nixon-january-22-1970.
[7] Quoted in J. Hoberman, *The Dream Life: Movies, Media, and the Mythology of the Sixties* (New York: The New York Press, 2003), p. 268.
[8] Ibid.: p. 329.
[9] Theodore H. White, *The Making of the President, 1972* (New York, Harper Perennial Political Classics), p. 219.
[10] Ibid.
[11] Ibid.: p. 220.
[12] Ibid.
[13] Jefferson Cowie, 'The "Hard Hat Riot" was a preview of today's political divisions', *New York Times*, 11 May 2020. Available at https://www.nytimes.com/2020/05/11/nyregion/hard-hat-riot.html.
[14] Peter Lev, *American Films of the 70s: Conflicting Visions* (Austin, TX: University of Texas Press, 2000), p. 25.
[15] Ibid.: p. 24.
[16] Ibid.: pp. 24-5; Hoberman, *Dream Life*, pp. 286-7.
[17] There is a distinct parallel here with the British television series *Till Death Do Us Part* (BBC, 1966-75), which its creator, Johnny Speight, intended as a critique of the bigotry of its central character, Alf Garnett (Warren Mitchell), but with which many viewers actually identified. The US version of the show, *All in the Family* (CBS, 1971-9), which elicited similarly varied readings, was set in Joe's locale, Queens.
[18] Pauline Kael, 'Dirty Harry – Saint cop', originally published in the *New Yorker*, 15 January 1972. Available at https://scrapsfromtheloft.com/2017/12/28/dirty-harry-saint-cop-review-by-pauline-kael/.
[19] Ibid.
[20] The relevant passage is as follows:

> Men living together according to reason, without a common superior on earth, without authority to judge between them, is *properly the state of nature.* But force, or a declared design of force, upon the person of another, where there is no common superior on earth to appeal to for relief, is *the state of war:* and it is the want of such an appeal gives a man the right of war even against an *aggressor,* though he be in society and a fellow subject. Thus a *thief,* whom I cannot harm, but by appeal to the law for having stolen all that I am worth, I may kill, when he sets on me to rob me but of my horse or coat; because the law, which was made for my preservation, where it cannot interpose to secure my life from present force, which, if lost, is capable of no reparation, permits me my own defence, and the right of war, a liberty to kill the aggressor, because the aggressor allows not time to appeal to our common judge, nor the decision of the law, for remedy in a case where the mischief may be irreparable. *Want of a common judge with authority, puts all men in a state of nature: force without right, upon a man's person, makes a state of war*, both where there is, and is not, a common judge. (John Locke, *Two Treatises of Government*, ed. Peter Laslett, Cambridge: Cambridge:

Cambridge University Press, pp. 280-1). The italics are in the original, although I have not followed Locke's use of capital letters.

[21] Timothy O. Lenz, 'Conservatism in American crime films', *Journal of Criminal Justice and Popular Culture*, 12/2, p. 122.

[22] Rebecca Solnit, 'The violence at the Capitol was an attempted coup. Call it that', *Guardian*, 6 January 2021. Available at https://www.theguardian.com/commentisfree/2021/jan/06/trump-mob-storm-capitol-washington-coup-attempt.

[23] Lenz, 'Conservatism', pp. 122-3.

[24] Significantly, the vigilante cops are heavily fetishised here, with their white helmets, black leathers, powerful bikes and dark glasses. The scene is like an enlargement of that in which Marion Crane (Janet Leigh) is woken up by a highway patrolman in *Psycho* (Alfred Hitchcock, 1960). As the screenplay's co-writer, John Milius says in his commentary on the Warner Home Video Blu-ray of the film: 'I like that. That's a good scene, seeing them like that. They really look frightening … They make good villains …. These guys in their Nazi outfits with their helmets and everything, they do make a good force to oppose him'.

[25] What Briggs is referring to here is the San Francisco Committee of Vigilance, a vigilante group formed in 1851 and re-formed in 1856. It was a response to the rampant crime and corruption in the city which followed in the wake of the massive population growth consequent on the discovery of gold in 1848. The legal authorities were quite unable to deal with the situation, and hence the formation of the vigilante force. This hanged eight people and forced several elected officials to resign.

[26] It has to be said that if Warners was looking to clean up Callahan's image, the choice of Milius to co-write the screenplay was an odd one, since he has always delighted in not being part of what he regards as Hollywood's cosy liberal consensus. As he put it apropos the outraged reaction in certain quarters to his Communists-invade-USA movie, *Red Dawn* (1984):

> I'm really an extreme right-wing reactionary. I'm not a reactionary – I'm just a right-wing extremist so far beyond the Christian-identity people like that and stuff, that they can't even imagine. I'm so far beyond that I'm a Maoist. I'm an anarchist. I've always been an anarchist. Any true, real right-winger if he goes far enough hates all form of government, because government should be done to cattle and not human beings.

Interview in *Film Threat*, 8 March 1999. Available at https://filmthreat.com/uncategorized/joy-in-the-struggle-a-look-at-john-milius/.

[27] Tony Ortega, 'What Frank Serpico started: the Knapp Commission report', *Village Voice*, 1 March 1973. Available at https://www.villagevoice.com/2011/04/18/what-frank-serpico-started-the-knapp-commission-report/.

[28] John Pratt, *Penal Populism* (Abingdon: Routledge 2007), p. 12.

[29] Ibid.: p. 21.

[30] Kael, 'Saint cop'.

[31] Eric Patterson, 'Every which way but lucid: the critique of authority in Clint Eastwood's police movies', *Journal of Popular Film & Television*, 10/3, 1982, p. 94.

[32] Herbert Marcuse, *One Dimensional Man: The Ideology of Industrial Society* (London: Sphere Books, 1968), p. 71

[33] Ibid.: pp. 72-3.

[34] Patterson, 'Every which way', p. 103.

[35] Michael Ryan and Douglas Kellner, *Camera Politica: The Politics and Ideology of Contemporary Hollywood Film* (Bloomington and Indianapolis, IN: Indiana University Press, 1990), p. 95.

[36] Brennan Center for Justice, 'In his own words: the President's attacks on the courts', 5 June 2017. Available at https://www.brennancenter.org/our-work/research-reports/his-own-words-presidents-attacks-courts

[37] Rebecca R. Ruiz,, Robert Gebeloff, Steve Eder and Ben Protess, 'A conservative agenda unleashed on the federal courts', *New York Times*, 14 March 2020. Available at https://www.nytimes.com/2020/03/14/us/trump-appeals-court-judges.html

[38] Peter Baker and Maggie Haberman, 'Trump selects Amy Coney Barrett to fill Ginsburg's seat on the Supreme Court', *New York Times*, 25 September 2020. Available at https://www.nytimes.com/2020/09/25/us/politics/amy-coney-barrett-supreme-court.html

[39] Harriet Grant, 'Home secretary's "dangerous" rhetoric "putting lawyers at risk"', *Guardian*, 6 October 2020. Available at https://www.theguardian.com/global-development/2020/oct/06/home-secretarys-dangerous-rhetoric-putting-lawyers-at-risk

[40] Owen Boycott, 'Lawyers call for apology from Johnson and Patel for endangering colleagues', *Guardian*, 25 October 2020. Available at https://www.theguardian.com/politics/2020/oct/25/lawyers-ask-johnson-and-patel-to-apologise-for-endangering-colleagues.

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