



The Dirty Harry Problem

Carl B. Klockars

Annals of the American Academy of Political and Social Science, Vol. 452, The Police and Violence. (Nov., 1980), pp. 33-47.

Stable URL:

<http://links.jstor.org/sici?sici=0002-7162%28198011%29452%3C33%3AATDHP%3E2.0.CO%3B2-0>

Annals of the American Academy of Political and Social Science is currently published by Sage Publications, Inc..

Your use of the JSTOR archive indicates your acceptance of JSTOR's Terms and Conditions of Use, available at <http://www.jstor.org/about/terms.html>. JSTOR's Terms and Conditions of Use provides, in part, that unless you have obtained prior permission, you may not download an entire issue of a journal or multiple copies of articles, and you may use content in the JSTOR archive only for your personal, non-commercial use.

Please contact the publisher regarding any further use of this work. Publisher contact information may be obtained at <http://www.jstor.org/journals/sage.html>.

Each copy of any part of a JSTOR transmission must contain the same copyright notice that appears on the screen or printed page of such transmission.

The JSTOR Archive is a trusted digital repository providing for long-term preservation and access to leading academic journals and scholarly literature from around the world. The Archive is supported by libraries, scholarly societies, publishers, and foundations. It is an initiative of JSTOR, a not-for-profit organization with a mission to help the scholarly community take advantage of advances in technology. For more information regarding JSTOR, please contact support@jstor.org.

The Dirty Harry Problem

By CARL B. KLOCKARS

ABSTRACT: Policing constantly places its practitioners in situations in which good ends can be achieved by dirty means. When the ends to be achieved are urgent and unquestionably good and only a dirty means will work to achieve them, the policeman faces a genuine moral dilemma. A genuine moral dilemma is a situation from which one cannot emerge innocent no matter what one does—employ a dirty means, employ an insufficiently dirty means, or walk away. In such situations in policing, Dirty Harry problems, the danger lies not in becoming guilty of wrong—that is inevitable—but in thinking that one has found a way to escape a dilemma which is inescapable. Dire consequences result from this misunderstanding. Policemen lose their sense of moral proportion, fail to care, turn cynical, or allow their passionate caring to lead them to employ dirty means too crudely or too readily. The only means of assuring that dirty means will not be used too readily or too crudely is to punish those who use them and the agency which endorses their use.

Carl B. Klockars is an associate professor of criminal justice at the University of Delaware. He holds a Ph.D. from the University of Pennsylvania. He is the author of numerous journal articles and The Professional Fence, a life history of a dealer in stolen property, and is coeditor of Deviance and Decency, a collection of essays on the ethics of research with deviant subjects.

WHEN and to what extent does the morally good end warrant or justify an ethically, politically, or legally dangerous means for its achievement? This is a very old question for philosophers. Although it has received extensive consideration in policelike occupations and is at the dramatic core of police fiction and detective novels, I know of not a single contribution to the criminological or sociological literature on policing which raises it explicitly and examines its implications.¹ This is the case in spite of the fact that there is considerable evidence to suggest that it is not only an ineluctable part of police work, but a moral problem with which police themselves are quite familiar. There are, I believe, a number of good reasons why social scientists have avoided or neglected what I like to

1. In the contemporary philosophical literature, particularly when raised for the vocation of politics, the question is commonly referred to as the Dirty Hands problem after J. P. Sartre's treatment of it in *Dirty Hands*, (Les Maines Sales, 1948) and in *No Exit and Three Other Plays* (New York: Modern Library, 1950). Despite its modern name, the problem is very old and has been taken up by Machiavelli in *The Prince* (1513) and *The Discourses* (1519) (New York: Modern Library, 1950); by Max Weber, "Politics as a Vocation," (1919) in *Max Weber: Essays in Sociology*, eds. and trans. H. Gerth and C. W. Mills (New York: Oxford University Press, 1946); and by Albert Camus, "The Just Assassins," (1949) in *Caligula and Three Other Plays* (New York: Alfred A. Knopf, 1958). See Michael Walzer's brilliant critique of these contributions, "Political Action: The Problem of Dirty Hands" *Philosophy and Public Affairs*, 2(2) (winter 1972). Likewise the Dirty Hands/Dirty Harry problem is implicitly or explicitly raised in virtually every work of Raymond Chandler, Dashiell Hammett, James Cain, and other *Tough Guy Writers of The Thirties*, ed. David Madden (Carbondale, IL: Southern Illinois University Press, 1968), as they are in all of the recent work of Joseph Wambaugh, particularly *The Blue Knight*, *The New Centurions*, and *The Choirboys*.

call the Dirty Harry problem in policing, not the least of which is that it is insoluble. However, a great deal can be learned about police work by examining some failed solutions, three of which I consider in the following pages. First, though, it is necessary to explain what a Dirty Harry problem is and what it is about that makes it so problematic.

THE DIRTY HARRY PROBLEM

The Dirty Harry problem draws its name from the 1971 Warner Brothers film *Dirty Harry* and its chief protagonist, antihero Inspector Harry "Dirty Harry" Callahan. The film features a number of events which dramatize the Dirty Harry problem in different ways, but the one which does so most explicitly and most completely places Harry in the following situation. A 14-year-old girl has been kidnapped and is being held captive by a psychopathic killer. The killer, "Scorpio," who has already struck twice, demands \$200,000 ransom to release the girl, who is buried with just enough oxygen to keep her alive for a few hours. Harry gets the job of delivering the ransom and, after enormous exertion, finally meets Scorpio. At their meeting Scorpio decides to renege on his bargain, let the girl die, and kill Harry. Harry manages to stab Scorpio in the leg before he does so, but not before Scorpio seriously wounds Harry's partner, an inexperienced, idealistic, slightly ethnic, former sociology major.

Scorpio escapes, but Harry manages to track him down through the clinic where he was treated for his wounded leg. After learning that Scorpio lives on the grounds of a nearby football stadium, Harry breaks into his apartment; finds guns and other evidence of his guilt, and finally

confronts Scorpio on the 50-yard line, where Harry shoots him in the leg as he is trying to escape. Standing over Scorpio, Harry demands to know where the girl is buried. Scorpio refuses to disclose her location, demanding his rights to a lawyer. As the camera draws back from the scene Harry stands on Scorpio's bullet-mangled leg to torture a confession of the girl's location from him.

As it turns out, the girl is already dead and Scorpio must be set free. Neither the gun found in the illegal search, nor the confession Harry extorted, nor any of its fruits—including the girl's body—would be admissible in court.

The preceding scene, the heart of *Dirty Harry*, raises a number of issues of far-reaching significance for the sociology of the police, the first of which will now be discussed.

THE DIRTY HARRY PROBLEM I:
THE END OF INNOCENCE

As we have phrased it previously, the Dirty Harry problem asks when and to what extent does the morally good end warrant or justify an ethically, politically, or legally dangerous means to its achievement? In itself, this question assumes the possibility of a genuine moral dilemma and posits its existence in a means-ends arrangement which may be expressed schematically as follows:

MEANS

		MORALLY GOOD (+)	MORALLY DIRTY (-)
E N D S	Morally good (+)	A + +	B - + The Dirty Harry Problem
	Morally dirty (-)	C + -	D - -

It is important to specify clearly the terms of the Dirty Harry problem not only to show that it must involve the juxtaposition of good ends and dirty means, but also to show what must be proven to demonstrate that a Dirty Harry problem exists. If one could show, for example, that box B is always empirically empty or that in any given case the terms of the situation are

better read in some other means-ends arrangement, Dirty Harry problems vanish. At this first level, however, I suspect that no one could exclude the core scene of *Dirty Harry* from the class of Dirty Harry problems. There is no question that saving the life of an innocent victim of kidnapping is a "good" thing nor that grinding the bullet-

mangled leg of Scorpio to extort a confession from him is "dirty."²

There is, in addition, a second level of criteria of an empirical and epistemological nature that must be met before a Dirty Harry problem actually comes into being. They involve the connection between the dirty act and the good end. Principally, what must be known and, importantly, known before the dirty act is committed, is that it will result in the achievement of the good end. In any absolute sense this is, of course, impossible to know, in that no acts are ever completely certain in their consequences. Thus the question is always a matter of probabilities. But it is helpful to break those probabilities into classes which attach to various subcategories of the overall question. In the given case, this level of problem would seem to require that three questions be satisfied, though not all with the same level of certainty.

In *Dirty Harry*, the first question is, Is Scorpio able to provide the information Dirty Harry seeks? It is an epistemological question about which, in *Dirty Harry*, we are absolutely certain. Harry met Scorpio at the time of the ransom exchange. Not only did he admit the kidnapping at that time, but when he made the ransom demand, Scorpio sent one of the girl's teeth and a description of her clothing and underwear to leave no doubt about the existence of his victim.

Second, we must know there are means, dirty means and nothing

2. "Dirty" here means both "repugnant" in that it offends widely shared standards of human decency and dignity and "dangerous" in that it breaks commonly shared and supported norms, rules, or laws for conduct. To "dirty" acts there must be both a deontologically based face validity of immorality and a consequentialist threat to the prevailing rules for social order.

other than dirty means, which are likely to achieve the good end. One can, of course, never be sure that one is aware of or has considered all possible alternatives, but in *Dirty Harry* there would appear to be no reason for Scorpio in his rational self-interest to confess to the girl's location without being coerced to do so.

The third question which must be satisfied at this empirical and epistemological level concedes that dirty means are the only method which will be effective, but asks whether or not, in the end, they will be in vain. We know in *Dirty Harry* that they were, and Harry himself, at the time of the ransom demand, admits he believes that the girl is already dead. Does not this possibility or likelihood that the girl is dead destroy the justification for Harry's dirty act? Although it surely would if Harry knew for certain that the girl was dead, I do not think it does insofar as even a small probability of her being saved exists. The reason is that the good to be achieved is so unquestionably good and so passionately felt that even a small possibility of its achievement demands that it be tried. For example, were we to ask, If it were your daughter would you want Harry to do what he did? it would be this passionate sense of unquestionable good that we are trying to dramatize. It is for this reason that in philosophical circles the Dirty Hands problem has been largely restricted to questions of national security, revolutionary terrorism, and international war. It is also why the Dirty Harry problem in detective fiction almost always involves murder.

Once we have satisfied ourselves that a Dirty Harry problem is conceptually possible and that, in fact, we can specify one set of concrete

circumstances in which it exists, one might think that the most difficult question of all is, What ought to be done? I do not think it is. I suspect that there are very few people who would not want Harry to do something dirty in the situation specified. I know I would want him to do what he did, and what is more, I would want anyone who policed for me to be prepared to do so as well. Put differently, I want to have as police-officers men and women of moral courage and sensitivity.

But to those who would want exactly that, the Dirty Harry problem poses its most irksome conclusion. Namely, that one cannot, at least in the specific case at hand, have a policeman who is both just and innocent. The troublesome issue in the Dirty Harry problem is not whether under some utilitarian calculus a right choice can be made, but that the choice must always be between at least two wrongs. And in choosing to do either wrong, the policeman inevitably taints or tarnishes himself.

It was this conclusion on the part of Dashiell Hammett, Raymond Chandler, Raoul Whitfield, Horace McCoy, James M. Cain, Lester Dent, and dozens of other tough-guy writers of hard-boiled detective stories that distinguished these writers from what has come to be called the "classical school" of detective fiction. What these men could not stomach about Sherlock Holmes (Conan Doyle), Inspector French (Freeman Wills Crofts), and Father Brown (Chesterton), to name a few of the best, was not that they were virtuous, but that their virtue was unsullied. Their objection was that the classical detective's occupation, how he worked, and the jobs he was called upon to do left him morally immaculate. Even the most brilliant

defender of the classical detective story, W. H. Auden, was forced to confess that that conclusion gave the stories "magical function," but rendered them impossible as art.³

If popular conceptions of police work have relevance for its actual practice—as Egon Bittner and a host of others have argued that they do⁴—the Dirty Harry problem, found in one version or another in countless detective novels and reflected in paler imitations on countless television screens, for example, "Parental Discretion is Advised," is not an unimportant contributor to police work's "tainted" quality. But we must remember also that the revolution of the tough-guy writers, so these writers said, was not predicated on some mere artificial, aesthetic objection. With few exceptions, their claim was that their works were art. That is, at all meaningful levels, the stories were true. It is this claim I should next like to examine in the real-life context of the Dirty Harry problem.

THE DIRTY HARRY PROBLEM II: DIRTY MEN AND DIRTY WORK

Dirty Harry problems arise quite often. For policemen, real, everyday policemen, Dirty Harry problems are part of their job and thus considerably more than rare or artificial dramatic exceptions. To make this point, I will translate some rather familiar police practices, street stops and searches and victim and

3. W. H. Auden, "The Guilty Vicarage," in *The Dyer's Hand and Other Essays* (New York: Alfred A. Knopf, 1956) pp. 146–58.

4. Egon Bittner, *The Functions of Police in Modern Society* (New York: Jason Aronson, 1975) and "Florence Nightingale in Pursuit of Willie Sutton," in *The Potential For Reform Of the Criminal Justice System*, vol. 3, ed. H. Jacob (Beverly Hills, CA: Sage Publications, 1974) pp. 11–44.

witness interrogation, into Dirty Harry problems.

Good ends and dirty means

The first question our analysis of street stops and searches and victim and witness interrogation must satisfy is, For policemen, do these activities present the cognitive opportunity for the juxtaposition of good ends and dirty means to their achievement? Although the "goodness" question will be considered in some detail later, suffice it to say here that police find the prevention of crime and the punishment of wrongful or criminal behavior a good thing to achieve. Likewise, they, perhaps more than any other group in society, are intimately aware of the varieties of dirty means available for the achievement of those good ends. In the case of street stops and searches, these dirty alternatives range from falsifying probable cause for a stop, to manufacturing a false arrest to legitimate an illegal search, to simply searching without the fraudulent covering devices of either. In the case of victim or witness interrogations, dirty means range all from dramatically "chilling" a *Miranda* warning by an edited or unemphatic reading to Harry's grinding a man's bullet-shattered leg to extort a confession from him.

While all these practices may be "dirty" enough to satisfy certain people of especially refined sensitivities, does not a special case have to be made, not for the public's perception of the "dirtiness" of certain illegal, deceptive, or subrosa acts, but for the police's perception of their dirtiness? Are not the police hard-boiled, less sensitive to such things than are most of us? I think there is no question

that they are, and our contention about the prevalence of Dirty Harry problems in policing suggests that they are likely to be. How does this "tough-minded" attitude toward dirty means affect our argument? At least at this stage it seems to strengthen it. That is, the failure of police to regard dirty means with the same hesitation that most citizens do seems to suggest that they juxtapose them to the achievement of good ends more quickly and more readily than most of us.

The dirty means must work

In phrasing the second standard for the Dirty Harry problem as "The dirty means must work," we gloss over a whole range of qualifying conditions, some of which we have already considered. The most critical, implied in *Dirty Harry*, is that the person on whom dirty means are to be used must be guilty. It should be pointed out, however, that this standard is far higher than any student of the Dirty Hands problem in politics has ever been willing to admit. In fact, the moral dilemma of Dirty Hands is often dramatized by the fact that dirty means must be visited on quite innocent victims. It is the blood of such innocents, for example, whom the Communist leader Hoerderer in Sartre's *Dirty Hands* refers to when he says, "I have dirty hands. Right up to the elbows. I've plunged them in filth and blood. But what do you hope? Do you think you can govern innocently?"⁵

But even if cases in which innocent victims suffer dirty means commonly qualify as Dirty Harry problems, and by extension innocent victims would be allowable in Dirty Harry problems, there are a num-

5. Sartre, *Dirty Hands*, p. 224.

ber of factors in the nature and context of policing which suggest that police themselves are inclined toward the higher "guilty victim" standard. Although there may be others, the following are probably the most salient.

1. The Operative Assumption of Guilt. In street stops and searches as well as interrogations, it is in the nature of the police task that guilt is assumed as a working premise. That is, in order for a policeman to do his job, he must, unless he clearly knows otherwise, assume that the person he sees is guilty and the behavior he is witnessing is evidence of some concealed or hidden offense. If a driver looks at him "too long" or not at all or if a witness or suspect talks too little or too much, it is only his operative assumption of guilt that makes those actions meaningful. Moreover, the policeman is often not in a position to suspend his working assumption until he has taken action, sometimes dirty action, to disconfirm it.

2. The Worst of all Possible Guilt. The matter of the operative assumption of guilt is complicated further because the policeman is obliged to make a still higher-order assumption of guilt, namely, that the person is not only guilty, but dangerously so. In the case of street stops and searches, for instance, although the probability of coming upon a dangerous felon is extremely low, policemen quite reasonably take the possibility of doing so as a working assumption on the understandable premise that once is enough. Likewise the premise that the one who has the most to hide will try hardest to hide it is a reasonable assumption for interrogation.

3. The Great Guilty Place Assumption. The frequency with which policemen confront the worst of

people, places, and occasions creates an epistemological problem of serious psychological proportions. As a consequence of his job, the policeman is constantly exposed to highly selective samples of his environment. That he comes to read a clump of bushes as a place to hide, a roadside rest as a homosexual "tearoom," a sweet old lady as a robbery looking for a place to happen, or a poor young black as someone willing to oblige her is not a question of a perverse, pessimistic, or racist personality, but of a person whose job requires that he strive to see race, age, sex, and even nature in an ecology of guilt, which can include him if he fails to see it so.⁶

4. The Not Guilty (This Time) Assumption. With considerable sociological research and conventional wisdom to support him, the policeman knows that most people in the great guilty place in which he works have committed numerous crimes for which they have never been caught. Thus when a stop proves unwarranted, a search comes up "dry," or an interrogation fails, despite the dirty means, the policeman is not at all obliged to conclude that the person victimized by them is innocent, only that, and even this need not always be conceded, he is innocent this time.

Dirty means as ends in themselves

How do these features of police work, all of which seem to incline police to accept a standard of a

6. One of Wambaugh's characters in *The Choirboys* makes this final point most dramatically when he fails to notice that a young boy's buttocks are flatter than they should be and reads the child's large stomach as a sign of adequate nutrition. When the child dies through his mother's neglect and abuse, the officer rightly includes himself in his ecology of guilt.

guilty victim for their dirty means, bear upon the Dirty Harry problem from which they derive? The most dangerous reading suggests that if police are inclined, and often quite rightly inclined, to believe they are dealing with factually, if not legally, guilty subjects, they become likely to see their dirty acts, not as means to the achievement of good ends, but as ends in themselves—as punishment of guilty people whom the police believe deserve to be punished.

If this line of argument is true, it has the effect, in terms of police perceptions, of moving Dirty Harry problems completely outside of the fourfold table of means–ends combinations created in order to define it. Importantly as well, in terms of our perceptions, Dirty Harry problems of this type can no longer be read as cases of dirty means employed to the achievement of good ends. For unless we are willing to admit that in a democratic society a police arrogates to itself the task of punishing those who they think are guilty, we are forced to conclude that Dirty Harry problems represent cases of employing dirty means to dirty ends, in which case, nobody, not the police and certainly not us, is left with any kind of moral dilemma.

The possibility is quite real and quite fearsome, but it is mediated by certain features of police work, some of which inhere in the nature of the work itself and others, imposed from outside, which have a quite explicit impact on it. The most important of the “naturalistic” features of policing which belie the preceding argument is that the assumption of guilt and all the configurations in the policeman’s world which serve to support it often turn out wrong. It is precisely because the operative assumption of guilt can

be forced on everything and everyone that the policeman who must use it constantly comes to find it leads him astray as often as it confirms his suspicions.

Similarly, a great many of the things policemen do, some of which we have already conceded appear to police as less dirty than they appear to us—faked probable cause for a street stop, manipulated *Miranda* warnings, and so forth—are simply impossible to read as punishments. This is so particularly if we grant a hard-boiled character to our cops.

Of course, neither of these naturalistic restrictions on the obliteration of the means–ends schema is or should be terribly comforting. To the extent that the first is helpful at all assumes a certain skill and capacity of mind that we may not wish to award to all policemen. The willingness to engage in the constant refutation of one’s working worldview presumes a certain intellectual integrity which can certainly go awry. Likewise, the second merely admits that on occasion policemen do some things which reveal they appreciate that the state’s capacity to punish is sometimes greater than theirs.

To both these “natural” restrictions on the obliteration of the means–ends character of Dirty Harry problems, we can add the exclusionary rule. Although the exclusionary rule is the manifest target of *Dirty Harry*, it, more than anything else, makes Dirty Harry problems a reality in everyday policing. It is the great virtue of exclusionary rules—applying in various forms to stops, searches, seizures, and interrogations—that they hit directly upon the intolerable, though often, I think, moral desire of police to punish. These rules make the very simple point to police that the more they wish to see a felon punished, the more they are advised to be scrupu-

lous in their treatment of him. Put differently, the best thing Harry could have done for Scorpio was to step on his leg, extort his confession, and break into his apartment.

If certain natural features of policing and particularly exclusionary rules combine to maintain the possibility of Dirty Harry problems in a context in which a real danger appears to be their disappearance, it does not follow that police cannot or do not collapse the dirty means-good ends division on some occasions and become punishers. I only hold that on many other occasions, collapse does not occur and Dirty Harry problems, as defined, are still widely possible. What must be remembered next, on the way to making their possibility real, is that policemen know, or think they know, before they employ a dirty means that a dirty means and only a dirty means will work.

Only a dirty means will work

The moral standard that a policeman know in advance of resorting to a dirty means that a dirty means and only a dirty means will work, rests heavily on two technical dimensions: (1) the professional competence of the policeman and (2) the range of legitimate working options available to him. Both are intimately connected, though the distinction to be preserved between them is that the first is a matter of the policeman's individual competence and the second of the competence of the institutions for which (his department) and with which (the law) the policeman works.

In any concrete case, the relations between these moral and technical dimensions of the Dirty Harry problem are extremely complicated. But a priori it follows that the more competent a policeman is at the use

of legal means, the less he will be obliged to resort to dirty alternatives. Likewise, the department that trains its policemen well and supplies them with the resources—knowledge and material—to do their work will find that the policemen who work for them will not resort to dirty means “unnecessarily,” meaning only those occasions when an acceptable means will work as well as a dirty one.

While these two premises flow a priori from raising the Dirty Harry problem, questions involving the moral and technical roles of laws governing police means invite a very dangerous type of a priori reasoning:

Combating distrust [of the police] requires getting across the rather complicated message that granting the police specific forms of new authority may be the most effective means for reducing abuse of authority which is now theirs; that it is the absence of properly proscribed forms of authority that often impels the police to engage in questionable or outright illegal conduct. Before state legislatures enacted statutes giving limited authority to the police to stop and question persons suspected of criminal involvement, police nevertheless stopped and questioned people. It is inconceivable how any police agency could be expected to operate without doing so. But since the basis for their actions was unclear, the police—if they thought a challenge likely—would use the guise of arresting the individual on a minor charge (often without clear evidence) to provide a semblance of legality. Enactment of stopping and questioning statutes eliminated the need for this sham.⁷

Herman Goldstein's preceding argument and observations are undoubtedly true, but the danger in them is that they can be extended

7. Herman Goldstein, *Policing a Free Society* (Cambridge, MA: Ballinger Publishing, 1977), p. 72.

to apply to any dirty means, not only illegal arrests to legitimate necessary street stops, but dirty means to accomplish subsequent searches and seizures all the way to beating confessions out of suspects when no other means will work. But, of course, Goldstein does not intend his argument to be extended in these ways.

Nevertheless, his a priori argument, dangerous though it may be, points to the fact that Dirty Harry problems can arise wherever restrictions are placed on police methods and are particularly likely to do so when police themselves perceive that those restrictions are undesirable, unreasonable, or unfair. His argument succeeds in doing what police who face Dirty Harry problems constantly do: rendering the law problematic. But while Goldstein, one of the most distinguished legal scholars in America, can follow his finding with books, articles, and lectures which urge change, it is left to the policeman to take upon himself the moral responsibility of subverting it with dirty and hidden means.

Compelling and unquestionable ends

If Dirty Harry problems can be shown to exist in their technical dimensions—as genuine means—ends problems where only dirty means will work—the question of the magnitude and urgency of the ends that the dirty means may be employed to achieve must still be confronted. Specifically, it must be shown that the ends of dirty means are so desirable that the failure to achieve them would cast the person who is in a position to do so in moral disrepute.

The two most widely acknowledged ends of policing are peace

keeping and law enforcement. It would follow, of course, that if both these ends were held to be unworthy, Dirty Harry problems would disappear. There are arguments challenging both ends. For instance, certain radical critiques of policing attempt to reduce the peace-keeping and law-enforcing functions of the police in the United States to nothing more than acts of capitalist oppression. From such a position flows not only the denial of the legitimacy of any talk of Dirty Harry problems, but also the denial of the legitimacy of the entire police function.⁸

Regardless of the merits of such critiques, it will suffice for the purpose of this analysis to maintain that there is a large "clientele," to use Albert Reiss's term, for both types of police function.⁹ And it should come as no surprise to anyone that the police themselves accept the legitimacy of their own peace-keeping and law-enforcing ends. Some comment is needed, though, on how large that clientele for those functions is and how compelling and unquestionable the ends of peace keeping and law enforcement are for them.

There is no more popular, compelling, urgent, nor more broadly appealing idea than peace. In international relations, it is potent enough to legitimate the stockpiling of enough nuclear weapons to exterminate every living thing on earth a dozen times over. In domestic affairs, it gives legitimacy to the idea

8. See, for example, John F. Galliher, "Explanations of Police Behavior: A Critical Review and Analysis," *The Sociological Quarterly*, 12:308-18 (summer 1971); Richard Quinney, *Class, State, and Crime* (New York: David McKay, 1977).

9. Albert J. Reiss, Jr., *The Police and the Public* (New Haven, CT: Yale University Press, 1971), p. 122.

of the state, and the aspirations to it have succeeded in granting to the state an absolute monopoly on the right to legitimate the use of force and a near monopoly on its actual, legitimate use: the police. That peace has managed to legitimate these highly dangerous means to its achievement in virtually every advanced nation in the world is adequate testimony to the fact that it qualifies, if any end does, as a good end so unquestionable and so compelling that it can legitimate risking the most dangerous and dirtiest of means.

The fact is, though, that most American policemen prefer to define their work as law enforcement rather than peace keeping, even though they may, in fact, do more of the latter. It is a distinction that should not be allowed to slip away in assuming, for instance, that the policeman's purpose in enforcing the law is to keep the peace. Likewise, though it is a possibility, it will not do to assume that police simply enforce the law as an end in itself, without meaning and without purpose or end. The widely discretionary behavior of working policemen and the enormous underenforcement of the law which characterizes most police agencies simply belie that possibility.

An interpretation of law enforcement which is compatible with empirical studies of police behavior—as peace keeping is—and police talk in America—which peace keeping generally is not—is an understanding of the ends of law enforcement as punishment. There are, of course, many theories of punishment, but the police seem inclined toward the simplest: the belief that certain people who have committed certain acts deserve to be punished for them. What can one say of the compelling and unquestionable char-

acter of this retributive ambition as an end of policing and policemen?

Both historically and sociologically there is ample evidence that punishment is almost as unquestionable and compelling an end as peace. Historically, we have a long and painful history of punishment, a history longer in fact than the history of the end of peace. Sociologically, the application of what may well be the only culturally universal norm, the norm of reciprocity, implies the direct and natural relations between wrongful acts and their punishments.¹⁰ Possibly the best evidence for the strength and urgency of the desire to punish in modern society is the extraordinary complex of rules and procedures democratic states have assembled which prevents legitimate punishment from being administered wrongfully or frivolously.

If we can conclude that peace and punishment are ends unquestionable and compelling enough to satisfy the demands of Dirty Harry problems, we are led to one final question on which we may draw from some sociological theories of the police for assistance. If the Dirty Harry problem is at the core of the police role, or at least near to it, how is it that police can or do come to reconcile their use of—or their failure to use—dirty means to achieve unquestionably good and compelling ends?

PUBLIC POLICY AND POLICE MORALITY: THREE DEFECTIVE RESOLUTIONS OF THE DIRTY HARRY PROBLEM

The contemporary literature on policing appears to contain three

10. These two assertions are drawn from Graeme Newman's *The Punishment Response* (Philadelphia: J. B. Lippincott Co., 1978).

quite different types of solution or resolution. But because the Dirty Harry problem is a genuine moral dilemma, that is, a situation which will admit no real solution or resolution, each is necessarily defective. Also, understandably, each solution or resolution presents itself as an answer to a somewhat different problem. In matters of public policy, such concealments are often necessary and probably wise, although they have a way of coming around to haunt their architects sooner or later. In discovering that each is flawed and in disclosing the concealments which allow the appearance of resolution, we do not urge that it be held against sociologists that they are not philosophers nor do we argue that they should succeed where philosophers before them have failed. Rather, we only wish to make clear what is risked by each concealment and to face candidly the inevitably unfortunate ramifications which must proceed from it.

Snappy bureaucrats

In the works of August Vollmer, Bruce Smith, O. W. Wilson, and those progressive police administrators who still follow their lead, a vision of the perfect police agency and the perfect policeman has gained considerable ground. Labeled "the professional model" in police circles—though entirely different from any classical sense of profession or professional—it envisions a highly trained, technologically sophisticated police department operating free from political interference with a corps of well-educated police responding obediently to the policies, orders, and directives of a central administrative command. It is a vision of police officers, to use

Bittner's phrasing, as "snappy bureaucrats,"¹¹ cogs in a quasi-military machine who do what they are told out of a mix of fear, loyalty, routine, and detailed specification of duties.

The professional model, unlike other solutions to be considered, is based on the assumption that the policeman's motives for working can be made to locate within his department. He will, if told, work vice or traffic, juvenile or homicide, patrol passively or aggressively, and produce one, two, four, or six arrests, pedestrian stops, or reports per hour, day, or week as his department sees fit. In this way the assumption and vision of the professional model in policing is little different from that of any bureaucracy which seeks by specifying tasks and setting expectations for levels of production—work quotas—to coordinate a regular, predictable, and efficient service for its clientele.

The problem with this vision of *sine ira et studio* service by obedient operatives is that when the product to be delivered is some form of human service—education, welfare, health, and police bureaucracies are similar in this way—the vision seems always to fall short of expectations. On the one hand the would-be bureaucratic operatives—teachers, social workers, nurses, and policemen—resent being treated as mere bureaucrats and resist the translation of their work into quotas, directives, rules, regulations, or other abstract specifications. On the other hand, to the extent that the vision of an efficient and obedient human service bureaucracy is realized, the clientele of such institutions typically come away with the impression that no one in the institution truly cares about their problems. And, of

11. Bittner, p. 53.

course, in that the aim of bureaucratization is to locate employees' motives for work within the bureaucracy, they are absolutely correct in their feelings.

To the extent that the professional model succeeds in making the ends of policing locate within the agency as opposed to moral demands of the tasks which policemen are asked by their clients to do, it appears to solve the Dirty Harry problem. When it succeeds, it does so by replacing the morally compelling ends of punishment and peace with the less human, though by no means unappealing, ends of bureaucratic performance. However, this resolution certainly does not imply that dirty means will disappear, only that the motives for their use will be career advancement and promotion. Likewise, on those occasions when a morally sensitive policeman would be compelled by the demands of the situational exigencies before him to use a dirty means, the bureaucratic operative envisioned by the professional model will merely do his job. Ambitious bureaucrats and obedient timeservers fail at being the type of morally sensitive souls we want to be policemen. The professional model's bureaucratic resolution of the Dirty Harry problem fails in policing for the same reason it fails in every other human service agency: it is quite simply an impossibility to create a bureaucrat who cares for anything but his bureaucracy.

The idealized image of the professional model, which has been responded to with an ideal critique, is probably unrealizable. Reality intervenes as the ideal type is approached. The bureaucracy seems to take on weight as it approaches the pole, is slowed, and may even collapse in approaching.

Bittner's peace

A second effort in the literature of contemporary policing also attempts to address the Dirty Harry problem by substituting an alternative to the presently prevailing police ends of punishment. Where the professional model sought to substitute bureaucratic rewards and sanctions for the moral end of punishment, the elegant polemics by Egon Bittner in *The Functions of Police in Modern Society* and "Florence Nightingale in Pursuit of Willie Sutton: A Theory of the Police" seek to substitute the end of peace. In beautifully chosen words, examples, and phrasing, Bittner leads his readers to conclude that peace is historically, empirically, intellectually, and morally the most compelling, unquestionable, and humane end of policing. Bittner is, I fear, absolutely right.

It is the end of peace which legitimates the extension of police responsibilities into a wide variety of civil matters—neighborhood disputes, loud parties, corner lounging, lovers' quarrels, political rallies, disobedient children, bicycle registration, pet control, and a hundred other types of tasks which a modern "service" style police department regularly is called upon to perform. With these responsibilities, which most "good" police agencies now accept willingly and officially, also comes the need for an extension of police powers. Arrest is, after all, too crude a tool to be used in all the various situations in which our peace-keeping policemen are routinely asked to be of help. "Why should," asks Herman Goldstein, in a manner in which Bittner would approve, "a police officer arrest and charge a disorderly tavern patron if ordering him to leave the tavern

will suffice? Must he arrest and charge one of the parties in a lovers' quarrel if assistance in forcing a separation is all that is desired?"¹² There is no question that both those situations could be handled more peacefully if police were granted new powers which would allow them to handle those situations in the way Goldstein rhetorically asks if they should. That such extensions of police powers will be asked for by our most enlightened police departments in the interests of keeping the peace is absolutely certain. If the success of the decriminalization of police arrests for public intoxication, vagrancy, mental illness, and the virtually unrestricted two-hour right of detention made possible by the Uniform Law of Arrest are any indication of the likelihood of extensions being received favorably, the end of peace and its superiority over punishment in legitimating the extension of police powers seem exceedingly likely to prevail further.

The problem with peace is that it is not the only end of policing so compelling, unquestionable, and in the end, humane. Amid the good work toward the end of peace that we increasingly want our police to do, it is certain that individuals or groups will arise who the police, in all their peace-keeping benevolence, will conclude, on moral if not political or institutional grounds, have "got it coming." And all the once dirty means which were bleached in the brilliant light of peace will return to their true colors.

Skolnick's craftsman

The third and final attempt to resolve the Dirty Harry problem is offered by Jerome Skolnick, who in *Justice Without Trial* comes ex-

trremely close to stating the Dirty Harry problem openly when he writes:

. . . He (the policeman) sees himself as a craftsman, at his best, a master of his trade . . . [he] draws a moral distinction between criminal law and criminal procedure. The distinction is drawn somewhat as follows: The substantive law of crimes is intended to control the behavior of people who wilfully injure persons or property, or who engage in behaviors having such a consequence, such as the use of narcotics. Criminal procedure, by contrast, is intended to control authorities, not criminals. As such, it does not fall into the same *moral* class of constraint as substantive criminal law. If a policeman were himself to use narcotics, or to steal, or to assault, *outside the line of duty*, much the same standards would be applied to him by other policemen as to the ordinary citizen. When, however, the issue concerns the policeman's freedom to carry out his *duties*, another moral realm is entered.¹³

What is more, Skolnick's craftsman finds support from his peers, department, his community, and the law for the moral rightness of his calling. He cares about his work and finds it just.

What troubles Skolnick about his craftsman is his craft. The craftsman refuses to see, as Skolnick thinks he ought to, that the dirty means he sometimes uses to achieve his good ends stand in the same moral class of wrongs as those he is employed to fight. Skolnick's craftsman reaches this conclusion by understanding that his unquestionably good and compelling ends, on certain occasions, justify his employment of dirty means to their achievement. Skolnick's craftsman, as Skolnick understands him, resolves the Dirty

12. *Ibid.*, p. 72.

13. Jerome Skolnick, *Justice Without Trial*, 2nd ed. (New York: John Wiley & Sons, 1975), p. 182.

Harry problem by denying the dirtiness of his means.

Skolnick's craftsman's resolution is, speaking precisely, Machiavellian. It should come as no surprise to find the representative of one of the classic attempts to resolve the problem of Dirty Hands to be a front runner in response to Dirty Harry. What is worrisome about such a resolution? What does it conceal that makes our genuine dilemma disappear? The problem is not that the craftsman will sometimes choose to use dirty means. If he is morally sensitive to its demands, every policeman's work will sometimes require as much. What is worrisome about Skolnick's craftsman is that he does not regard his means as dirty and, as Skolnick tells us, does not suffer from their use. The craftsman, if Skolnick's portrait of him is correct, will resort to dirty means too readily and too easily. He lacks the restraint that can come only from struggling to justify them and from taking seriously the hazards involved.

In 1966, when *Justice Without Trial* first appeared, Skolnick regarded the prospects of creating a more morally sensitive craftsman exceedingly dim. He could not imagine that the craftsman's community, employer, peers, or the courts could come to reward him more for his legal compliance than for the achievement of the ends of his craft. However, in phrasing the prospects in terms of a Dirty Harry problem, one can not only agree with Skolnick that denying the goodness of unquestionably good ends is a practical and political impossibility, but can also uncover another alternative, one which Skolnick does not pursue.

The alternative the Dirty Harry problem leads us to is ensuring that the craftsman regards his dirty means as dirty by applying the same

retributive principles of punishment to his wrongful acts that he is quite willing to apply to others! It is, in fact, only when his wrongful acts are punished that he will come to see them as wrongful and will appreciate the genuine moral—rather than technical or occupational—choice he makes in resorting to them. The prospects for punishment of such acts are by no means dim, and considerable strides in this area have been made. It requires far fewer resources to punish than to reward. Secondly, the likelihood that juries in civil suits will find dirty means dirtier than police do is confirmed by police claims that outsiders cannot appreciate the same moral and technical distinctions that they do. Finally, severe financial losses to police agencies as well as to their officers eventually communicate to both that vigorously policing themselves is cheaper and more pleasing than having to pay so heavily if they do not. If under such conditions our craftsman police officer is still willing to risk the employment of dirty means to achieve what he understands to be unquestionably good ends, he will not only know that he has behaved justly, but that in doing so he must run the risk of becoming genuinely guilty as well.

A FINAL NOTE

In urging the punishment of policemen who resort to dirty means to achieve some unquestionably good and morally compelling end, we recognize that we create a Dirty Harry problem for ourselves and for those we urge to effect such punishments. It is a fitting end, one which teaches once again that the danger in Dirty Harry problems is never in their resolution, but in thinking that one has found a resolution with which one can truly live in peace.