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More than Words: How ‘Law and  
Order’ Invigorated Conservatism, Did  
Irreparable Damage to Liberalism, and  
Ushered in a New Political Order

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# More than Words: How ‘Law and Order’ Invigorated Conservatism, Did Irreparable Damage to Liberalism, and Ushered in a New Political Order\*

Vesla Weaver

## Abstract

Review of Michael Flamm’s *Law and Order: Street Crime, Civil Unrest, and the Crisis of Liberalism in the 1960s*. Flamm provides a fresh take on the conservative ascendancy but is misleading about the role of race.

**KEYWORDS:** law and order, crime in the streets, riots, urban unrest, crime, civil rights, liberalism, conservatism

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Michael W. Flamm, *Law and Order: Street Crime, Civil Unrest, and the Crisis of Liberalism in the 1960s*. New York: Columbia University Press, 2005, 312 pp.

In 1968, two-thirds of the public believed the police should shoot looters to kill,<sup>1</sup> Congress passed a multi-billion dollar crime package, the first of its kind, and the Kerner Commission reported that the country was moving towards two societies – one black, one white.

*Law and Order* ties together these seemingly disparate developments. Michael Flamm argues that this “moment signified the early rumblings of a seismic shift in the American political landscape” (35) and the demise of the New Deal order. He argues further that the law and order issue acted as a “bridge,” allowing local resentments to be expressed in national elections. By construing violence as the “perceived failure of liberal government,” conservatives were able to mold the issue into their “lasting advantage.”

Flamm’s journey begins long before Nixon’s epic law and order campaign, with liberal initiatives on juvenile delinquency during the 1950s. Rising attention to crime set the stage first for George Wallace and then Barry Goldwater to loudly decry violence in their national campaigns in 1964. Neither went far but “buried within the rubble of Goldwater’s political defeat lay glimmers of future electoral gold for the Republicans” (49). The theme continued to resonate and the Johnson administration responded by forming a Crime Commission, sending a package of crime legislation to Congress, and launching a War on Crime. LBJ thought that he was diffusing an issue that would soon become yesterday’s news, but rising crime, the wave of urban riots that singed cities across the nation, and a nation confronted by war abroad and the domestic protests it inspired at home created the necessary trifecta of ingredients that became “law and order.”

Conservatives constructed a powerful narrative to cement these events as one: liberals’ reluctance to punish early dissenters and civil disobedience begot the violence that now flourished in the nation. Crime was rampant, protesters ran amok, racial rebellions gripped city residents in fear. To blame were Great Society programs, welfare leniency, Supreme Court decisions expanding the “rights of the accused” at the expense of catching criminals, liberal permissiveness of early protests by civil rights workers, and an attorney general who was “soft on crime” (Ramsey Clark). Importantly, the conservative doctrine collapsed the distinct issues of crime, civil disobedience, and racial disorder into “lawlessness,” while denying any role for police brutality. Further civil rights and poverty legislation (Model Cities, OEO funds, community action programs), they argued, rewarded rioters and criminals. “The amorphous quality of the issue

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<sup>1</sup> “Law and Order,” *Time*, October 4, 1968, 21-27.

enabled conservatives to combine fear over the Watts Riot, disgust over the demonstrations at Berkeley, and alarm at rising crime into a powerful denunciation of the inequities and inefficiencies of the liberal state” (68). With this construction, conservatives supported and expanded Johnson’s War on Crime, suspending their anxiety over federal encroachment into a state issue and fears of a national police force because the new doctrine was rich with political capital. Despite the contradictions inherent to a strong law and order platform – states’ rights and calling for federal crime control measures, individual rights and opposition to *Miranda* – it represented a powerful narrative and causal story to white voters. Capitalizing on its “amorphous quality,” law and order became an issue that peeled off voters from the Democratic ranks and unified conservatives, launching them to the political high ground and relegating the liberal camp to defensive claims.

In stark contrast to the coherence of the conservative logic, stood the muddled and shifting message of liberals who “never found their voice on the issue” (124). Proffering a blend of causes and solutions, liberals contended that crime and unrest were the result of poverty, blight, and disadvantage, and that combating crime meant dealing with its “root causes.” They desperately tried with little success to disentangle crime, dissent, peaceful protest, and violent riots, while contesting crime statistics and countering conservative challenges by arguing that law-and-order was a racist ruse. In so doing, Flamm argues, they antagonized fearful middle-class whites and ultimately couldn’t unlink riots, crime, and protest. On an elevator swiftly moving downward liberals struggled to craft a compelling alternative message. In response to the conservative takeover of the Safe Streets Act, liberals made gun control their policy priority and backed off of the root causes message. Liberals never managed to neutralize the issue; their sophisticated claims were lost on an electorate wanting safety, calm, and order and the eventual attempt to co-opt the law-and-order message by 1968 Democratic presidential candidate Hubert Humphrey came too late for antagonized whites and backfired among liberal bulwarks. By the late ‘60s, the historical line of liberals on crime and disorder– that social conditions were the cause—had been closed off and they watched with horror as conservatives used law and order (and its cousin “crime in the streets”) to attack their policy programs and their electoral prospects.

As liberals searched for answers through crime commissions and special reports, conservatives were waging an assault through campaign rhetoric and punitive adaptations to liberal crime bills. The Kerner commission report added salt to the wound by blaming riots on white racism and asking for Johnson to spend more on poverty programs. The public winced and conservatives countered that “liberals had promised a Great Society but had delivered great disorder” (173). Ultimately, the powerful and complete message of conservatives captured

wide appeal and was helped along by several “long, hot summers,” the assassinations of Kennedy and King, and campus unrest by long-haired beatniks, sending liberalism into a tailspin and doing irreparable damage to the Great Society. LBJ’s war on poverty steadily unwound, liberal incumbents became electorally vulnerable including Mayor John Lindsey and Congressman Emmanuel Celler of New York, and liberal crime proposals were hijacked by conservatives in Congress. By 1968, law and order became a decisive issue, Flamm argues, exceeding even the Vietnam War in public concern and launching Republicans into office.

*Law and Order* winds with ease through this political history pausing at various themes, events, and dilemmas. Bursting at the seams with detail and page-turning quality, this is a thoroughly-researched, readable, and fascinating account. Flamm visited more than a dozen archives, interviewed 12 key figures including Goldwater, former Attorney General Nicholas Katzenbach, and Johnson White House aide Joseph Califano, and though not systematic, peppers his narrative with polls, news clippings, and campaign commercials.

Flamm masterfully weaves his story through the major events that encompassed law and order, with refreshing dips into the passage of the first major crime legislation (The Safe Streets and Crime Control Act and Gun Control Act in 1968), local and national political campaigns, the events surrounding the riots in Detroit and Newark, and the Chicago democratic convention that erupted into a police riot. He shows how the domestic crisis intersected with Vietnam; conservatives contended that “the country could not contain the communist menace in South Vietnam unless it could contain crime in the streets, protests on the campuses, and riots in the cities” (111). His is a story of political contestation—over shooting looters, civilian review boards, the merit of crime statistics, racial turmoil—and the great anxiety of elites over how to manage a nation undergoing the breakdown of order.

*Law and Order* deepens our knowledge of this era and traces the conservative ascendance and crisis of liberalism. Flamm is perhaps too modest about what this political history meant for contemporary politics. Though not his purpose, the crime policies that sprang from law and order were responsible for starting the decades long growth in incarceration that would only be known long after the end of the political careers of Wallace, Goldwater, McClellan, Reagan, and Nixon.<sup>2</sup>

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<sup>2</sup> Katherine Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics* (New York: Oxford University Press, 1997); Bruce Western, *Punishment and Inequality in American Democracy* (New York: Russell Sage Foundation, 2006); Naomi Murakawa, “Electing to Punish: Congress, Race, and the American Criminal Justice State” (PhD diss., Yale University, 2005). Stuart Scheingold, *The Politics of Law and Order: Street Crime and Public Policy* (New York: Longman, 1984). Vesla Weaver, “Frontlash: Race and the Development of Punitive Crime Policy,” *Studies in American Political Development* 21 (Fall 2007): 230-265.

Law and order legislation, particularly Safe Streets, sent millions of dollars in grants to aid states in revising their criminal codes, professionalizing their police, and supported a massive increase in the criminal justice system. In addition to the demise of liberalism, this moment thus wrought policy innovations that would change entirely the governance of crime, by introducing the first mandatory minimum sentences and preventive detention on which later models would rest, and crystallized federal involvement in crime control. Law and order was not just a slogan but the birthplace of new coalitions and campaign strategies, the reordering of government around the problem of crime,<sup>3</sup> and the erosion of the brief experiment with a war on poverty. In tracing the political history of the evolution of law and order, we can better understand what followed. In this way, *Law and Order* is not just about campaigns, arguments, compromises and dilemmas during the 1960s, but sheds light on their aftermath.

Where the book falls short of its aim is in not fleshing out the role of blacks, race, and racial transformation. This shortcoming has two parts.

First, in “amplify[ing] the lost voices of what Richard Nixon would term ‘the silent majority’” (8) Flamm silences another groups’ voice – that of blacks. By privileging the experience of whites and discounting the effects of law and order for blacks, Flamm’s book presents an unbalanced history. The text often belittles black concerns while focusing on fearful whites. Flamm asserts, “White fear of racial violence and social chaos was real” (102) but nothing is said about black fear of police brutality, repression, militant whites in the South and the law and order practiced on blacks, the violence unleashed at peaceful protests, the unlawful surveillance of black leaders, or how black leaders responded to the riots. When they do appear, it is in inglorious ways, describing black riots as having a “carnival air” with freeloading looters and thugs. Black criminality is presented as a matter of fact: “white residents... had some cause to fear black muggers and burglars” (102). This might be true, but disconnected from empirical evidence – in fact, the black crime rate was stable during this period<sup>4</sup> – and alongside a consistent message regarding the “understandable” fears of “middle-class Americans” (whites), Flamm is dismissive of how blacks responded to law and order. At its center then, this book is about law and order and whites.

Second, Flamm argues that the primary motive of law and order lay not in race but in personal security (see particularly chapter one). Prominent accounts had overstated the role of race, he claims, particularly the Edsalls *Chain Reaction* and Scammon and Wattenberg’s *The Real Majority*. This is a welcome argument and I waited patiently to discover his rejoinder. But what followed seemed to

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<sup>3</sup> Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (Oxford: Oxford University Press, 2007).

<sup>4</sup> This is based on black arrest data, the closest proxy to black offending. Data can be found in the Statistical Abstracts (various years), which are originally reported in the *Uniform Crime Reports*.

reinforce previous accounts rather than uncover some hidden aspect of the politics of law and order. Flamm's own data (as well as that of the secondary accounts he employs) contradict the lesser role he wants race to play and instead depict how it was riddled throughout. Race figured prominently in the rhetorical strategy of conservatives, like the speech by Nixon in Texas in which he appealed to the Mexican population by saying they haven't been the one's rioting and breaking laws (178). Another example is Nixon's use of the vocabulary of civil rights in his law and order advertisements where he stressed the right to be free from violence was the first civil right. Nor was the symbolic attachment of crime and race lost on voters: "I like his stand on 'law and order.' You know—the niggers" (cabdriver quoted in Flamm, 165). Though this quote related to George Wallace's presidential bid in 1968, Flamm asserts "racial animosity was not the main motivation for many of his supporters" (165) and that "for most whites the appeal of law and order was due primarily to genuine fear" (5). In taking on several prior accounts that show quite well how racial appeals were a critical part of the conservative crime strategy,<sup>5</sup> Flamm should have mustered more evidence for his counterpoint. Without systematic public opinion analysis, there is little to base this claim on. And was anyone confused when urban areas were compared to "jungles" or when the Harlem riot was featured in a Goldwater campaign ad titled *Choice*? Nor was the race-crime linkage limited to campaign rhetoric. Discussions of race flared up in legislative debates over crime, anti-riot and criminal penalties saved civil rights legislation including the 1968 Fair Housing Act, and crime among blacks leaked into debates around civil rights. Crime legislation fixated on DC, although it was not the worst city for crime, because the majority black population there helped make it the focus of national attention; racial considerations were also pivotal in the debate over block grants for crime control and the success of conservatives in making sure Title VI of the Civil Rights Act would not apply to the Safe Streets Act. Those calling for law and order had completely opposed legislation to punish perpetrators of violence against civil rights workers. Race continues to rear its head in the pages to come leaving the reader with a feeling that the book Flamm intended to write was different than the story uncovered by his research. Other accounts have better highlighted the *multiple interests* – some overtly racial, some endogenous to race, and some totally outside of racial considerations – that came to constitute the complex issue of law and order.

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<sup>5</sup> Beckett, *Making Crime Pay*; Tali Mendelberg, *The Race Card: Campaign Strategy, Implicit Messages, and the Norm of Equality* (Princeton, NJ: Princeton University Press, 2001); Thomas E. Cronin, Tania Z. Cronin, and Michael F. Milakovich, *U.S. v. Crime in the Streets* (Bloomington, IN: University of Indiana Press, 1981).

While this is a book that has many achievements, a tendency to leave developments blurry keeps it from reaching its ambition. For instance, the historical account often flattens distinctions between urban riots and campus protests and especially differences in how each was dealt with. While *Law and Order* documents the divisions among liberals, Flamm is less adept at unpacking the motivations, divisions, and arguments in conservative camps even while his stated purpose is to “restore a conservative perspective.” Indeed, the reader doesn’t learn who the conservatives are; Flamm treats them as a unified, fixed, and knowable group, losing sight of the possibility that conservatives also faced their own set of dilemmas and demons and also experimented with a shifting message to attract moderates to their coalition. More importantly, in discussing the campaign on which much of the rest of the narrative hinges – Barry Goldwater’s 1964 run – the crime theme seems to appear out of thin air. Did conservatives really just stumble on to this political capital?<sup>6</sup> Without elaborating on the 1961-64 period that foreshadowed this moment, we miss the fact that conservative Southern Democrats were testing out the crime issue in arguments against civil rights and integration based on old tropes of black criminality before Goldwater brought it to national attention.<sup>7</sup>

With these disappointments aside, *Law and Order* contributes much to our knowledge of the politics of fear, the demise of the Great Society, partisan change, and uncovers an important political history that will be useful to political scientists, historians, and casual observers alike.

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<sup>6</sup> See Simon, *Governing Through Crime*, for a compelling account of why conservatives used the crime issue when they did.

<sup>7</sup> Murakawa, “Electing to Punish;” Weaver, “Frontlash.”