

Wilson and van den Haag: Conservative Theories of Crime Control

**Gary Potter, PhD
Professor, School of Justice Studies
Eastern Kentucky University**

Theoretical Assumptions of the Conservative Model

Crime control policy in the United States is grounded in two basic conservative traditions. The first is an assumption that traditional, hierarchical forms of social organization organized around established values have positive impacts on society. The second assumption is that any reform is subversive and radical reforms are anarchistic.

At its core the theory underlying crime control policy in the United States is extremely simple. There is very little concern with what “causes” crime. Crime is a legally defined category of behavior and the reality of crime is based on a principle of "what you see is what you get."

Ideologically, U.S. crime control policy is stridently conservative. That’s important for two reasons. First, it is concerned with the attempt to control and prevent criminal behavior. It has little or no interest in producing a theoretical elaboration of crime and criminality. Second, "solutions" to the "problem of crime" are couched in terms of a clear separation between criminals/non-criminals, such that the behavior of the former has to be prevented or punished. Theoretically, there is no concern with the exploration of power and ideology structures in society. American crime control policies uncritically accept a “consensus-based” perspective that does not question the nature of law creation, or ask about the underlying causes of crime.

Methodologically, the theory is also extremely simplistic. The social reality of crime is defined by official statistics. The assertion is that no matter what

the problems with those statistics might be they reflect the "primary concerns" of society at large about criminal behavior.

In "Thinking about Crime", James Q. Wilson, for example, rejects the idea that crime has "root causes" that can be found in the structural contexts of people's lives. As he argues:

To people who say "crime and drug addiction can only be dealt with by attacking their root causes," I am sometimes inclined, when in a testy mood, to rejoin: "stupidity can only be dealt with by attacking its root causes". I have yet to see a "root cause" or encounter a government program that has successfully attacked it ..."

Three points need to be stressed about Wilson's comments. First, since he insists that "root causes" cannot be identified or measured empirically, we should not bother to look for them or to consider them as evidence in formulating policy. Second, attempts by government to "identify and eliminate" the causes of crime are doomed to failure. Third, "crime" and "criminal behavior" cannot be eliminated from society - the "best" that we can hope to do is to reduce its impact upon people's lives.

For Wilson, the way to reduce the impact of criminal behavior is to focus on two central ideas. The first is that state needs to ensure conformity to moral values that stress the idea that criminal activity is socially unacceptable. The second is that the state needs to increase the chances of a criminal being caught.

So, there are two main themes in the theoretical justification for U.S. crime control policy. At the societal level there is a crude application of a form of control theory, in which moral values are stressed as being the key to crime prevention. At the micro level there is a crude form of "cost/benefit" analysis, where the task of criminal justice system agencies is to make crime too risky for the potential criminal.

The Conservative View of Human Nature

Basic to the understanding of humans and their actions is the image of humans having both an instinctual and social side. Our instinctual, animalistic, atavistic natures continually threaten to resurface and smash the

civilized veneer we have all been socialized to display. But, as humans we all possess free choice and the power of restraint. We must continually call upon these uniquely human capacities to control our lower urges. Sacrifice, discipline and submission to authority are the foundations of the philosophy of crime control in the United States.

Conservatives and the Social Order

Conservatism as a political theory arose as a reaction to the French Revolution. Conservative theory has always stressed the organic nature of society, defending the traditional order against individualism and rationalism:

From conservatism's defense of social tradition sprang its emphasis on the values of community, kinship, hierarchy, authority and religion, and also its premonitions of social chaos surmounted by absolute power once individuals had become wrenched from the context of those values by the forces of liberalism and radicalism (Nisbet, 1970:11).

For social cohesion to be maintained, self-interest must be subordinated to the general good. However, conservatives do not see the general good as being a contractual agreement in society. The conservative view of family and marriage is a good illustration of this point. In conservative theory the unity of the family and its patriarchal structure, is a long-term social and moral good. No matter what changing circumstances or attitudes impinge on family structure and life, conservative theory insists that self-sacrifice and order, embodied in the family, should never be reduced to utilitarian calculations of individual pleasure and pain, effort and reward. Translating this into crime control it is fair to say that for conservatives order always takes precedence over justice: "order is indispensable to justice because justice can only be achieved by means of social and legal order" (van den Haag, 1975: 35). Van den Haag continues: "objections to inequality of condition are objections as to the system of distributive justice, unless they are objections to God" (1975: 46).

Van den Haag in *Punishing Criminals* notes that inequality is a key part of our system. If we wish to maintain the capitalist order then we must have inequality. Disproportional reward is the most effective method of maintaining capitalism. Considering this, van den Haag tells us that the

short-term or single-minded pursuit of individual justice must be seen as being either naïve or dangerous:

Since the law quite deliberately restricts the tempted, as well as the untempted, there is a kernel of truth in the belief, held by revolutionaries of various persuasions (most elaborately by Marxists) that the law is a device of the rich and powerful to keep the poor and powerless in check. The theater of the law is meant to restrain those who would do what the law prohibits. Obviously, the poor and powerless are more tempted to take what is not theirs, or to rebel, than the powerful and wealthy, who need not take what they already have. However, the discovery that the penal law restrains the poor and powerless more than the wealthy and powerful who are less pressed, or tempted, to do what it forbids is about as revealing as the disclosure that the Prohibition laws were meant to restrain drinkers more than the teetotalers who imposed them. Obviously, the law restrains some groups more than others and is violated by some groups more often than by others ... So because the temptation to break the laws is unequally distributed, because of different personalities and different living conditions, the laws – and the punishments for violating them – must weigh or fall most heavily on some persons and groups. Those less favored by society are more tempted to violate laws and therefore suffer punishment for doing so more often (1975: 45-46).

Simply put, coercion is an inevitable part of the system, and its focus must of necessity be on those most tempted, namely the poor.

Conservatives and the Definition of Crime

The criminal justice system in the United States is premised on the very conservative notion that it is those activities which threaten order that should be criminalized. This includes acts that offend morality as well as those which endanger person or property. Attacks on tradition and people's respect for authority are seen a major threat to an orderly society.

The Extent and Distribution of Crime:

Criminal behavior is seen as an individually rational endeavor - if the potential criminal feels that the likelihood of being caught and punished is greater than the benefit that will derive from the criminal act then, according to writers such as Wilson, a criminal act will not take place.

The social policy implications of this are clear. First, the police should focus their efforts not on law enforcement (catching people after a crime has been committed), but upon the maintenance of social order. The role of the police is "pro-active" involving functions such as:

- Maintaining a strong presence "on the ground".
- Keeping in close touch and working with "local people" to prevent crime.
- Keeping the streets clear of "potential criminals" (youths, drug abusers, beggars, prostitutes and so forth).

The rationale underpinning Wilson's argument relates to the "conformity" aspect of control theory. Wilson sees "informal social controls" as being most effective in preventing crime from taking place. The role of the police is an "active" one of preventing the breakdown of community life by making it safe for the "law-abiding" citizen. If the police are successful in protecting the law-abiding members of a community, it follows from Wilson's argument that "informal social controls" can be exercised more efficiently - thereby reducing levels of crime.

U.S. crime control policy assumes that the causes of crime lie in the pursuit of individual gratification (usually incommensurate with effort), the undermining of traditional loyalties and the unwillingness of the individual to accept discipline. The weakening of the social ties has been undermined by a lack of recognition of the necessity for coercion in the preservation of order.

Conservative Theory and Crime Control

The goal of crime control policy is simply the maintenance of order. To achieve this coercion is a necessity. Coercion is a central part of social control, which is undermined if any laxity in the exertion of authority occurs. It is due to the very nature of human beings that coercion is necessary and always will be necessary. Crime will never be eliminated. Justice may be important but it must always be subsumed to the maintenance

of order. This is achieved through a “dual track” system of punishment. In a dual track system the offender is first judged strictly on his or her offense. But, the severity of punishment is arrived at not on the basis of the crime, but from consideration of a series of criteria related to order:

- *Ascriptive criteria*: Who is the offender? Is the offender or the offense someone or something that threatens the fabric of authority? If so, the punishment should be more severe.
- *Dangerousness*: Is the person a recidivist who is possibly of further danger to society? If so should he or she be incarcerated longer than the law and the crime requires? Important in this formulation is the notion of incapacitation as an added period of confinement.
- *Deterrence*: Does the offense or the type of offender represent a particular threat to society at the time of arrest? Is it necessary in sentencing the offender to think about the function of punishment in deterring similar offenders?

On the other hand, the U.S. crime control system and the conservative philosophy which underpins it, extends charity in the form of lesser punishment to those who pose no threat to order and where the crime is seen as only a temporary failing (i.e., a white-collar crime). In the interest of maintaining order, proportionate justice may be added to or subtracted from at the point of sentencing. Punishment must be commensurate not with the crime but with the dangers to social order.

The main concern of conservative crime control policy is not the criminal act or the biographical antecedents of the criminal, but the actor him or herself. The offender’s relative position or reputation in the social order becomes of considerable importance. The conservative theory of punishment stresses the symbolic and public nature of punishment. Conservatism insists upon *general deterrence*, which punishes one individual to deter others, according to the social significance of the crime. Conservative crime control theory prefers the simple, moral lesson, of unchallengeable authority reflected in the residual (and obsessive) belief in the efficacy of physical punishment. Punishment should be as public as possible, whether in the courts or the mass media. The law must be carried out and punishment meted out in the public view. That way the limits of permissible behavior are clearly defined and the penalties for infractions are clearly spelt out. The

moral lesson of punishment for the individual must extend its effects to the population as a whole.

Theories of Crime Derived from the Conservative Model

Having looked briefly at the underlying philosophy of American crime control in the work of Wilson and van den Haag, it is still necessary to put those philosophical concepts into some kind of theoretical context. The theories, which support crime control policies in the U.S., are basically control theory, rational choice and routine activities theory. Because these theoretical approaches reflect U.S. government policies, research has been generously funded. While the three theories differ, they share some basic assumptions about crime, criminal behavior and the social order:

- A belief there is a general value consensus at the heart of our society.
- The idea that laws are created for the benefit of the majority of citizens.
- The view that human beings are naturally self-seeking, devious and fundamentally selfish.
- The view that people are rational - they make choices and are aware of the possible consequences of their behavior.

Fundamentally these theories see crime and law-abiding behavior in terms of a "cost benefit" analysis of human behavior. Basic to this cost benefit analysis are two key ideas: (1) People have no fundamental adherence to various moral principles – in short, they are capable of any type of behavior, and (2) In rationally evaluating possible courses of action, people weigh the likely cost (being caught and punished) against the likely benefits (getting something for nothing) of that behavior. The person who decides to break-into a warehouse will, prior to committing a crime, weigh the possible cost of their action (going to prison, for example) against the likely benefit (getting some valuable commodities). Similarly, the person who knowingly buys stolen goods does so on the basis of the cost (how likely they are to be discovered) against the benefit (getting something cheap).

So, depending upon this rational assessment of risk and benefit, the "potential criminal" will be either encouraged or dissuaded from committing the crime. This argument has a very superficial plausibility if you don't think too hard about it. For example, breaking into a heavily guarded warehouse in

broad daylight is likely to involve the potential cost out-weighting the likely benefit (although, depending on what is in the warehouse this might not be true).

Beyond its superficial plausibility this idea encompasses a number of debatable ideas. First, it assumes - rather than demonstrates - that people do indeed behave "rationally" (whatever this may mean). Second, it presupposes that people are always in full possession of the knowledge they would need to assess the likely costs and benefits of their behavior. Third, how many crimes actually conform to this type of "rational cost/benefit" analysis - both theoretically and empirically? This analysis seems to assume that all forms of criminal behavior are calmly assessed prior to a criminal act being committed - is this always (or indeed ever) the case? Finally, it assumes that the "potential criminal" views likely costs in the same way as any "right thinking person".

Rational-Choice Theory

Rational-choice theory assumes that individuals choose to commit crime after calculating whether its potential rewards outweigh its potential risks. The roots of this theory come from economic models of rational decision-making. Rational-choice theory is closely aligned with deterrence theory, which assumes that potential and actual punishment can deter crime, and the two theories are often considered synonymous. As we will see, the evidence on deterrence is very weak. The research shows that actual punishment has only a weak general or specific deterrent effect on crime and delinquency, and perhaps no effect at all.

Routine Activities Theory

Routine activities theory is derived primarily from the assumptions of free-will and rational-thought perspectives. The key claim of routine activities theory is that patterns of crime and victimization result from the everyday interactions in geographical space and in time of likely offenders, suitable targets, and guardians.

This theory states that as people engage in "routine activities" they will be prone to criminal offending or victimization, regardless of their biological or cultural backgrounds. Felson developed a "chemistry of crime" that has three parts: (1) a target of crime is needed, (2) the target's guardian or

protector can be overcome by an offender, and (3) there must be an offender who has consciously planned to commit the crime. In this reality, then, Felson argues that offenders are more likely to choose targets that are within their reach, as well as victims that are more easily dominated. Felson also believes that the “broken window” theory is accurate in its explanation of street crime. As neighborhood conditions deteriorate—evidenced by buildings with broken windows, graffiti, and other visible effects of vandalism—the more crime will occur in that community.

Despite its common sense appeal, the routine activities approach has at least two major flaws. First, the theory does not indicate which routine activities are likely to be criminogenic. Second, when evaluated, this is more of a theory of victimization than crime causation. It also fails to provide much or any of the contexts of criminogenic situations, such as how and why crime is related to class, gender, race, and age.

Control Theory

The implications of control theory are clearly that, in order to prevent crime, people have to be made to adhere to certain moral imperatives governing various forms of acceptable or unacceptable behavior. While various social control agencies are clearly going to be involved here (the family, peer group, work group, police), the role of the state is crucial. The state has its basic task to ensure that, in any potentially criminal act, the cost to the criminal outweighs any likely benefits. There are a number of ways in which the government might attempt to do this. First, one way is to make punishments severe. Second, the state must somehow increase the chances of a criminal being caught (more cops on the beat, neighborhood watch programs). Third, people could be encouraged to take "commonsense" measures to make crime more difficult.

Control theory would argue that:

- Informal social controls are seen to be the most effective way of deterring crime because they involve policing by those closest to the criminal.
- For informal controls to work effectively, a sense of community has to be maintained. This requires social order and one role of the police is to maintain the orderly social relationships, which will allow informal controls to operate effectively.

There are enormous theoretical problems with control theory. First, normative theories, like control theory assume that "most people" are not involved in crime. But, empirically the distinction between "criminal" and "law-abiding" is virtually nonexistent (as self-report studies have shown). How can informal controls be effective if those supposedly doing the controlling are themselves involved in criminal behavior? Second, normative theories involve "self-regulation" and, as we have seen in relation to white-collar crime, self-regulation tends to be a recipe for unequal treatment - allowing the criminal to escape the consequences of his or her behavior. Third, moral arguments are not open to empirical testing - why should we accept a concept of morality that clearly favors the rich and powerful at the expense of the poor and powerless?

There are also debilitating practical problems with this approach. Informal control measures (Neighborhood Watches, video camera surveillance) simply displace crime rather than deter it.

Finally, this argument rests on a common-sense version of morality which is lacking in empirical support and (in my judgment) horrifying to consider in its practical implications.

Morally, the argument is that since everyone is a potential criminal our behavior should be closely watched and monitored at all times. First, many of us would consider this "cure" to be worse than the "disease" itself. Second, the argument also begs the question of who should do the watching and monitoring - and to what potential use they might put the information they gather.

Similarly, the convenient assumption that crime committed by the working classes and the powerless is somehow more morally reprehensible than crime committed by the rich and powerful can only be sustained by making a moral judgment; it would be just as valid to take the opposite view.

Finally, a common thread running through these theories is that a "sense of community," and the informal social controls related to community, is the most important factor in limiting crime. What we need to ask is why has this sense of community been lost and, most importantly, did it ever exist in the first place? There seems to be a fundamental contradiction here. If people are fundamentally selfish and they need to be morally controlled, why

should they act communally? If the answer is that the benefit of this behavior outweighs the cost, then we need to ask why this has not occurred - why should a "sense of community" ever be lost if it is, fundamentally, in the best interests of the law abiding to maintain this sense of community at all costs? The answer here, of course, is that the fundamental distinction between criminal and non-criminal, the lack of attention to structural pressures and conditions, the failure to understand the way human behavior exists within - and is sustained by - a cultural context (rather than theoretically-naive notions of "rationality") are fundamental theoretical weaknesses in this particular perspective on crime.

Critiquing Conservative Theory

Conservatives insist on a "realistic" pessimism. According to conservative theory, even in a world based on the most rational and just system of rules, many people would inevitably cheat. Since people are *created* unequal, talk of equality merely incites envy and dispute. Conservative theory accepts and defends the proposition that the social order is not one of equality and justice. There are two obvious problems with this position.

First, the cause of crime, for conservatives, is the innate propensity for evil in the individual, combined with the weakening of social ties. There is no attempt in this theory to link the type of crime (i.e. theft or rape) to the nature of particular societies. Conservatism has no explanation for why individuals or groups concentrate on certain crimes rather than others (i.e. why do men commit almost all violent crime, why don't corporate executives commit armed robbery?).

Second, the pessimism of conservative theory requires coercion to maintain the present social order. Coercion is inescapable and indispensable. In response to this, it is legitimate to counter pose the possibility of a society in which the incidence of crime would be minimized by creating real substantive equalities based on agreed principles of justice.

Turning specifically to James Q. Wilson's justification for this argument there is much to be said. Apart from the potentially horrifying moral implications attendant to such a view, Wilson's argument has a number of debilitating weaknesses.

First, James Q. Wilson is remarkably adept at knowing who the law-abiding citizens are and who the criminals are. This easy distinction made between the "criminal" (the "bad guy") and the "law-abiding" citizen (the "good guy") is simply not supported by empirical evidence. There is little in Wilson's argument that suggests anything other than a kind of "Hollywood" version of human behavior, where "criminals" are "evil" (and probably wear black hats and do unspeakable things to innocent bystanders) and everyone else is "good."

Second, he dismisses other evidence on the basis of a fallacious, oversimplified, misrepresentation of the facts.

Third, he ignores the fact that crime is not simply a "lower class phenomenon". The crimes of the powerful may not be as visible as those of the powerless, but they are just as - if not more so - significant. This is especially true in terms of the moral basis that Wilson uses to make his argument. Wilson rationalizes this contradiction by saying:

This book [Thinking about Crime] deals neither with "white-collar crimes" nor, except for heroin addiction, with so-called "victimless crimes". Partly this reflects the limits of my own knowledge, but it also reflects my conviction, which I believe to be the conviction of most citizens [*my italics*], that predatory street crime is a far more serious matter than consumer fraud, antitrust violations, prostitution, or gambling, because predatory crime makes difficult or impossible the maintenance of meaningful human communities.

So crime becomes a matter of belief and faith (James Q. Wilson's beliefs and faith). It should not be necessary to point out that this is hopelessly inadequate as the basis for the generation of scientific knowledge. Wilson provides no evidence to support his contention, except for his "belief" (which he attempts to give a spurious credibility by claiming it to be the belief of "most citizens.")

Fourth, it is evident that Wilson's argument is driven by his political stance - he finds the idea of criminal behavior having a "social causality" politically unacceptable. So without evidence, or even a credible attempt at argument, he rejects this possible explanation out of hand.

While it is clear that people do make choices about their behavior - committing a criminal offense, for example, usually (but not necessarily) involves some form of conscious choice - it is an over-simplification to ignore the fact that the choices available to people in their lives are conditioned and limited in some way by the social context of their life.

Wilson is not really concerned with theorizing crime, but with the development of ways to make crime "less attractive" to people. Any idea that Wilson doesn't want to contemplate is "ruled out" on the basis of vague generalizations and rationalizations. In essence, if you don't share Wilson's view of the world, then there must be something wrong with you.

Van Den Haag ("Punishing Criminals", 1975) proposes a similar set of ideas to those of Wilson when he argues that, within Capitalism, the basic rationale of the system is that there are "winners" and "losers". If we accept this, then we also have to accept that the winners must be allowed to enjoy the fruits of their enterprise and risk-taking without these rewards being illegally taken-away by the losers. In this respect, Van Den Haag is basically saying that, for capitalism to continue as a successful form of economic production, those responsible for the accumulation of wealth must be protected from the activities of criminals. For capitalism to survive, it is, according to Van Den Haag, logical that law enforcement should be concentrated upon the activities of the poor and powerless (the losers). There is no need to be redundant in critiquing van den Haag. It's the same simplistic, unscientific, moral rationalization as Wilson, although better written and argued.

In summation conservative theory is remarkably depressing. People are simply evil and therefore must be coerced and punished. Even so, we have no chance of eradicating criminal behavior. The very best we can do is to contain some of it and keep it away from the law-abiding citizens in their gated communities. The emphasis is on security and order maintenance not crime itself. Ultimately conservative theory addresses only one issue: How do we make people who have been disadvantaged, injured, excluded, debased, and purged from society behave? If we maintain order then the privileged will continue to profit and continue to be privileged. If we don't maintain social order the shining city on the hill falls into ruin. It's not a theory it's a choice. And ultimately that choice will lay ruin to the illusion of order, security and stability.

