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# *Western Violence: Structure, Values, Myth*

RICHARD MAXWELL BROWN

Western violence nearly defies interpretation as one struggles to make sense of the almost countless episodes and events that have made the West such a turbulent region. Yet, despite its complexity, the reassessment of western violence can elucidate both our western past and our American present. By dissecting three of its components, violence as a regional phenomenon takes on greater clarity within and beyond the American West.

First, this essay examines the structure of western violence, especially in the period from 1850 to 1920. The discussion will include a treatment of a significant and typical, although often overlooked, outbreak of violence in old Arizona. An interpretation of the second component, the values closely related to structure that led westerners to commit violence, follows. Third, the mythology of western violence, the element that slips beyond the boundaries of the historical era emphasized here and captures the on-going fascination of Americans, will be the subject for the final portion of this contribution.

In my view, western violence after 1850 falls into roughly three periods. A conflict that I describe as the *Western Civil War of Incorporation* primarily shaped the intensely violent western era from the 1850s to the 1910s. The order imposed by the outcome of that regional civil war produced a legacy of relative calm from 1920 to 1960, the years to date of the least violence in the American West. A renewed surge of western violence, rivaling that of 1850 to 1920, marked the period from the 1960s to the present. I would argue that a key factor in the post–1960 renewal of large-scale violence stems from the partial disincorporation of the West in our own time.

However, instead of discussing the relatively calm years of 1920–1960 or the highly volatile era since 1960, I will focus on the foundation period from the 1850s to the 1910s and, as noted, the Western Civil War of

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Richard Maxwell Brown
Thirtieth President of the Western History Association

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Incorporation.[1] The violence central to the Western Civil War of Incorporation illustrates Charles Tilly's maxim that the history of violence is the history and organization of power.[2] From 1850 to 1920, the conservative, consolidating authority of modern capitalistic forces infused the dynamics of the Western Civil War of Incorporation. These forces propelled, in Alan Trachtenberg's 1982 formulation, the incorporation of the whole of America during the late nineteenth century.[3]

More often than not, the nonviolent means of legislation, administration, court rulings, and the impersonal trends of economics and culture accounted for incorporation in the West.[4] But westerners, frequently with violence, vehemently resisted this incorporation. Their responses led to a plethora of local wars and vendettas in the West, especially from 1850 to 1900—episodes viewed as isolated events. They have not been seen as elements in a broad, unified pattern of intra-regional strife stretching from the Missouri to the Pacific and from border to border. When one looks more closely, however, both well-known and obscure explosions of violence in the West come into focus as local battlegrounds and fronts of a region-wide civil war.

By my reckoning—and I know it is an undercount—there were at least forty-two violent episodes in the Western Civil War of Incorporation.[5] One of the most pervasive alignments within this western civil war set the earliest of all westerners—Indians—against political pressure and military force. In the final outcome of this confrontation, Indians found themselves on reservations or coercively absorbed into a labor structure erected by white pioneers. The so-called "Indian Wars" of the West might better be labeled "Wars of Incorporation." I say this because the Native American struggle did not simply collapse and end on some bloody battle-

[1] Other uses of the concept of incorporation in western history are John Walton, *Western Times and Water Wars: State, Culture, and Rebellion in California* (Berkeley, 1992), chap. 2; David Alan Johnson, *Founding the Far West: California, Oregon, and Nevada, 1840–1890* (Berkeley, 1992), in which incorporation is a key concept.

[2] Charles Tilly. Remarks in session on "Collective Violence," American Historical Association, annual meeting, San Francisco, 28 December 1978.

[3] Alan Trachtenberg, *The Incorporation of America: Culture and Society in the Gilded Age* (New York, 1982).

[4] Richard Maxwell Brown, "Law and Order on the American Frontier: The Western Civil War of Incorporation," in *Law for the Elephant, Law for the Beaver: Essays in the Legal History of the North American West,* ed. John McLaren, Hamar Foster, and Chet Orloff (Regina, 1992), 79–81. This deals with the role of courts, judges, and lawyers.

[5] Forty-two numbered episodes are listed in the appendix to Brown, "Law and Order," 82–85. See also, Richard Maxwell Brown, *Strain of Violence: Historical Studies of American Violence and Vigilantism* (New York, 1975). Much of the vigilantism treated in this book was related to the Western Civil War of Incorporation, although I had not yet developed the concept and did not use it in the book.

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field. As William Walton has shown in his recent book on the Owens Valley of California, incorporated Native American workers sometimes continued the fight against the dominant system with arson, sabotage, and theft.[6] Latinos from California to Texas felt similar pressures exerted against their traditional lifeways and livelihoods; these people warded off incorporation with the violence of banditry or the violence of guerrilla warfare, as did, for example, the guerrilla *gorras blancas* (white caps) of northern New Mexico. Tragically caught in the crossfire of the Western Civil War of Incorporation were Chinese workers—innocent victims, often, of racist, anti-incorporating mobs at Rock Springs, Wyoming, and elsewhere.[7]

Land wars and the brigandage of those who rejected incorporation repeatedly rocked the far-flung farm and range country of the expanding Anglo community of the West. Curbing the disorder of the chaotic boom towns ranked among the highest priorities of the incorporators. In these towns, the violent escapades of unruly, unincorporated cowboys and the violent enforcement of the law in behalf of incorporating urban business and professional men split the communities.[8] By the 1890s, the main venues of the Western Civil War of Incorporation shifted from the backlands and old boom towns to the new mines, mills, and logging camps of what Carlos A. Schwantes calls the "wageworkers' frontier" of the West.[9] In this industrial phase of the Western Civil War of Incorporation, from 1890 to 1920, employees often countered incorporating industrialists with strikes that frequently flared into violence. In response, an alliance of capital with federal, state, and local government used paramilitary violence to pacify the industrial work places of the West.[10]

Such was the structure of much western violence, but who formed the rank and file and provided the leadership on both sides in the Western Civil War of Incorporation? In the forefront stood one of the most misunderstood elements in the region's society—the gunfighters of the Old West. Branded as heroes by purveyors of the popular process of myth making

[6] Walton, *Western Times*, 37, 45, 109, 111. See also Lynwood Carranco and Estle Beard, *Genocide and Vendetta: The Round Valley Wars of Northern California* (Norman, 1981), chaps. 1–7.

[7] Robert J. Rosenbaum, *Mexicano Resistance in the Southwest: "The Sacred Right of Self-Preservation"* (Austin, 1981). Chapter 3 deals with banditry. On the *gorras blancas*, see Robert W. Larson, *New Mexico Populism: A Study of Radical Protest in a Western Territory* (Boulder, 1974), chap. 4. On the Chinese, see Craig Storti, *Incident at Bitter Creek: The Story of the Rock Springs Chinese Massacre* (Ames, IA, 1991).

[8] Richard Maxwell Brown, *No Duty to Retreat: Violence and Values in American History and Society* (New York, 1991), 54–58.

[9] Carlos A. Schwantes, "The Concept of the Wageworkers' Frontier: A Framework for Future Research," *Western Historical Quarterly* 18 (January 1987): 39–55.

[10] For example, Robert Wayne Smith, *The Coeur d'Alene Mining War of 1892: A Case Study of an Industrial Dispute* (Corvallis, 1961).

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but often dismissed as socially insignificant, the gunfighters were neither. Instead, they acted as crucial agents of violence in the Western Civil War of Incorporation.

Those I term the *incorporation gunfighters* lined up on the conservative side in the regional civil war.[11] They included famous gunfighters like Wild Bill Hickok, Wyatt Earp, Pat Garrett, and Tom Horn but also hundreds of others whose fate destined them for obscurity. Of the better known characters, as exemplified by both Wild Bill Hickok and Wyatt Earp, northern background and staunch membership in the Republican party often typified the incorporation gunfighters.[12]

Conversely, the *resister gunfighters*—my label for those who habitually used six-gun and rifle to reject incorporation—boasted of southern or Texan roots and professed loyalty to the Democratic party. Many cowboys deserve the title of "resister gunfighters," and for many of the most famous can be added the term "outlaw." These men often conformed to the American variation of E. J. Hobsbawm's notion of the "social bandit"—in American terms, a notable lawbreaker paradoxically widely admired by law-abiding members of society.[13] Certainly, both Jesse James and Billy the Kid fit this definition.[14] In the post-1865 era, social bandits, in the James tradition of crime, looted banks and railroads, institutions whose rapacious economic exactions caused resentment among peaceable western farmers, ranchers, and townspeople. From the James and Younger gang and the Dalton brothers in the middle-border country to the once-famed Chris Evans and John Sontag in California, a host of western outlaws rode hard across the land as resister gunfighters.[15]

More often than generally realized, black American cowboys took positions on both sides of the Western Civil War of Incorporation. These African-

[11] Brown, *No Duty to Retreat,* 44–47.

[12] Joseph G. Rosa, *They Called Him Wild Bill: The Life and Adventures of James Butler Hickok* (1964; 2d ed., rev., Norman, 1974). There is no dependable, complete biography of Earp, but for a brief treatment, see Brown, *No Duty to Retreat,* 65–85.

[13] E. J. Hobsbawm, *Social Bandits and Primitive Rebels: Studies in Archaic Forms of Social Movement in the 19th and 20th Centuries* (Glencoe, IL, 1959); Richard White, "Outlaw Gangs of the Middle Border: American Social Bandits," *Western Historical Quarterly* 12 (October 1981): 387–408; Mark Dugan and John Boessenecker, *The Grey Fox: The True Story of Bill Miner—Last of the Old Time Bandits* (Norman, 1992), 205–11.

[14] William A. Settle, Jr., *Jesse James Was His Name, or Fact and Fiction Concerning the Careers of the Notorious James Brothers of Missouri* (Columbia, MO, 1966); David Thelen, *Paths of Resistance: Tradition and Dignity in Industrializing Missouri* (New York, 1986), 70–77; Robert M. Utley, *Billy the Kid: A Short and Violent Life* (Lincoln, 1989); Stephen Tatum, *Inventing Billy the Kid: Visions of the Outlaw in America, 1881–1981* (Albuquerque, 1982).

[15] White, "Outlaw Gangs"; Glenn Shirley, *West of Hell's Fringe: Crime, Criminals, and the Federal Peace Officer in Oklahoma Territory, 1889–1907* (Norman, 1978); Wallace Smith, *The Prodigal Sons: The Adventures of Christopher Evans and John Sontag* (Boston, 1951).

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American cowboys included Isom Dart (an alias of Ned Huddleston) of the Brown's Park outlaw faction of Colorado and Wyoming and tall, tough Jim Kelly, a notable incorporation gunfighter and star shootist for magnate I. P. (Print) Olive, who dominated cattle ranges in both Nebraska and Texas.[16]

Behind the front lines of the Western Civil War of Incorporation stood the conservative commanders of incorporation. These men seldom directly involved themselves in violent episodes but, like generals in conventional warfare, called the shots from afar with policy and strategy that often resulted, sometimes by design, in violence. Some of the West's greatest landholders, businessmen, industrialists, lawyers, judges, and politicos moved with ease throughout this leadership.[17] The incorporation gunfighters served, in effect, as the violent surrogates of the commanders of incorporation.

The annals of western history record many examples of the powerful influence of these leaders. An incorporating conflict in California that aligned Southern-Pacific rail barons Collis P. Huntington, Leland Stanford, and Charles Crocker against small farmers in the Mussel Slough district resulted in the Far West's deadliest civilian shootout.[18] In 1880, a gunfighting supporter of Huntington, Stanford, and Crocker shot to death five anti-railroad farmers—an event that, months later in far distant London, caused Karl Marx to write that California "is very important to me, because nowhere else" in the world "has the upheaval most shamelessly caused by capitalist" oppression "taken place with such speed."[19]

A much more violent conflict later in the 1880s apparently escaped the notice of Karl Marx, but it also reflected an incorporating character. In the remote mile-high central Arizona country, between the towns of Payson and Globe, a complex series of events led to the infamous Tonto Basin War. Deep in the heart of the Tonto Basin country lay the beautiful Pleasant Valley that in a few short years changed to a charnel house belying its bucolic name. To read of the Tonto Basin War with its death list of

[16] Philip Durham and Everett L. Jones, *The Negro Cowboys* (New York, 1965), 179–88; Harry E. Chrisman, *The Ladder of Rivers: The Story of I. P. (Print) Olive* (1962; rev. ed., Chicago, 1983), 34–35, 77, 103–4, 113–14, 121–22, 147–48, 190–91, 193, 196, 217, 248–49, 260–61, 298–99, 369–70.

[17] These commanders of incorporation included landholders John Chisum (NM), Granville Stuart (MT), and William C. Irvine (WY); businessmen William T. Coleman (CA), Joseph G. McCoy (KS), and Joseph C. Lea (NM); industrialists Collis P. Huntington, Leland Stanford, and Charles Crocker (CA), John Hays Hammond (ID), and E. B. Gage (AZ); lawyers and politicos Thomas B. Catron (NM) and Wilbur Fisk Sanders (MT); and judges Stephen J. Field and Lorenzo Sawyer (CA).

[18] Brown, *No Duty to Retreat*, 106–10.

[19] Alexander Trachtenberg, ed., *Karl Marx and Frederick Engels, Letters to Americans: 1848–1895, A Selection* (New York, 1953), 126; see also, R. Hal Williams, *The Democratic Party and California Politics, 1880–1896* (Stanford, 1973), 47–50, 54.

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twenty or thirty to fifty makes *Blood Meridian*, Cormac McCarthy's critically acclaimed novel of southwestern gore, seem more like reality and less like a literary fantasy.[20]

The Tonto Basin War of 1887–1888 began as the Pleasant Valley feud between two ranching families living across a creek and within ten miles of each other. On one side of the creek lived the four Tewksbury brothers, sons of a New England Yankee father and a Shoshone Indian mother. On the other side resided the three Graham brothers, of white parents, who hailed from Iowa. The Grahams backed the Republican party, while the Tewksburys supported the Democrats. However, as the Pleasant Valley feud between the Grahams and the Tewksburys widened into the Tonto Basin War, the contrasting political allegiances between the opposing factions blurred. In Earle R. Forrest's words, Pleasant Valley was "Arizona's dark and bloody ground."[21] The vendetta did not end until it claimed the lives of all three Graham brothers and three Tewksburys. With only one Tewksbury brother surviving, the family feud had been fought, as the title of Zane Grey's fictional version put it, "to the last man."[22] In the broadest terms, the Tonto Basin War swirled around like a witch's brew of ethnic, racial, religious, economic, political, criminal, and cultural conflict. Anglos, Latinos, Indians, Mormons, Catholics, Protestants, Texans, northerners, sheepmen, and cattlemen melded together—in the familiar terms of the New Western History's emphasis on culturally-pluralistic conflict—within a seething cauldron of Tonto Basin hate and homicide that ultimately produced its own grassroots historiography.[23]

Tom Graham led his faction. Protagonist of an aggressive ranching style, he had nothing but contempt for the old-settler, half-Indian Tewksburys, who represented the traditional slow-paced pastoral and farming life of Pleasant Valley and so much of the unincorporated rural West. In addition, Tom Graham made no secret of his highly partisan attachment to the Republican party.

While the Tonto Basin War raged, he reacted to the national presidential election of 1888, roundly condemning the Democratic party as the rep-

[20] Cormac McCarthy, *Blood Meridian, or, The Evening Redness in the West* (New York, 1985).

[21] Earle R. Forrest, *Arizona's Dark and Bloody Ground* (1936; 2d ed., rev., 1952; reprint, Tucson, 1984).

[22] Zane Grey, *To the Last Man* (New York, 1922).

[23] Patricia Nelson Limerick, *The Legacy of Conquest: The Unbroken Past of the American West* (New York, 1987). Forrest, *Arizona's Dark and Bloody Ground*, is pro-Graham. Clara T. Woody and Milton L. Schwartz, *Globe, Arizona: Early Times in a Little World of Copper and Cattle* (Tucson, 1977), is pro-Tewksbury. By far the most complete and best balanced treatment is Don Dedera, *A Little War of Our Own: The Pleasant Valley Feud Revisited* (Flagstaff, 1988). Important unpublished accounts of the Tonto Basin War are cited in Dedera, *A Little War*, 263–64.

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resentative of the lazy and improvident, including, he implied, his Tewksbury foes. Declaring, "I hate the sight of a Democrat," and asserting that he was "a Republican for 1000 different reasons," Graham emphasized his view that the Republican party championed the conservative, entrepreneurial spirit. This bombastic Arizona figure fiercely, if ungrammatically, objected that "the Democrats never done anything only [sit] back in some old cabin with sunflowers growing all round the house." Graham further derided the Democratic party as one of "corn bread" and "cheap living" while applauding his own Republican party as that of "work" and the much more preferable (to him) "wheat bread." "The Democrats," Graham went on, "never have anything doing or going on in the country"—they "just wait on the cloud to roll by and it never rolls." Concluded this gunfighting western Republican, "We want business in the country," not Democratic "talk."[24]

Although covered in the San Francisco and Los Angeles newspapers of the day, the Tonto Basin War is now nearly forgotten, but for the writings of aficionados and local specialists. However, at the time, the chaotic events preyed on the mind of the Montana and Arizona multi-millionaire copper king, William A. Clark. In the late 1880s, Clark turned his attention toward development of the great mines at Jerome, Arizona, not far from Tonto Basin.[25] Clark feared the threat to the business establishment posed by the livestock thievery and wanton killing in the nearby Tonto Basin. The danger to the capitalistic order in Arizona far surpassed the importance of a local feud, in Clark's view. About the chief culprits, Clark privately warned, "they will soon be robbing trains," and for the ears of the vigilante minded he put out these words: "Kill them." Issuing an oral, secret charter for vigilante action, the territorial governor of Arizona, Conrad Meyer Zulick, echoed Clark by declaring, "kill them and no one will be hurt for it"—meaning the law would look the other way.[26]

The greatest of the aspiring Tonto Basin cattlemen, Colonel Jesse W. Ellison, willingly answered the call for vigilantism. With a domineering character that had much in common with Major Tetley, the vigilante leader of *The Ox-Bow Incident*, Ellison headed the shadowy "Committee of Fifty" that brought the Tonto Basin War to a close with three vigilante hangings in August 1888.[27] Members of Ellison's vigilante clique mirrored

[24] Dedera, *A Little War*, 206–7. I have corrected Graham's spelling and capitalization, but not his grammar.

[25] Michael P. Malone, "Midas of the West: The Incredible Career of William Andrews Clark," *Montana The Magazine of Western History* 33 (Autumn 1983): 2–17.

[26] The words of Clark and Zulick are quoted by the 1880s Tonto Basin settler, Samuel A. Haught, in Dedera, *A Little War*, 276n.

[27] Walter Van Tilburg Clark, *The Ox-Bow Incident* (New York, 1940); Dedera, *A Little War*, 175–79, 184–88, 191–202.

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the traits of classic incorporators: "men and a few women," writes authority Don Dedera, "who fell heir to high government posts" and social leadership in Arizona—an element that represented "political muscle" and "wealth," both in being and on the rise.[28]

The marriage of Colonel Ellison's daughter, Helen Duette, to George W. P. Hunt, an ambitious merchant of the Tonto Basin gateway town of Globe, personified the union of ranching and commercial power that marked the incorporating vigilante conclusion to the Tonto Basin War. George Hunt went on to become the first governor of the state of Arizona and, in all, won the gubernatorial election seven times from 1912 to 1932. Hunt's wife, Helen Duette, daughter of the vigilante autocrat of the Tonto Basin, became Arizona's long-time First Lady.[29] Governor Hunt ultimately emerged as a strongly progressive Democrat. However, for long years after, "the Arizona legislative establishment [was] controlled" by highly conservative "ranching and other rural business interests," of the sort exemplified by Hunt himself in commerce and vigilante leader Ellison in ranching.[30]

Meanwhile, a legacy of incorporation was the environmental degradation of the Tonto Basin country and its ecologically-edenic Pleasant Valley through overgrazing by dominant ranchers like Colonel Ellison. At its peak after the Tonto Basin War, Ellison's Q Ranch ran more cattle than permitted in the vast Tonto National Forest of our own time.[31] The environmental devastation began to be evident by 1895, less than ten years after Ellison's vigilantes made the Tonto Basin safe for big cattlemen like himself. As a result of the overgrazing, declares Dedera, "nature's scar tissue—chaparral and cedar—invaded ruined climax grasslands and denuded swales."[32] Not until the U. S. Forest Service's grazing regulations began to take effect in the early twentieth century did a measure of healing come to the ecologically ravaged lands—land that in the early days a pioneer praised for having "as fine timber and water and land and grass as [ever] was seen in any country"—a "very healthy country," he said, with "a good chance for a poor man."[33]

As of 1900, huge stretches of the West had succumbed—like Tonto Basin—to incorporation, but the civil war raged on. A militant early twentieth-century labor movement, spearheaded by the Industrial Workers of

[28] Dedera, *A Little War*, 199–200.

[29] Ibid., 100, 257; John S. Goff, *George W. P. Hunt and His Arizona* (Pasadena, CA, 1973).

[30] Dedera, *A Little War*, 257.

[31] Ibid., 177–78, 258. For the location of the Q Ranch, Graham, Tewksbury, and other sites in the Tonto Basin War, see Writers' Program of the Work Projects Administration, *Arizona: A State Guide* (New York, 1940), 457–60.

[32] Dedera, *A Little War*, 258–59.

[33] Ibid., 178, 259–60; Martin J. Blevins, quoted in Dedera, *A Little War*, 115. I have corrected Blevins's spelling.

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the World, remained uncowed and unincorporated until the First World War and postwar frenzy of 1917–1919 energized a final triumphant surge in the incorporating trend.[34] By 1920, the Western Civil War of Incorporation came to a close, with the conservative side victorious. Distinctively western? Yes. But just how unique was the Western Civil War of Incorporation? Did its equivalent sweep through the lands north of the Canadian and south of the Mexican boundaries of the United States?

South of the U. S. border one finds a clear answer to this question. The North Mexican Civil War of Incorporation, its main stage set in the states of Chihuahua and Sonora, played a central factor in the long regime of Porfirio Diaz. Here the fearsome *rurales*, the federal Mexican police, ranged across the countryside as the violent enforcers of incorporation, and they shared much in common with the incorporation gunfighters of the U. S. West.[35] The ascendant conservative side in the North Mexican Civil War of Incorporation eventually bred a backlash, beginning with the 1906 labor uprising at the great American-owned Cananea copper mine in northern Sonora—an uprising that touched off a chain reaction leading to the Mexican Revolution of 1910.[36]

Likewise, north of the 49th parallel the process known as "the Canadianizing of the West" resembled the incorporating pattern in the American West.[37] Did the 1885 rebellion of *métis* leader Louis Riel represent an episode in what might be viewed as a Western Canadian Civil War of Incorporation?[38] I think it did.

Even more broadly, did a nineteenth-century Western Hemispheric Civil War of Incorporation extend all the way north from the cattle spreads of Chile and Argentina to the prairies of western Canada? The intriguing evidence in Richard W. Slatta's recent comparative study of the cowboys of South and North America suggests an affirmative answer.[39]

[34] See appendix to Brown, "Law and Order," for numbered post–1900 labor episodes, of which numbers 31, 33–34, 37–39, and 42 involved the I. W. W.

[35] Paul J. Vanderwood, *Disorder and Progress: Bandits, Police, and Mexican Development* (Lincoln, 1981), chaps. 6–11; Ramón Eduardo Ruiz, *The People of Sonora and Yankee Capitalists* (Tucson, 1988). Ruiz emphasizes an "Americanization" of Sonora in industry and business that resembles incorporation.

[36] Vanderwood, *Disorder and Progress*, chaps. 12–13.

[37] R. C. Macleod, "Canadianizing the West: The North-West Mounted Police as Agents of the National Policy, 1873–1905," in *Essays on Western History: In Honour of Lewis Gwynne Thomas*, ed. Lewis H. Thomas (Edmonton, 1976), 101–10.

[38] Bob Beal and Rod Macleod, *Prairie Fire: The 1885 North-West Rebellion* (Edmonton, 1984).

[39] Richard W. Slatta, *Cowboys of the Americas* (New Haven, 1990), 103–10; see also Richard W. Slatta, ed., *Bandidos: The Varieties of Latin American Banditry* (Westport, CT, 1987). Some of the bandits described in this book resemble the resister gunfighters of the western United States.

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As for the Western U. S. Civil War of Incorporation, brutality and oppression abounded, but these should be seen in proportion. From the 1880s on—at least for Anglos—a remarkably open, geographically mobile, and expanding society mitigated the harsh reality of and coexisted with the Western Civil War of Incorporation. This society enabled a great many of those of lower or middle class status not only to avoid the battlegrounds of the regional civil war but to prosper and thrive.[40] Nor should the popularity of the incorporating victory be overlooked and underestimated, for a widespread desire—by no means restricted to the elite and affluent—for the more orderly, structured society that resulted from the Western Civil War of Incorporation permeated the American West. Finally, a series of progressive reform movements and significant advances in popular education after 1900 softened the impact of the incorporating triumph without greatly diminishing its legacy, in part, found in the early and middle twentieth-century order and stability.[41]

Aside from such beliefs as the ideology of vigilantism, the homestead ethic, the ethic of individual enterprise, and the incorporating and anti-incorporating attitudes that divided the West, the key factor in regard to western violence and western values was western honor.[42]

Notions of honor crucially affected the way in which westerners shaped and regarded the chronic violence in their midst. The practice of aggressive, violent, self-defense embodied in the American social and legal doctrine of no duty to retreat provided an integral linchpin in the concept of western honor. In the nineteenth century, the West, along with America as a whole, made the transition from the English common law of homicide and self-defense, in which threatening situations of individual combat required flight or retreat, to the American and western idea of no duty to retreat.[43]

In 1877, the Indiana State Supreme Court spoke for the Midwest and West by intoning that "the tendency of the American mind seems to be

[40] Wallace Stegner, *The American West as Living Space* (Ann Arbor, 1987), 21–22. On California's open, mobile, expanding society, 1880–1920, see Walton Bean and James J. Rawls, *California: An Interpretive History* (1968; 4th ed., New York, 1983), chaps. 18–25; Richard B. Rice, William A. Bullough, and Richard J. Orsi, *The Elusive Eden: A New History of California* (New York, 1988), chaps. 16–18.

[41] Michael P. Malone and Richard W. Etulain, *The American West: A Twentieth-Century History* (Lincoln, 1989), chaps. 1–2, 4–6; Norman H. Clark, *Mill Town: A Social History of Everett, Washington, from Its Earliest Beginnings on the Shores of Puget Sound to the Tragic and Infamous Event Known as the Everett Massacre* (Seattle, 1970), 236–37. This is an example of the regenerative effect of secondary education in a violently incorporated city.

[42] Brown, *Strain of Violence*, 113–18; Brown, *No Duty to Retreat*, 88, 90–92, 97–98, 206–7n.

[43] Brown, *No Duty to Retreat*, chap. 1; see also Garrett Epps, "Any Which Way but Loose: Interpretive Strategies and Attitudes toward Violence in the Evolution of the Anglo-American 'Retreat Rule,'" *Law and Contemporary Problems* 55 (Winter 1992), 303–31.

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very strongly against the enforcement of any rule which requires a person to flee when assailed."[44] In effect, the Indiana court held that the English duty to retreat provided a legal rationale for cowardice and was, therefore, simply un-American—a viewpoint reflected by the noted civil libertarian, Justice Oliver Wendell Holmes, in his 1921 U. S. Supreme Court opinion upholding the doctrine of no duty to retreat. This Supreme Court decision reversed the murder conviction of a Texan who, far from retreating, stood his ground and fatally shot a knife-wielding assailant.[45] In Texas, Holmes wrote with approval in a private letter, "a man is not born to run away."[46]

An Englishman who served as a cowboy on a long Lone Star State 1880s cattle drive directly observed the no duty to retreat society of Texas and the Old West. For readers of the elite British *Cornhill Magazine* this anonymous Englishman described the elements of what he termed the "somewhat primitive code of honour" of his Texas cowboy mates on the cattle drive: honesty, courage, sensitive pride, stoic indifference to pain, and, above all, a violent vengefulness against insult—in other words, he gave a perfect description of the commonly called Code of the West.[47] With the cowboy, the Englishman noted, one saw "frequently not a word and a blow but a word and a bullet."[48] Among insults none incited more resentment, he wrote, than "a certain form of imprecation which, whilst calling down divine punishment on the person addressed, casts an unwarrantable imputation on the character of his immediate female ancestor. The use of such an expression is immediately followed by the production of six-shooters . . . and the death of one or the other of the parties to the dispute."[49] On this 1880s Texas cattle drive, indeed, there occurred a fatal gunfight precipitated by the forbidden expression.

The gunfight on the Texas cattle drive demonstrated what Harvard law school professor, Joseph H. Beale, Jr., denounced in 1903 as the "hip-pocket ethics" of the Southwest.[50] By that term Beale referred to the hip pocket (or the hip holster) in which the westerner often carried his pistol.

[44] *Runyan v. State,* 57 Ind. 80 (1877).

[45] *Brown v. United States,* 256 U. S. 335 (1921).

[46] Mark DeWolfe Howe, ed., *Holmes-Laski Letters: The Correspondence of Mr. Justice Holmes and Harold J. Laski, 1916–1935* (Cambridge, MA, 1953), vol. 1, 335–36.

[47] "The Cow-Boy at Home," *Cornhill Magazine* 54 (September 1886): 295, 301–4; Joseph Nimmo, Jr., "The American Cow-Boy," *Harper's New Monthly Magazine* 73 (November 1886): 890–91.

[48] "Cow-Boy at Home," 301.

[49] Ibid., 301–2.

[50] Joseph H. Beale, Jr., "Retreat from a Murderous Assault," *Harvard Law Review* 16 (1902–03): 580–81.

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Hip-pocket ethics turned on issues of cowardice and honor that Beale held had wrongly supplanted the greater value of reverence for life. Beale passionately endorsed the traditional English common law principle of the duty to retreat. He fervently believed that the contrary concept of no duty to retreat strongly abetted the evil ethics of the hip pocket.[51]

Much earlier, in 1889, Rudyard Kipling, on a tour across America, found what he called the "etiquette of the hip-pocket" well established in the West.[52] Hip-pocket ethics appalled Kipling, as they did Joseph Beale, but violence prone westerners felt no such dismay. Instead, they favored what a leading western writer, Eugene Manlove Rhodes, characterized as the "barbarous code of the fighting man."[53] In his book, *Southern Honor*, Bertram Wyatt-Brown defines honor in terms that applied to the West as well as the South: namely, "the cluster of ethical rules"—a code—"most readily found in societies of small communities, by which judgments of behavior are ratified by community consensus."[54] Thus, the "code of the fighting man" intertwined with the broader Code of the West and even broader notions of western honor. No mean gun handler but never a gunfighter, Eugene Manlove Rhodes hobnobbed with noted outlaws and shootists of the Southwest in the late nineteenth and early twentieth centuries. He had a deep understanding of those who lived, he wrote, by the following six points of the "code of the fighting man":

—Never rise up from your rival's table to make war on him.
—Never fight your rival if encountered on neutral ground or in the course of a lawful or peaceable errand.
—Fight only upon a "fresh offense, openly given."
—"You must not smile and shoot."
—"You must not shoot an unarmed" rival.
—"You must not ambush your enemy" unless your enemy is pursuing you, for your enemy is thus "presumed" to be on "guard and sufficiently warned" or any ambush of yours.[55]

[51] Ibid.; Brown, *No Duty to Retreat*, 24–26.

[52] Arrell Morgan Gibson, ed., *American Notes: Rudyard Kipling's West* (Norman, 1981), 53.

[53] Eugene Manlove Rhodes, *West Is West* (New York, 1917), 12–13.

[54] Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (New York, 1982), xv. One of the greatest needs in western history is a full-fledged study of western honor similar in scope to Wyatt-Brown's book on southern honor and Gerald F. Linderman's study of Civil War honor, *Embattled Courage: The Experience of Combat in the American Civil War* (New York, 1987). An important step in this direction is Ramón A. Gutiérrez, *When Jesus Came, the Corn Mothers Went Away: Marriage, Sexuality, and Power in New Mexico, 1500–1846* (Stanford, 1991), with its attention to the emphasis on honor among Latinos. A comprehensive treatment of western honor would include not just Anglos and Latinos but also Indians, blacks, Asians, and women, as well as men.

[55] Rhodes, *West Is West*, 12–13.

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Although sometimes ignored, the "code of the fighting man" enjoyed wide support in the West, as in the case of the Tonto Basin War.[56]

Susan L. Johnson of the University of Michigan recently called for the regendering of western history fully to include women.[57] Currently other scholars direct this same process toward the subject of violence. For example, Melody Graulich and David Peterson have contributed articles on physically-abused women, Anne M. Butler has written on African-American women in western prisons, and David Alan Johnson is well along on a book on the infamous California Gold Rush lynching of a woman called Juanita.[58] Of course, women in the West figured prominently in the regional conception of honor. As the 1880s English visitor stressed in his account of the cowboy code of honor, Texans venerated motherhood, and, when insult denied its purity, the result could be death. Yet, genteel but strong-minded women, like writer and artist Mary Hallock Foote, resented the paternalistic way in which men attempted to wall out respectable women from any direct knowledge of the violent ways of the masculine West.[59]

In fact, women—while seldom directly involved in the violence of the Western Civil War of Incorporation—took sides in that conflict. Two novels written by women galvanized by the 1890s Coeur d'Alene War in the far northern panhandle of Idaho illustrate this point. This war, one of incorporating mining companies versus resistant workers, included horrendous acts of property destruction by labor unionists. The incorporating side retaliated with iron-fisted oppression that culminated in the roundup of insurgents into local concentration camps known as "bull-pens."[60]

[56] Robert M. Utley, *High Noon in Lincoln: Violence on the Western Frontier* (Albuquerque, 1987), 20, notes that the Code of the West (including, in effect, the "code of the fighting man") significantly governed behavior in the West. In a nationally-televised address in 1953, President Dwight D. Eisenhower praised the western code of his boyhood hometown hero, Wild Bill Hickok, according to which, Eisenhower said, "you could get away with almost anything, as long as the bullet was in front." *New York Times*, 24 November 1953, p. 1, col. 2, and p. 20, cols. 2–5. See also Kent Ladd Steckmesser, *The Western Hero in History and Legend* (Norman, 1965), 165.

[57] Susan L. Johnson, "The Significance of Gender in the History of the American West." Paper presented at the research conference, "A New Significance: Re-Envisioning the History of the American West," 31 July 1992, Utah State University, Logan, UT.

[58] Melody Graulich, "Violence against Women: Power Dynamics in the Literature of the Western Family," in *The Women's West*, ed. Susan Armitage and Elizabeth Jameson (Norman, 1987), 111–25; David Peterson, "Wife Beating: An American Tradition," *Journal of Interdisciplinary History* 23 (Summer 1992): 97–118. Peterson emphasizes Lane County, Oregon, as a case study. Anne M. Butler, "Still in Chains: Black Women in Western Prisons, 1865–1910," *Western Historical Quarterly* 20 (February 1989): 18–35.

[59] Mary Hallock Foote, *A Victorian Gentlewoman in the Far West: The Reminiscences of Mary Hallock Foote*, ed. Rodman W. Paul (San Marino, CA, 1972), 177.

[60] Smith, *Coeur d'Alene Mining War*; Stanley S. Phipps, *From Bull Pen to Bargaining Table: The Tumultuous Struggle of the Coeur d'Alenes Miners for the Right to Organize, 1887–1942* (New York, 1988).

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Mary Hallock Foote and May Arkwright Hutton presented their own fictional but antagonistic accounts of the war. With a former bull-pen inmate for a husband, Hutton published in 1900 her satirical anti-incorporation novel entitled *The Coeur d'Alenes or A Tale of the Modern Inquisition in Idaho*.[61] Hutton's barely disguised fiction may have been written, partly, as a reply to Mary Hallock Foote's novel, *Coeur d'Alene*, which appeared in 1894.[62] Just as ardent and ideological as Hutton, Foote, a leading writer of her day married to a Yale trained western mining engineer, produced a pro-incorporation novel replete with conservative heroism and labor villainy. Both novels rank as polemical contributions to the literary history of the Western Civil War of Incorporation.

The principle of no duty to retreat and what Joseph H. Beale, Jr. called hip-pocket ethics governed the supreme mythic moment of the legend of the West, as depicted by Owen Wister in his 1902 novel, *The Virginian*.[63] Thus, in the climactic passage of Wister's book, a sunset showdown pitted the villain of the story, Trampas, against the heroic local cowboy known as "the Virginian." In a nearby hotel room, the Virginian's betrothed anxiously awaited the outcome of the gun battle. As the sundown glowed over the Wyoming peaks to the west, Trampas fired first, but the hero's flawless aim left the bad man dying in the dust. Following a wedding the next day, hero and sweetheart rode away to their honeymoon in the mountains.[64]

No single item had a greater impact on the western myth in print and film than Wister's book, but few general readers recognize the relationship of the novel's secondary plot to what I have discussed as the Western Civil War of Incorporation. Aside from its primary story line—the romantic tale of hero and sweetheart—the secondary plot of the book featured a fictional, but realistic (although biased) portrayal of the 1892 Johnson County War in Wyoming. A key episode in the Western Civil War of Incorporation, the Johnson County War proved to be only one event in a long conflict throughout much of Wyoming from the late 1880s to 1901. The big cattlemen who sought to rule the rangeland directed the incorporating side. Nesters, small ranchers, and rustlers lined up as their adversaries. In 1892, cattlemen vigilantes attacked Johnson County, an anti-incorporation stronghold. Behind the cattle kings stood the Republican grandees of Wyoming: Governor Amos Barber, Senators Joseph M. Carey and Francis E. Warren, and, ultimately, the president of the United States, Benjamin Harrison, who, at the

[61] May Arkwright Hutton, *The Coeur d'Alenes or A Tale of the Modern Inquisition in Idaho* (Wallace, ID, 1900).

[62] Mary Hallock Foote, *Coeur d'Alene* (Boston, 1894).

[63] Owen Wister, *The Virginian: A Horseman of the Plains* (New York, 1902). Wister dedicated the book to his good friend, President Theodore Roosevelt.

[64] Ibid., 478–82.

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behest of the two senators, intervened on behalf of the vigilantes. A grass-roots uprising of Johnson Countians repelled the vigilantes in 1892, but their cohorts throughout Wyoming capitulated to the big ranchers who turned to incorporation gunfighter Tom Horn. Horn's bounty hunting kills from ambush succeeded where the vigilantes had failed, and by 1901 the cattle kings had shattered the rustler force that plagued them.[65]

Owen Wister, an ultra conservative Republican, wove the incorporating big cattlemen's version of the Johnson County War into his novel.[66] On Wister's pages, the leading ranchers and their loyal cowboys, including the Virginian, rode against rustlers. Just as Wister's friends, the Wyoming ranch tycoons, had resorted to vigilantism in the Johnson County War, so, with the lynching of two rustlers, did his fictional characters in *The Virginian*.[67] The heroic Virginian was, in effect, an incorporation gunfighter; the villainous Trampas, both a bandit and a resister gunfighter. Wister modeled Trampas on Black Henry Smith, a gunfighting outlaw member of the Red Sash gang, a major target of the big ranchers in the Johnson County War. Wister once met Black Henry Smith, and although their encounter remained a routine, peaceable one, Wister—a robust eastern aristocrat not lacking in physical courage—strongly sensed evil and menace in Smith.[68]

A prominent scholarly view holds that popular Western fiction in print and film dramatizes a deep formula in which the gunfighting hero mediates between civilization and savagery or, in similar terms, between culture and nature or order and chaos.[69] In this deep formula, the hero—typified by the Virginian as well as, to name only two more, the heroes of the films *High Noon* (1952) and *Shane* (1953)—functions as a transitional figure: one who reluctantly, but necessarily, employs the violence of the Old West to end the rampant disorder of the early days and to usher in the peaceful, civilized times of the New West.[70]

[65] Helena Huntington Smith, *The War on Powder River* (New York, 1966); Lewis L. Gould, *Wyoming: A Political History, 1868–1896* (New Haven, 1968), chap. 6; Dean F. Krakel, *The Saga of Tom Horn: The Story of a Cattlemen's War* (Laramie, 1954), 3–55; Lauran Paine, *Tom Horn: Man of the West* (London, 1962), 144–47, 152–57.

[66] Darwin Payne, *Owen Wister: Chronicler of the West, Gentleman of the East* (Dallas, 1985), 146–47, 204–5, 267–68.

[67] Ibid., 125–27, 140, for Wister's friendship with the cattle kings. Wister, *Virginian*, chaps. 30–31, for the lynching episode.

[68] Payne, *Owen Wister*, 120, 125, 206.

[69] John G. Cawelti, *The Six-Gun Mystique* (1971; 2d ed., Bowling Green, OH, 1984); Christine Bold, *Selling the Wild West: Popular Western Fiction, 1860 to 1960* (Bloomington, IN, 1987). Departing from the focus on the deep formula is the gendered interpretation by Jane Tompkins, *West of Everything: The Inner Life of Westerns* (New York, 1992).

[70] *High Noon* (1952) was directed by Fred Zinneman. *Shane* (1953) was directed by George Stevens. *High Noon* is the favorite film of the 1992 Democratic nominee, Governor Bill Clinton; see *New York Times*, national edition, 12 July 1992, sec. 2, p. 19, col. 3.

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Yet, the reality of the Western Civil War of Incorporation produced a conflict—a cognitive split—in the mythology of the western hero. The powerful winning side in the Western Civil War of Incorporation bred a socially conservative myth of the hero—for example, the fictional Virginian and the mythic versions of the real life Wild Bill Hickok and Wyatt Earp.[71] The anti-incorporating side in the regional civil war generated a dissident social bandit myth, in which real life outlaws like Billy the Kid, Jesse James, Joaquin Murrieta, and Gregorio Cortez assumed the heroic stature.[72]

Generally, the socially conservative myth of the western hero dominates (but not by much) in our culture—probably because it confronts and engages our fear of anarchy. Yet, the mystique of the losing side in the Western Civil War of Incorporation attracts both the thought and the emotion of many Americans. Michael Cimino's powerful 1980 film, *Heaven's Gate,* offered an anti-incorporation fictionalization of the Johnson County War, as did Frederick Manfred's fine 1957 novel, *Riders of Judgment.*[73] Indeed, both the conservative mythic hero and the insurgent social bandit hero retain their widespread appeal within our society. These contradictory versions of the Western myth endure because Americans are deeply ambivalent about established power and dissident protest.[74]

[71] A mythic Hickok was played by Gary Cooper in *The Plainsman* (1936), a film directed by Cecil B. DeMille. The prototypical mythic portrayal of Earp is the undependable biography by Stuart N. Lake, *Wyatt Earp: Frontier Marshal* (Boston, 1931). A cogent study of the late-nineteenth-century conservative overtones of the heroic image of George A. Custer appears in Richard Slotkin, *The Fatal Environment: The Myth of the Frontier in the Age of Industrialization, 1800–1890* (New York, 1985). A monumental new work is Richard Slotkin, *Gunfighter Nation: The Frontier Myth in Twentieth-Century America* (New York, 1992).

[72] Utley, *Billy the Kid*; Tatum, *Inventing Billy the Kid*; Settle, *Jesse James*; Thelen, *Paths of Resistance,* 70–77. For the mythical Murrieta, see Yellow Bird (John Rollin Ridge), *The Life and Adventures of Joaquin Murieta* (1854; reprint, Norman, 1955); for a realistic treatment, see Frank F. Latta, *Joaquin Murrieta and His Horse Gangs* (Santa Cruz, 1980); on Cortez, see Américo Paredes, *"With His Pistol in His Hand": A Border Ballad and Its Hero* (Austin, 1958).

[73] Frederick Manfred, *Riders of Judgment* (New York, 1957).

[74] The relationship between the Western Civil War of Incorporation and the cognitive split in the mythology of the western hero is treated more fully in Richard Maxwell Brown, "Desperadoes and Lawmen: The Folk Hero," *Media Studies Journal* 6 (Winter 1992): 151–61.

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