Pax Vigilanticus: Vigilantism, Order, and Law in the Nineteenth Century American West

by

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Class of 2009
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Acknowledgments

The task of researching, writing, and editing this thesis was a tremendous test of my intellectual curiosity, my patience, and my willpower. It would not have been possible without the advice and support of countless people whom I have had the pleasure of knowing during my time at Wesleyan. I could probably write another 150+ pages about the feat of collective action or norm entrepreneurship that mobilized people, however slightly, in helping me undertake this feat, but I fear that nobody at Wesleyan nor Mancur Olson himself would be able to fully explain what I could convey. For academic convenience, I’ll chalk it up to luck that I’ve been blessed with a supportive community of friends, family, and teachers.

My thesis advisor, Richard Adelstein, helped me transform a short paper on constitutional vigilantism into larger social theory I am proud to call my own. Under his guidance, I not only managed to maintain a decent grasp of institutional economics (although I still do not understand “rent” and probably never will) but learned to write forcefully and with direction. Without his comments and criticisms I would have been entirely lost, and I am grateful for his counsel and good humor. I am also indebted to Gil Skillman, whose senior colloquium on game theory and the public sphere in the Fall of 2008 provided significant insight into approaching this topic. I have benefited greatly in my intellectual development at Wesleyan from my experiences with Giulio Gallarotti, John Finn, Gabe Paquette, and Cecilia Miller, who continually challenged me to think critically and creatively. I have never had better teachers in my entire life.

My classmates in the College of Social Studies and friend at Wesleyan are the foundation of this thesis. Chris Sarma, Chris Choi, Benedict Bernstein, Ari Edmundsun, and Erik Underwood all substantially contributed to the formulation of this work, despite the fact that the “Gentlemen’s Club” that occupied the fourth floor library in the John Andrus Center for Public Affairs was a notorious black hole for productive academic work. My friends outside the College have been more instrumental in completing this project than they will ever know, providing both positive encouragement and much-needed study breaks. Nick Mirsky, Nick Moutinho, Kyle Nuland, Brendan Cleary, Ben Kaplan, Chris Goy, Alex Early, and Cesar Medina deserve the most credit, although it would be impossible for me to list the people who made this possible.

My grandparents Morton and Phyllis, the “titans of academia” in our family, have consistently been a source intellectual insight and academic pragmatism. Their advice and criticism prevented this piece from spiraling into some unintelligible mass of post-modern jargon, and without their suggestion that I glance at Anarchy, State, and Utopia I would still be fixated on some lukewarm phenomenological explanation of vigilantism. I hope this work makes them proud.

For my parents, Jon and Inez, there really are no words to describe the amount of encouragement, support, and much-needed perspective they have continually bestowed upon me during my life. This thesis is dedicated, with love, to them.
Who Watches The Watchmen?

Despite my immersion in sociology, political theory, economics, and philosophy during my time in the College of Social Studies, this thesis was primarily inspired by my childhood interest in comic book vigilantes. The popular conception of vigilantism is of individual citizens “taking the law into their own hands” where conventional law enforcement is perceived to be absent or ineffective. This public perception stems primarily from three genres in contemporary media: the Western in film, literature, radio, and television that centers on gunfighters of the “Wild, Wild West;” “vigilante cops” in television and film (best exemplified by Clint Eastwood in the Dirty Harry movies); and the costumed crime-fighters in the comic book genre. As an avid reader and collector of comic books as a child, the costumed vigilantism that filled the pages of monthly issues and graphic novels always held interest, and formed the creative basis for examining vigilantism as a historical, political, and social occurrence.

Within the field of comics and graphic novels in particular, the term “vigilante” is typically used to refer to a costumed adventurer who exhibits the characteristics of an anti-hero, or “a good guy who does bad things for the right reasons.”¹ In typical dichotomy between good and evil that characterizes the classic superhero stories of the 1940s and 1950s, the costumed vigilante lies somewhere in between the two, using violent methods and constantly forced to escape pursuit from

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regular law enforcement rather than enjoying some level of free reign. This type of hero is often cast in contrast to images of heroes who possess a strong moral compass, the most notable examples being DC Comics’ Superman or Marvel Comics’ Captain America. Superman is the archetypal moral hero of the comic book, often referred to as a “Boy Scout.” He cannot be corrupted by the lure of power, money, or fame, and despite his incredible powers rarely uses deadly force. In contrast, Batman is the original anti-hero of the comic book genre, employing illegal and morally dubious tactics (like torture and intrusive surveillance), instilling fear in his enemies, and displaying a strong willingness to work outside the law to capture criminals. “Batman,” a friend of mine once commented, “is like a terrorist who fights criminals.”

The character Rorschach embodies the psychological profile of the vigilante, appearing in celebrated famous graphic novel *Watchmen* (1987), published by DC Comics in twelve issues between 1986 and 1987. I first read *Watchmen* in the summer of 2005, as a gift from an English teacher upon graduating from high school. I was fascinated by Rorschach who, despite his successful involvement in fighting criminal activity in a fictional New York City, lacks special abilities and is presented to the reader as completely out of his mind. The vast majority of mainstream comic heroes possess extraordinary skills that are essential in crime-fighting; even Batman had “batarangs” and a Batmobile bristling with high-tech armaments. In contrast, Rorschach has no special powers or abilities: he possesses no altered genetic structure, alien technology, or mystical artifact that allows him to move faster than a

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3 Knowlton and Spivey, “Anti-Heroism in the Continuum of Good and Evil,” 55.
speeding bullet or makes him impervious to harm. He is a normal citizen named Walter Kovacs; instead of bouncing off his chest, bullets go straight through and hurt him like anyone else. Concurrently, Rorschach’s motivation to fight crime comes not from a perceived moral responsibility to use some remarkable skills or abilities for the public good (a la Marvel Comic’s Spider-Man, whose mantra is “with great power comes great responsibility”). Instead, vigilantes like Rorschach are motivated psychologically by a deep-seated disdain for criminal lawlessness and disgust for the degradation of society:

This city is afraid of me. I have seen its true face. The streets are extended gutters and the gutters are full of blood and when the drains finally scab over, all the vermin will drown. The accumulated filth of all their sex and murder will foam up about their waists and all the whores and politicians will look up and shout "Save us!"... and I’ll whisper “no”... 

The psychological impetus behind Rorschach’s vigilantism is emphasized in Watchmen by his presentation as mentally unsound: he refers to his costume – a white mask with moving black spots like the Rorschach inkblot test – as his “face.” While describing his butchering the German shepherds of multiple rapist Gerald Grice after discovering that Grice fed the victim to his dogs, Rorschach tells police psychiatrists: “Shock of impact ran along my arm... Jet warmth splattered on chest, like hot faucet...It was [Walter] Kovacs who close his eyes...it was Rorschach who opened them again.” Rorschach’s tactics against underworld thugs are violent and merciless; he breaks a man’s fingers one after another to extract information about a murder from him, and while imprisoned scalds another prisoner with a pan of cooking oil,

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4 David Gibbons and Alan Moore, Watchmen no. 1 (DC Comics, 1986), 1.
5 Dave Gibbons and Alan Moore, Watchmen no. 6 (DC Comics, 1986), 21.
proclaiming "none of you understand… I'm not locked up in here with you. You're locked up in here with me."\(^6\) Batman, traumatized at a young age by witnessing the cold-blooded murder of his parents, appears almost as sociopath. As Batman’s story unfolds, his alter ego as millionaire playboy Bruce Wayne appearing increasingly false, with his identity as Batman indicative of his true personality. The masked vigilante of the comic book genre, despite the positive effects of his crime-fighting activities on a larger society, is an outlaw, perceived as a sociopath and a menace by regular law enforcement.

But this thesis is not about comic books or some *Pax Batmanicus*. While the fictional costumed crime-fighter like Batman or Rorschach provides an interesting psychological element to the perception of vigilantism as individuals taking the law into their own hands, its theoretical applicability is limited to literary critique and sociological interpretation of comic books as a genre. However, I believe that the deeply psychological features of anti-hero vigilantes like Batman and Rorschach reveal something unique about vigilantism as an actual political and social phenomenon. Vigilantism is not confined to spaghetti Westerns and comic books: it is a real life occurrence, in which private individuals fight to uphold their way of life in when faced with a violent threat or crisis. My goal is not to discover what motivates people to put on a mask or spandex and prowl the streets at night. Rather, I want to show how the idea of vigilantism has practical application to conceptualizing the way people act to protect their way of life when they believe that the world is crumbling around them.

\(^{6}\) Ibid., 13.
Introduction

The Social Contract

In *A Decent, Orderly Lynching* (2004), historian Frederick Allen presents the idea of a *Pax Vigilanticus*, or a “vigilante peace.” Allen uses the term to describe a period of relative peace and calm in the Montana Territory of the United States of America during the 1870s, following the formation of a vigilance committee in 1864 in Virginia City to combat roadside robbers and bandits. The 1864 vigilance committee is considered to be both the deadliest instance of American vigilante justice as well as the most famous, gaining widespread notoriety throughout the nation and popularizing the term “vigilante” in the American lexicon. The phrase *Pax Vigilanticus* itself provokes interest because of its obvious attempt to tie vigilantism to the concepts of a *Pax Romana* (“The Roman peace”), *Pax Britannica* (“the British peace”), and *Pax Americana* (“the American peace”) describing ancient Rome, imperial Britain, and the United States after World War II. All three of these concepts share the same fundamental idea: a prevailing peace under a single hegemonic regime, which exercises its influence through military might, social and ideological power, and a critical place in a larger political economy. Allen’s invocation of the *Pax Vigilanticus* draws parallels between the period of relative peace and prosperity under the Montana vigilantes and that which prevailed under the hegemony of Rome, Britain, and the United States. Allen suggests the idea of vigilante hegemony: out of the violence and crime of the frontier came a unitary, powerful source of peace and

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prosperity with its own political, moral, and social character. The *Pax Vigilanticus* proposed by Allen was brought about by the reign of vigilance committees on the anarchical American frontier.

With this analogy and comic vigilantes in mind, my interest in vigilantism as a political and social phenomenon is best articulated in this question: *what does an understanding of vigilantism contribute to the idea of the spontaneous origins of governance?* The broader context of this thesis is an exploration of state formation based on the idea of governance emerging out of a condition of anarchy, primarily through *state of nature theory* and the idea of a *social contract*. I believe that vigilantism is an alternative route to voluntary, collective formation of a sovereign state to maintain law and order in the face of violence and conflict. In terms of political and social theory, I believe that vigilantism represents more than simply a reaction to crime and corruption, but an instinctual, psychological push to restore the status quo of a society disrupted by some crisis or exigency. In the face of crime, corruption, or a violent disruption of the social order, vigilance committees naturally emerge to fill the void. Vigilantism is a mode of state formation, and the *Pax Vigilanticus* is its consequence.

For the giants of classical social contract theory like Thomas Hobbes (1651) and John Locke (1689) and modern political theories of the evolution of governance like that of Robert Nozick (1974), civil government springs forth from the *state of nature*, a pre-social anarchic state in which individual action is at its peak. Thomas Hobbes describes the absence of civil government as a *bellum omnium contra omnes*,
or the “warre of every man against every man.” For Hobbes, the state of nature is apolitical and asocial, and since each individual is free of social obligations or preexisting institutions they act solely in their own pragmatic self interest. All men are effectively equal, and Right of Nature (Jus Naturale) compels all men to use their own power for the same ends, the preservation of life “and consequently, doing any thing, which in his own Judgment, and Reason, he shall conceive to be the aptest means thereunto.” The result is perpetual violence. Eventually, individuals acting rationally and exercising their natural faculties of reason instrumentally to achieve their goal of safety inevitably enter into some type of social contract under which they surrender their right to self-preservation to a larger coercive body. The result is the sovereign state, famously depicted on the front cover of The Leviathan (1651) as a single, independent entity that binds its constituent members through absolute force.

While Hobbes provides the first detailed treatment of the social contract in modern political theory (with the exception of seventeenth century Dutch jurist Hugo Grotius, who introduced the idea of natural rights as the basis for society in On the Law of War and Peace (1625)), Locke and Nozick provide a more convincing account of a theoretical state of nature, while still retaining the central notion that persons in an anarchic state of nature would willingly come together to form a state, primarily in their rejection of the Hobbesian view of a radically asocial state of nature. Locke believed that individuals in a state of nature would have stronger moral limits on their action than accepted by Hobbes; individuals could appeal to “Laws of Nature” for acceptable behavior, as "the state of Nature has a law of Nature to govern

9 Ibid., 189.
Locke believes that reason teaches that "no one ought to harm another in his life, health, liberty or possessions," and that transgressions of these natural laws may be justly punished. As such, individuals in Locke’s state of nature exist in a state of perfect liberty rather than perpetual war: since individuals are essentially equal in their ability to coerce others, they conclude not to harm one another by appealing to the Law of Nature through reason.11 The state of nature for Locke – places where the law does not exist or simply cannot be effectively enforced – is not an automatic sphere of violence, just one of unlimited agency. However, individuals in the state of nature still fear coercion and violence, and thus enter into a compact to end the state of nature and establish a civil government.12

Robert Nozick’s treatment of the evolution of governance in Anarchy, State, and Utopia (1974) replicates Locke’s state of nature theory with its emphasis on preexisting rights or “side constraints” under anarchy. Nozick presents side constraints as limits upon actions that “reflect the underlying principles that individuals are ends and not merely means; they may not be sacrificed or used for achieving other ends without their consent … individuals are inviolable.”13 In contrast to Locke’s social contract, Nozick emphasizes an “invisible hand” or market-based explanation: a minimal state or “night-watchmen state ” limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on "without interfering with the business of its constituent members will evolve out of an anarchical situation. A rational response to conflict in the state of nature is to form

10 John Locke, Two Treatises of Government (1689) (Cambridge Texts in the History of Political Thought) (Cambridge, 1988),271
11 Ibid., 271-272.
12 Ibid., 276.
mutual-protection associations, which will protect and enforce the rights of its members. According to Nozick, the logic of the situation dictates that entrepreneurs will go into the business of selling protective services and eventually a dominant protective association will emerge in a given geographical area. This is something "very much resembling a minimal state," evolving out of a market demand for protection. The basis for state formation, as defined by Hobbes, Locke, and Nozick, is relatively simple: under violent conditions of anarchy in the state of nature, individuals will cooperate and form coercive states for their own protection. Social contract theory involving a state of nature is the thought experiment behind the origins of government.

The main problem with a social contract theory based on the state of nature is that it remains just that: a theory or thought experiment. This problem is best exemplified by economist Murray Rothbard’s critique of the Nozickian model of state formation in his article “Robert Nozick and the Immaculate Conception of the State” (1977):

It is highly relevant to see whether Nozick’s ingenious logical construction has ever indeed occurred in historical reality: namely, whether any State, or most of all States, have in fact evolved in the Nozickian Manner. It is a grave defect in itself, when discussing an institution all too well grounded in historical reality that Nozick has failed to make a single mention or reference to the history of actual States.15

The historical applicability of state of nature theory encounters two particular problems. First, it is difficult to identify historical period under which there exists a

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relative lack of formal government that can be subject scrutiny as an anarchical state of nature. Second, even in historical conditions where governance institutions are entirely absent and individuals are left on their own, no historical situation would reflect the completely apolitical and asocial nature of the state of nature imagined by Hobbes. Locke and Nozick certainly present the “law of nature” or “side constraints” as binding rules (like not doing harm to oneself or refraining from harming another in “life, health, liberty, and possessions”\textsuperscript{16}), but these rules are conceived as virtually deontological “natural laws” that operate irregardless of the social and political evolution of human society throughout time; they are presented as ahistorical, transcendental rules, derived through man’s rational capacities. While the Lockean and Nozickian conceptions of the anarchic state of nature are significantly more convincing than that of Hobbes because of this emphasis on preexisting moral limits, they do not account for how states emerge in a \textit{specific historical epoch}, in relation to ingrained social norms, mores, and practices of a given region, identity group, or social order. I believe that vigilantism is a type of state formation sensitive to both ahistorical forces \textit{and} prevailing historical norms, one that reconciles the idea of a theoretical state of nature with historical actuality.

I propose that vigilantism as spontaneous governance, based on state of nature theory, has a historical basis in the parallel institutional development of \textit{mutual protection agencies} and \textit{vigilance committees} on the expanding American frontier during the nineteenth century. The “wild, wild West” of the American frontier during the nineteenth century, stretching from the Mississippi River to the Pacific Ocean, was a zone of lawlessness where the formal institutions of U.S. federal government

\footnote{Nozick, \textit{Anarchy, State, and Utopia}, 10.}
were either absent of completely ineffective in regulating violence, conflict, and private coercion by frontier settlers. To deal with frontier lawlessness, settlers formed frontier mutual protection agencies to protect individual rights to life, liberty, and property. The formation of mutual protection agencies on the frontier is a combination of the Lockean and Nozickian treatments of state formation out of the state of nature, influenced by both market demand for governance and formed through collective action in the tradition of the social contract. The natural laws and transcendental side constraints discussed by Locke and Rousseau take on a different form in the evolution of frontier governances: instead of the law of nature, *economic logic* underpins the rational behavior of individuals on the frontier, while the natural rights concerning entitlements that Nozick outlines in *Anarchy, State, and Utopia* (1974) are based on microeconomic principles of scarcity, methodological individualism, and rationality. There are two fundamental principles that are considered basic, ahistorical rules that shape human action: 1) individuals make decisions by comparing marginal benefits with marginal costs in order to maximize individual well-being, and 2) those individuals only enter into voluntary trades and agreements if they expect positive rewards. Vigilance committees are not exempt from this economic logic in their development, but their institutional structure is radically different from that of frontier mutual protection agencies, reflecting a focus on historical norms and rules that govern the very fabric of the nineteenth century social order.

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The major focus of this study is a *comparative institutional analysis* of the mutual protection agency and the vigilance committee. Chapter I will explore the conditions of lawlessness on the frontier that make possible a theory of spontaneous governance emerging out of the state of nature. I will examine both the presence of formal coercive organs on the frontier and the nature of informal social and legal norms that shaped individual behavior in the absence of effective government. The underlying social norms of American society during the nineteenth century reflect a very pervasive system of economic logic, embodied both in the wealth-maximizing behavior of frontier settlers in the process of westward movement and the sanctity of principles of private property and contract in the American legal order. As a result, the nature of the “war of all against all” of the American frontier is based in competition for scarce resources while the prevailing side constraints are also economic in basis.

With these conditions of lawlessness and underlying social and economic norms of westward expansion established, Chapter II will present an economic view of the classical social contract on the frontier, combining Nozick’s market-based theory with Locke’s vision of the social contract into a coherent economic model of a *Coaseian social contract*. This analysis will focus on the institutional development of mutual protection agencies. I will begin with an examination for three types of frontier mutual protection agencies – claims clubs, mining camps, and cattlemen’s associations – and an analysis of their common institutional features. The economic logic of maximizing production and other wealth-accumulating activities results in a firm-like organization constituted through collective action. The frontier mutual
protection agency represents an answer to the problem of the historical applicability of the social contract posed by Rothbard: their formation, organization, and functions are entirely based in economic logic and principles that are the equivalent of ahistorical, deontological side constraints.

Chapter III will consist of a comparative institutional analysis of two major vigilance movements on the frontier: the San Francisco vigilance committees of 1851 and 1856, and the Montana vigilance committees of 1864 and the 1880s. Using the history of these two movements, I will develop an institutional model of the vigilance committee based on the idea of a “stationary bandit” proposed by Mancur Olson in Power and Prosperity (2000). Despite its foundations in the same economic principles of competition for scarce resources and wealth-maximizing, the stationary bandit is distinct from the Coaseian social contract as an authoritarian example of state formation, exercising coercion and tax theft to maintain itself rather than being formulated through voluntary collective action. However, the historical behavior of vigilance committees poses problems for a purely economic model of the stationary bandit, suggesting that there is a purely non-economic or historically-based social paradigm for why vigilance committees form, organize, and act the way they do. The resulting institutional model is a vigilante strain of the stationary bandit.

Chapter IV will provide a theory of vigilantism that serves as a historically-situated normative supplement to the ahistorical economic principles that produced parallel manifestations of the Coaseian social contract and the Olsonian stationary bandit. This explanation will emphasize the role of vigilance committees, not simply as units of law enforcement reacting to violent competition for resources, but agents
of *norm enforcement* reacting to perceived violations of social rules. I will develop a
definition and theory of *neovigilanitism* as a reaction to social instability rather than
coercive violence. Drawing on themes from sociology, philosophy, and psychology, I
will present the saliency of this model in the context of the larger history of vigilance
committees in the American frontier, including its manifestation in the Ku Klux Klan
after the Civil War. This model will address the nature of norm enforcement, social
crises, and the manner in which they influence the vigilante strain of stationary
bandit.

The final goal of my historical exploration of mutual protection agencies and
vigilance committees in the lawless American West is to present a new conception of
spontaneous governance, emerging from virtual chaos, which can be reconciled with
norms of rights, justice, community, and social relations within a given historical
epoch. I will show that the formation of the vigilance committee is necessarily
reactive to the *prevailing sociopolitical order at that point in history*, representing not
simply a reaction to the temporal or geographical lack of *government* order, but the
perceived lack of *any social order*. It is a reaction to *anomie*, to a vast social crisis,
and to feelings of dread, fear, and despair that emerge in the face of any severe social
crisis. There are some historical examples, like the formation of Hamas in the Middle
East during the first *intifada* in Israel that are available as a general contrast.

Vigilantism represents a form of spontaneous government that is deeply
psychological and social rather than purely economic. It presents radical human
action motivated entirely by the need for order and stability in the face of a social
disruption.
I

The Conditions of Lawlessness on the American Frontier

I. Bellum Omnium Contra Omnes

The uniqueness of the vigilance committee as an institution stems from the particular conditions of the American West that constituted the “lawlessness” of the frontier. For our purposes, “lawlessness” will refer to the absence or inadequacy of formal state organs in controlling coercive activities and regulating society. As economic historians Terry Anderson and Peter Hill suggest, the history of the “wild” West was a relatively peaceful diorama of lawlessness in the vein of the Lockean and Nozickian state of nature, in contrast to popular images of a Hobbesian bellum omnium contra omnes (“warre of all against all”) of perpetual violence and bloodshed. The West was home to a variety of civilian institutions that maintained law and order and created relative social stability, ranging from mining camps in the mineral veins of the Pacific to claims clubs and land associations on the Great Plains. According to Anderson and Hill, the main impetus for spontaneous governance was primarily economic, rooted in the competition for resources: wherever competition for scarce resources escalated to violence and disorder like that of the Hobbesian bellum omnium contra omnes, institutional structures emerged to encourage cooperation rather than domination and conflict. In a “normal” society with established state institutions with a monopoly on coercive force, the costs of engaging in violent acts like theft or murder are prohibitively high, both based on the threat of punishment from a formal government and social exclusion as a “criminal” in a
society. As more people settled the frontier and local population densities rose in different regions, competition for valuable agricultural and mineral lands intensified. Thus, the high potential gains from engaging in coercion to acquire control of scarce resources made such violence more appealing, leading to an increase in coercion and generating a demand for governance organs. While the use of violence by private citizens was certainly more prevalent on the frontier than anywhere else in the United States during the nineteenth century, the true picture is one of a “not so wild, wild West” with community organizations evolving in the absence of the federal government to counteract violence and maintain a stable social order.

There are several questions that must be answered before we can begin to draw an effective contrast between the vigilance committee and other mutual protection agencies (MPA) on the frontier. What were the particular conditions of lawlessness that called MPAs and vigilance committee into being? To what extent did the frontier lack formal law enforcement organs? In the absence of such organs, what specific natural rules or side constraints prevailed until governance institutions took hold? Which structures characterize an archetypal MPA, a term that in practice encompasses the claim club, the mining camp, and the cattleman’s association? In the process of answering these questions, I will show that mutual protection agencies and governance on the frontier generally follow a combination of anarcho-capitalist (or “market anarchist,” in economist David Friedman’s words)\(^\text{18}\) and constitutionalist models in their development, reflecting the fusion of the Nozickian and Lockean models of state formation. The initial starting point of individual rights and the

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distribution of material entitlements were certainly established prior to the formation of spontaneous governance organs on the frontier, both by the formal body of U.S. law and informal social norms. As such, most traditional functions of government were taken on by individuals possessing these private rights that were exchangeable in a market, and governance organs emerged in response to market demand for the definition, arbitration, and enforcement of such rights. After these institutions were constituted in response to market demand, frontier MPAs took on the structural characteristics and economically productive roles of constitutional organization, organized through voluntary collective action in the vein of the Lockean social contract. For our purposes, a constitutional organization is one that gives rise to a preferred set of outcomes that through a body of contractual rules and obligations, maximizing the benefits for its members.19

Acknowledgement of preexisting rights and norms on the American frontier lends value to an anarcho-capitalist model in contrast to classical social contractarian theories that occur in the state of nature, a problem which Anderson and Hill identify as problematic in effectively accounting for the origins of governance organs.20 For classic social contract theorists, collective action is the vehicle for the demarcation of specific rules and obligations that maintain any semblance of legitimacy outside of those basic moral side constraints that are ostensibly known to all through reason; it is the very process by which those initial rights of life, liberty, and property that are exchanged in a market are originally determined in the first place. Anderson and Hill

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emphasize that the basic rights and material entitlements to which individuals were subject on the frontier were already promulgated by a variety of sources, such as federal land policy, English common law, and customs of original acquisition. Collective action in the social-contractarian vein is secondary to the market model, employed in a market setting as formalized rules become necessary to achieve certain economic goals.

Robert Nozick’s *theory of entitlement* proves an interesting tool for describing the distribution and enforcement of property rights on the American frontier. Nozick defines entitlement as “justice in holdings,” the belief that one is deserving of some particular resource, benefit, or privilege. Nozick divides his theory of entitlement into three distinct areas: original acquisition of holdings (“the appropriation of unheld things”), justice in the transfer of holdings, and the rectification of unjust transfers. In the frontier, the original distribution of entitlements was determined by federal land policy and, in the event of squatting, informal rules of original acquisition. Justice in the transfer of holdings was determined by available governance bodies or by informal social norms. When competition for scarce resources increased and unjust transfers (theft, murder, and other crime) became more and more widespread and local courts and peace officers could not maintain order, the frontier MPA and vigilance committee emerged. Hence, the state of nature deployed by Locke and Nozick which “begins with fundamental general descriptions of morally permissible and impermissible actions” is an adequate description of the West.

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22 Ibid., 7.
I will address two major topics in this chapter. The first is the role of formal
government institutions in defining the conditions of lawlessness in the frontier. The
U.S. government was not *totally* absent from frontier life: the federal government
played a crucial part in surveying, dividing, and selling the public domain into private
plots, as well as encouraging people to emigrate west by building infrastructure
developments and altering land policy to accommodate the needs of settlers and
potential capitalists. The economic motives that drove the federal government to
courage settlement are clear from the history of westward expansion, and they
greatly influenced the way legitimate property rights were defined and distributed.
Finally, the government had some agents of justice on the frontier, primarily in the
form of courts and peace offices under the jurisdiction of territorial governments who
were charged with enforcing those entitlements rendered under the federal land
system. However, the extent to which these institutions effectively maintained law
and order was extremely limited.

The second topic will involve pervasive social, economic, and legal norms
that were both embodied by formal legal institutions and present on the frontier in
their absence. The settlers who populated the frontier landscape did not emerge from
a vacuum; they carried their values, ideals, and norms reflecting the way of into the
frontier wilderness. The primary focus in this section will be on norms of property,
contract, and the perceived role of the state in enforcing both, as well as the nature of
social relationships on the frontier. I will develop a definition of social norms
encompassing two types of closely related social norms – instrumental and expressive
norms – and illustrate how they were reflected in both the constitutional and legal
order of the United States and frontier settlers. Even in the complete absence of
government institutions, the presence of community customs and social conventions
regarding acceptable actions and behaviors influenced the behavior of frontier settler.
This discussion of norms will prove critical in my explication of vigilance committees
as agents of norm-enforcement in Chapter IV.

II. Go West, Young Man!

The westward expansion of the United States outside the boundaries of the
original thirteen colonies originally began at the end of the Revolutionary War,
motivated by the endless economic possibilities of the trans-Appalachian hinterland
and the prospect of immediately acquiring revenue from land sales to capitalist,
market-oriented agrarian farmers and investors. The federal government saw national
capitalist expansion in the post-Revolutionary War era as an inevitability based on
“impulses already abroad in the new nation – a restless mobility, a search for profit
through transforming a place and moving on, a tendency to see land as a
commodity.”23 At the end of Revolutionary War, there were 25,000 to 30,000 settlers
and frontiersmen living in the Allegheny Plateau,24 and with the signing of the Treaty
of Paris in 1783 Great Britain ceded the entirety of the Allegheny hinterland and its
inhabitants to the United States, constrained by the 31st parallel to the south, the 45th
parallel to the north, and the Mississippi River to the West. As part of the Treaty of
Paris, existing British property rights and contractual debts on the frontier were

23 Elliott West, “The American Frontier” in The Oxford History of the American West, eds. Clyde A.
Milner II, Carol A O’Conner, and Martha A. Sandweiss, (Oxford: Oxford University Press, 1994),
125.
protected, although they now fell under the administration of the fledgling American
government and the American legal order.

In the last decade of the eighteenth century, there was a steady trickle of
settlers into the frontier region as the population of the United States increased from
3.9 million in 1790 to 5.3 million in 1800; Frederic Paxson writes that the West was a rural economy developing “more markedly than elsewhere in the Union,” with vibrant farms and townships rapidly dotting the Kentucky and Tennessee landscapes.25 Congress hoped to sell the public domain to private citizens both encourage emigration and improvements on valuable land and as a source of revenue to relieve debts incurred during the Revolutionary War.26 Two significant acts extended Congress’ constitutional power of taxation over the new territories. The Land Ordinance of 1785 established the Public Land Survey System, through which Congress could survey and identify land parcels, particularly for titles and deeds of rural, wild or undeveloped land.27 The Northwest Ordinance in 1787 established a mandate for the creation of new territories once a population had reached 6,000, primarily to bring the newly-acquired western domain into a legal relationship with the federal government through which Congress could levy taxes on tracts of land.28

The Louisiana Purchase was also based in the commercial and economic interests of the infant United States. The flow of surplus crops from Ohio, Kentucky, and the Mississippi Territory were finding their way into eastern markets, and eastern

26 Ibid., 120.
28 Paxson, History of the American Frontier, 118.
farmers and land speculators were searching for new profitable agricultural opportunities for prosperity in the virgin lands. The most pressing goal to the federal government was securing the Mississippi River as an outlet for American commerce and trade. While the federal government had secured the right for American entrepreneurs to store goods for export to European markets on the Spanish-controlled Mississippi with Pinckney’s Treaty in 1795, American settlers and traders were often subject to bribery, extortion, or the confiscation of their wares by Spanish importers and traders. President Thomas Jefferson recognized the importance of the Mississippi River and control of the port at New Orleans, both to American economic development and foreign trade and as a jumping-off point to the rest of the frontier, and American control of the Louisiana territory became his administration’s top priority with the return of the Province of Louisiana from the Spain to the French (from whom they had received the territory in 1763). While his primary objective was to acquire the island on which New Orleans was situated and the surrounding area, Virginia Governor James Monroe and Minister to France Robert R. Livingston negotiated the sale of the whole province, from the Mississippi River to the Rocky Mountains, for $11.3 million.29

Following the Louisiana Purchase, western emigration rapidly increased. Land sales exploded after the War of 1812, with sales leaping from 14 thousand acres in 1813 to 5.11 million in 1819.30 Increased interest in Western land was partially a consequence of the neutralization of the threat of Native American agitation after the anti-American tribal confederation of Shawnee and Creek tribes was broken during

29 Ibid., 123.
30 Ibid., 221.
the War of 1812.\textsuperscript{31} The expulsion of the British from the Mississippi River valley and elimination of the Native American threat lowered the risk of settlement, inducing thousands of speculators and farmers to spread into the new markets of the Lake Plains and Prairie plains of the Midwest, where exceptional rainfall and soil content made wheat and corn production efficient and profitable.\textsuperscript{32}

The territorial holdings of the United States reached the Pacific Ocean by the middle of the nineteenth century, primarily under the presidency of James K. Polk which between 1845 and 1849 saw the annexation of Texas, the Mexican-American War and subsequent Mexican Cessation, and a near war with Britain over the Northwest. The vast wilderness extending from the Mississippi River to the Pacific coast was claimed primarily by Great Britain and Spain. The whole area, starting with the establishment of an American foothold in the Midwest through the Louisiana Purchase and the War of 1812, was contested by all three powers in the first half of the nineteenth century primarily because of the access to Asian markets afforded by control of the Pacific coast and overland trapping and trading routes.\textsuperscript{33} Gold was not yet a significant resource until the gold rush in 1848, but the Polk administration favored a policy of “manifest destiny,” a continuation of the capitalistic expansionary consciousness of Jefferson during the Louisiana Purchase, charged with “a more aggressive tone and nationalistic zeal.”\textsuperscript{34} The U.S. legally annexed Texas in December 1845. In the process, the Polk administration assumed that the British and

\textsuperscript{31} Merk, \textit{History of Westward Movement}, 162.
\textsuperscript{32} Ibid., 165.
\textsuperscript{33} Ibid., 252.
Mexican rights of possession (and all constituent land claims thereof) had ceased, allowing the federal government to reassume and redistribute old land titles amongst American settlers. The territory from the Rocky Mountains to the Pacific Ocean, held by Mexico at the beginning of the 1840s, was annexed by President Polk in 1846-1848 after being occupied and seized by the U.S. army during the Mexican War. Napoleon Bonaparte had never gone “on record” about the extent of the Louisiana territory to the Southwest,35 and the border dispute between the United States and Mexico along the Rio Grande was a natural consequence, aggravating latent hostilities held over from the U.S. annexation of Texas in 1845 despite Mexican territorial claims to the independent republic and provoking war.36 After being routed by the U.S. army under Zachary Taylor, the Mexican government signed the Treaty of Guadalupe Hidalgo, ceding more than a third of their territory to the federal government for $15 million, including the gold fields of California.

III. Law and Law Enforcement

Between the close of the Revolutionary War and the acquisition of Oregon and California in the 1850s, the federal government became the owner of an immense public domain. The public lands grew by approximately 1.4 billion acres between 1803 and 1853 as the result of acquisition treaties with Spain, France, and Great Britain, the war with Mexico, and the annexation of Texas.37 As Americans poured across the Mississippi River in search of new economic opportunities, the federal government played a vital role in determining the conditions of lawlessness on the

35 Paxson, History of the American Frontier, 141.
36 Merk, History of Westward Movement, 361.
37 Ibid., 221.
frontier. The first was through land policy, which regulated the surveying, partitioning, and sale of the federally-owned public domain through the General Land Office and its territorial branches. Apart from regulating the sale of public lands, the federal government built roads and infrastructure developments (such as establish United States Postal Service routes) and defended settlers against Native Americans in order to encourage emigration to the virgin lands of the frontier. However, federal officials primarily served a purely administrative role. The real instrument of law and order on the frontier was the system of territorial law enforcement, consisting of territorial courts and peace officers, charged with upholding land law and the civil code in the frontier. Returning to our Nozickian analogy, land policy was the vehicle by which the federal government determined the initial distribution of property and entitlements on the frontier (with the exception of preexisting Mexican and British property rights secured under the Treaty of Paris and Treaty of Guadalupe Hidalgo). Issues arising from the transfer of entitlements and the rectification of unjust transfers (i.e. theft) were governed according to U.S. criminal and civil law, their practical adjudication and enforcement belonging to the system of territorial administration provisioned in the Northwest Ordinance of 1787.

**Land Policy**

The dynamics of expansion were firmly based in the growing capitalist economy that radiated from the commercial centers on the Atlantic Coast and stretched toward the shores of the Pacific. The original seaboard states had a special interest in the federal disposal of public lands: a low price would stimulate sales and
draw migrants from worn-out lands in the East to virgin lands in the West, whereupon a surplus of food and other raw materials would make their way into Atlantic and European markets.\textsuperscript{38} Federal debt, as it encouraged westward expansion and exploration in search of new agricultural, mineral, and commercial opportunities and markets, was also a significant factor in shaping policy to encourage emigration. Since the immediate costs of undertaking infrastructure development were extremely large, the federal government relied directly on land sales and rents for sources of revenue, using land policy to promote emigration and private land development. Federal land policy after 1800 was organized around encouraging emigration into the Western territories by surveying, regulating, and selling the public lands to private interests. The government surveyors of the Public Land Survey System, outlined under the Ordinance of 1785 and the Northwest Ordinance of 1787, carved out large 640 acre sections (1 mile square) and six mile square townships consisting of thirty-six sections that made up the plots of land available for sale. The rigid survey system was employed to maximize land sales and to create uniform and easily traded and sold plots of land, encouraging both trading and commerce involving land and extensive agricultural development of the trans-Mississippi West.\textsuperscript{39}

Over time, land policy became more favorable to the interests of the individual American farmer, emphasizing the federal government’s ultimate goal of encouraging maximum emigration. After the Revolutionary War, Treasury Secretary Alexander Hamilton hoped that a shift from selling only large tracts of land to allowing a credit of one year on half the purchase price per acre would provide an

\textsuperscript{38} West, “The American Frontier,” 133.
\textsuperscript{39} Milner, “National Initiatives,” 159.
incentive for future emigration by both individual farmers and large agricultural interests who could utilize such tracts for extensive capital investment and commercial agriculture. But as historian Frederic Paxson notes, “it was a rare local resident who had six hundred and forty dollars ready when he took up his land and could procure another six hundred and forty dollars to complete the transaction within a year...he was fortunate if after a year he had food for his family and stock and had escaped the perils of disease and accident.”40 Under the Harrison Laws – named after Henry Harrison, who became the first territorial governor of the Northwest Territory in 1801 – the federal government extended tax credits to four-year terms rather than the two-year periods outlined under the old policy, cut the minimum size of available land tracts to 320 acres, and decreased the costs of acquiring land from the government in order to provide incentives for emigration for both commercial interests and individual farmers. Sales of federal lands increased dramatically after the adoption of the Harrison Laws, which in conjunction with the elimination of hostile Native Americans greatly lowered the costs of individual settlement.

While individual farmers and families were still often confined to a condition of subsistence farming, commercial farmers had the most success under the new system as “many were planters of means who brought capital, equipment, and slaves. They lived with huge investments and onerous debts and succeeded or failed by shifts among complex markers and by the distant decisions of investors.”41 The upsurge in land disposal came to an abrupt end in the Panic of 1819 as bankruptcy became commonplace in American cities and farm products fell in price to the point where

41 West, “The American Frontier,” 133-134.
“producing them hardly paid for the labor.”42 The federal government was in debt from financing military operations during the War of 1812 and desperate to encourage the appropriation and use of western land; while gross revenue from land sales was $38 million by the turn of the century, the federal government had paid $49 million for administration and execution of the Northwest Ordinance of 1787 alone.43 The problem was corrected by Congress with the Land Act of 1820, which abolished the credit system that was luring pioneers into purchasing more land than they could pay for. Land was sold at public auctions starting at no less than $1.25 an acre, after which any lands not sold were “offered” and could be bought at any time from a local federal land office for the minimum price. Congress eventually adopted policies of “graduation” in 1854, under which offered lands were sold on a sliding scale of price based on the length of time that land had been on the market unsold, in order to minimize the prohibitive costs of extensive quality assessment and further encourage land sales. A rush of bargain hunters followed the adoption of the act, and a total of around acreage 25.6 million acres were sold.44

Until the 1840s, land claims made by settlers prior to formal land sales had no legal standing with the federal government. They were considered illegal squatters, beyond the protection of constitutional government. Individual settlers and pioneers had entered the wilderness prior to government surveyors under the Northwest Ordinance, but squatting on federal land was still illegal under the policy of land sales. With increased emigration into the Mississippi Valley and Northwest Territories in the 1820s and 1830s, western members of Congress and territorial

42 Merk, History of Westward Movement, 231.
43 Paxson, History of the American Frontier, 382.
44 Merk, History of Westward Movement, 231-235.
governors regularly brought petitions on behalf of their constituents for legislation permitting a squatter to acquire claims to parcels of land at the regular price prior to the announcement of a federal land auction. By the late 1830s, many territorial governments had adopted this system of “preemption” both to protect settlers from speculators and make land claims more readily available.45 While the permanent preemption law that entered into force with a Preemption Act of 1841 initially constrained squatting to surveyed land, unsurveyed lands on the Pacific Coast was opened for settlement following the discovery of gold in California and a rapid influx of farmers into Oregon and other parts of the Pacific Northwest.46 The final step in the liberalization of land law during the nineteenth century came with the Homestead Act of 1862, under which any person could acquire 160 acres of land if they paid a small fee and agreed to cultivate it for five years. The Act both replaced the practice of preemption and superseded most other modes of federal land disposal at the time as the easiest way for the widespread transfer of public federal land into private hands. Land disposal in the decade from 1847 to 1857, when coupled with more liberal land laws and a huge influx of territory in the southwest and Pacific coast, greatly exceeded what had occurred since the adoption of the Northwest Ordinance until land sales collapsed with the Panic of 1857 and the outbreak of the Civil War brought westward expansion to a temporary standstill.

46 Merk, History of Westward Movement, 233-234.
Federal Involvement on the Frontier

The use of public land policy to determine the distribution of legitimate property rights throughout the frontier, the federal government engaged in other measures to encourage emigration and fuel the expanding capitalist economy of the United States. The nature of federal involvement further reflects the profit-based view of the frontier lands as new markets and resources held by American citizens. While the federal government exercised sovereignty over frontier territories in surveying land, determining statehood, and levying taxes, involvement was limited to neutralizing Native American unrest and encouraging westward emigration through surveys and infrastructure developments like roads and communication routes rather than costly public works projects. Historian Clyde Milner writes that “until the 1840s, federal activity in the region extended little beyond a list of scientific, military, and diplomatic initiatives that suited political and economic interests east of the Mississippi,” including the Lewis and Clark survey that represented the “search for the useable West.”47 Between 1840 and 1860, the federal government placed great value on land surveys for scientific purposes, increased land sales, and the establishment of transcontinental railroads, which culminated in the federally-supported transcontinental railroad authorized by the Pacific Railways Act of 1862.48

During most of the nineteenth century, the federal government engaged in infrastructure developments solely to encourage emigration while remanding specific local projects to territorial administration. At the beginning of westward expansion,

48 Ibid., 161.
internal infrastructure development and public works were largely responsibility of
territorial legislatures and administrations. The first county courts, where available,
protected and extended the new economic system developed by the Office of Land
Policy, recording land titles and imposing penalties for crimes against property.49
Territorial governments were responsible for tax legislation, the control and
administration of cities and towns, and enacting measures to stimulate and regulate
business such as mining enterprises, and cattle ranchers. To some extent, federal
expenditures were kept to a minimum. Some of the territories on the westernmost
fringe of the frontier lacked even a basic administration until President Lincoln
extended the territorial system over the remaining unorganized lands during the Civil
War in an effort to keep the Western lands as resources for the Union.50 Furthermore,
the federal government only reinvested three percent of federal revenues from land
sales back into serious infrastructure developments like postal routes and military
outposts,51 and the major irrigation projects that enabled extensive agricultural
development throughout the West were “community projects” or profit-seeking
business ventures until the early twentieth century. Federal funds were primarily
devoted to inter-territorial surveys and national initiatives of Indian removal, mineral
surveys, and transportation developments. The federal government’s roles in
encouraging development was also limited to subsidizing federal employees of the
expanding territorial bureaucracy, who dealt with the private land claims of mine

owners, railroad developers, merchants, cattlemen and bankers. The main business of territorial government under federal purview, according to Milner, “was business.”

The primary agents of federal activity in the territories were soldiers of the United States Army, whose duties consisted of pacifying Native American tribes. Soldiers were spread across more than a hundred outposts scattered across the Mississippi River, the Great Plains, and Pacific as the acquisition of new territories “extended the exposed frontier” and rendered military operations and protection more and more difficult. The U.S. military was poorly trained and organized to deal with frontier conditions, and efforts to keep soldiers supplied with the bare bones of subsistence, arms, and ammunition were hampered by high excessive costs of transportation, the distribution of supply depots, and the great distance between sources of supply. The frontier soldier was often only equipped with a six-shooter and hunting knife, inadequate in combating outlaws and thieves due to the widespread availability of the six-shooter to the general population, making the army relatively ineffective as a supplement and substitute to territorial militias and peace officers. The military typically dealt with Native American tribes in the new territories, built roads, and maintained forts and outposts as way-stations for settlers, all designed to encourage emigration: they did not police the frontier unless territorial and local law

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52 Milner, “National Initiatives,” 186.
53 Ibid., 178-181; also in A.B. Bender, “The Soldier in the Far West, 1848-1860.” The Pacific Historical Review 8, no. 2 (Jan 1939), 159.
54 Ibid., 160.
55 Ibid., 164-166.
enforcement organs were completely overwhelmed or entirely absent,\textsuperscript{57} as was the case of the post-Civil War South

\textbf{Territorial Law Enforcement}

While the federal government would conduct land sales and auctions through a territorial land office, the duty of actually maintaining law and order was remanded to territorial governments. To this extent, territorial and local governments primarily had the responsibility of ensuring that transfers of entitlements were just, and that unjust transfers – either through the theft of a land claim or the murder of a rightful claimant – were deterred or punished. In the expanding West, the majority of violence stems from competition over land. During the nineteenth century, violations of property rights made up an astounding 87\% of violent crimes nationwide, reflecting the disproportionate number of Western property crimes.\textsuperscript{58} The grid system outlined in the Ordinance of 1785 and used by the federal government was inherently flawed: government surveyors used the same “legal checkerboard” on prairies, mountains, grasslands, and deltas despite the unsuitability of the system to encouraging agricultural development in certain regions.\textsuperscript{59} Plots of land claimed by frontier settlers – both with legal titles from the government and, prior to the Preemption Act of 1841, through squatting – were never totally consistent with the perfectly geometrical lines drawn on maps in Eastern cities, leading to disputes, litigation, and often violence.

\textsuperscript{59} West, “The American Frontier,” 125.
between settlers. Most violence was the result of either disputes over unclear property rights or the complete absence of legitimate land claims.

The regulation and mitigation of conflicts fell to two agents of territorial order: the *territorial judiciary* and the *peace officer*. Upon reaching a population of 5,000, the federal government provided each territory with judiciary consisting of a supreme court, three district courts, and three judges appointed by the President, as well as a legislature. The three justices rode circuit separately to hold district courts in densely-populated townships and met annually as a supreme court “to affirm each others errors.”\(^{60}\) In practice, the territorial courts were relatively weak in their operations: district courts could not handle a large docket because of remote locations of session, the vast areas which each court served, the difficulties of travel, lack of funds, and poor communication.\(^{61}\) Few cases were determined by the territorial supreme court because of great distances to the capital and excessive costs settlers faced. The lack of federal supervision, combined with local citizens’ hostility towards federal judges, made the legitimacy of territorial courts questionable, and they often went unutilized. Judges were seen as unfair and corrupt, especially in California and Nevada during serious mineral rushes,\(^{62}\) or were considered to be Eastern carpetbaggers receiving relatively undesirable political appointments and therefore more open to corruption and laxity. Self-constituted courts sprang up by necessity where courts were not formally organized or functioning.\(^{63}\)

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\(^{61}\) Ibid., 682.

\(^{62}\) Ibid., 683-684.

\(^{63}\) Ibid., 683.
corrupt nature of the territorial court system produced a lack of effective arbitration organs throughout the Western territories.

While weightier civil and criminal matters were passed on to territorial judges when the costs of travel to the territorial capital were worth the potential redress, most people encountered the court system only through a justice of the peace, or a peace officer. The peace officer was the basic agent of law enforcement throughout the frontier: throughout the nineteenth century, there were more than 100,000 designated as paid, government peace officers in 17 western states, as well as 25,000 different local sheriffs. In the beginning of western expansion, fledgling communities adopted sets of rules and means of selecting leaders without providing any formal scheme of enforcement, with local leaders serving as policemen and judges. The lack of formal government agents and institutions found implied recognition of United States criminal and civil law in the frontier areas, and professional peace officers were usually hired to enforce individual rights in local communities. Peace officers were usually justified by territorial legislatures as “any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrest for offenses while acting within the scope of his authority.” The peace officer’s duties were “scattered throughout involved statues of penal law and criminal procedure:” as historian Frank Prassel writes in The Western Peace Officer (1981), peace officers were legally required to “preserve the peace by taking into custody anyone committing their felonies or … common misdemeanors, in addition, they are usually instructed by law to suppress any public disorder and to

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64 Prassel, The Western Peace Officer, 33.
65 Ibid., 30.
66 Ibid., 32.
execute proper warrants issued by a magistrate or court.”67 While peace officers were usually associated with sparsely populated regions instead of larger cities (most of which had a basic police force after 1800), small isolated towns and the open range often were home to the bandit gangs, or collective organizations of criminals.

In the vast wilderness of the West, organized groups of outlaws sought refuge from ordinary law enforcement, preying on poorly-equipped and vulnerable settlers. Marauding bands might operate in a relative vacuum of state authority on the periphery of settler communities for years, and as an organized group often outgunned or eluded individual peace officers for years at a time.68 While the peace officer provided some semblance of formal law enforcement on the frontier, they were ineffective at consistently discouraging criminal behavior and enforcing the rights of settlers, due to both the lack of resources and the practical problems posed by tracking roving criminal groups over the vast expanses of Western wilderness. Apprehending criminals was extremely difficult because of inadequate communication and investigation practices and reliance on the actions of a single officer. Incarceration of prisoners in jails was equally difficult, especially on the Great Plains where timber and stone were scarce; often, prisoners would be tied to a tree and easily freed by their comrades.69 The sheer extent to which firearms were available in the general population made the practical efforts of a single peace officer ineffective. As Frank Prassel writes, the availability of firearms to ordinary citizens was perhaps “never so prevalent as along the American frontier, contributing immeasurably to an already tense environment … Common disagreements and

67 Ibid., 35.
68 Ibid., 8-9.
69 Kenyon, *Legal Lore of the West*, 693.
perhaps a simple assault could be rapidly transformed into a deadly encounter.”

When combined with the corruption and laxity of territorial courts and the inefficiencies of territorial administration, the weakness of peace officers as agents of order created a virtual vacuum of law enforcement. Territorial courts and peace officers had neither the resources nor manpower to effectively enforce criminal and civil law across the frontier wilderness, leaving rural populations of settlers, farmers, and miners to fend for themselves.

IV. Social Norms on the Frontier

Before we can discuss the particular social and legal rules that influenced American behavior in the absence of formal law enforcement on the frontier, we must proceed with an abstract analysis of social norms. Social norms are the behavioral expectations or informal rules and mores that govern a society or group. Economist Bruce Benson provides a supplemental definition in his distinction between formally codified laws and “moral norms,” the latter being rules that “generally do not require explicit codification or backing by coercive threats to induce recognition, because they are widely ‘shared values’ adopted by individuals in their interactions with an identifiable group of other individuals.” While social norms are often embodied in a formal system of rules as codified laws, informal rules and expectations shape what we treat as acceptable behavior or an appropriate set of outcomes – our conception of justice. Social norms will be addressed in depth in the context of vigilance committees in Chapter IV. For now, we will discuss norms as the informal rules that

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70 Prassel, *The Western Peace Officer*, 11.
regulated and defined the nature of human relationships on the frontier in the absence of formal institutions before competition for scarce resource necessitated the creation of formal governance institutions. There are two closely related types of social norms operating in a given society: \textit{instrumental} norms and \textit{expressive} norms.

\textbf{Instrumental Norms}

\textit{Instrumental norms} are cooperative or coordinative rules that encourage mutually beneficial results between two or more actors. Examples of instrumental norms include respect for private property, adherence to voluntary contracts, and other rules regarding material entitlements. Their primary focus is basic, wealth-maximizing behavior that is the basis for social interaction. Bruce Benson writes that “voluntary cooperation requires trust, of course, so ethical behavior must be anticipated in order to participate in such a positive-sum game.”\textsuperscript{72} When these norms are internalized, they become what economist Kaushik Basu calls \textit{rationality-limiting norms}, or norms that “stop us from doing certain things or choosing certain options, irrespective of how much utility that thing or option gives us.”\textsuperscript{73} Instrumental norms of property rights and voluntary contracts are evolutionary in basis, arising from repeated interactions in which individuals come to choose wealth-maximizing strategies, then spreading to the larger society so that “as more bilateral relationships are formed in recognition of the benefits from cooperation, a loose knit group with

\textsuperscript{73} Basu, \textit{Principles of Political Economy}, 72.
intermeshing mutual relationships begins to develop.”74 The development of instrumental norms is the closest we can get to an economic explanation of the side constraints or “natural rights” to life, liberty, and property in the Lockean and Nozickian theories. The distribution of entitlements resulting from a system of trade and exchange supported by a system of instrumental norms is an individual’s wealth or economic power.

Instrumental norms, due to their relationship to basic wealth-maximizing behavior, generally operate irregardless of their reflection in a larger formal legal system, so that even in the complete absence of law enforcement, theft and violent crime do not necessarily occur despite their potential benefits. The importance of life, liberty, and property enshrined in the United States Constitution and perpetuated through the formal body of nineteenth-century law did not disappear when individuals entered the state of nature of the frontier; they had largely been internalized by settlers as informal, instrumental norms. They influenced such customs as original acquisition, perceptions of the role of the state, and the sanctity of private property and contract. Norm violations that infringe upon instrumental norms are violations of distributive justice, or violations of the fair allocation of entitlements.75 Employing Robert Nozick’s entitlement theory, we would say that a distribution is just if the instrumental norms regarding the nature of entitlements are adhered to, or “if everyone is entitled to the holdings they posses under the distribution.”76 Distributive violations typically consist of unjust transfers of

76 Nozick, Anarchy, State, and Utopia, 151.
entitlements that upset the original distribution: theft is the most obvious example, although murder and arson are also relevant in this sense.

Property, Contract, and Government

The nineteenth-century in American history encompasses what political scientist William Culberson calls the “Populist Cycle,” characterized by arrogant capitalism, expanding anti-Federalism and libertarian social values, and popular demands structured into federal legislation. The Populist Cycle incorporated beliefs about economic individualism, the value of productive competition, and the virtues of a Protestant capitalist culture (without explicitly rooted in Protestant religious dogma). Legal historian James Willard Hurst writes of the principle of “the release of energy” that was the foundation for the nineteenth century legal order, which mandates that the legal order should protect and promote the release of the individual energy for the greatest extent compatible without preventing other from doing so. As such, the distinctive legal turn of the nineteenth century was the development of vested rights doctrine, which judicially protected private property and the “entrepreneur’s freedom” of contract under the Fourteenth Amendment as fundamental rights. To this end, the law should be used to “secure for a man a chance to be let alone, free of arbitrary public or private interference, while he showed what he could do” and “to provide instruments or procedures to lend the

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78 Ibid., 75
support of the organized community to the effecting of man’s creative talents.” The sanctity of private property and contract and the responsibility of state coercion to uphold them embody the emphasis on productive, wealth-maximizing behavior as the focus of the nineteenth century law.

The rights to private property have been ingrained in the American legal order since the American Revolution. The right to private property secured an individual’s legally protected control over economic resources without arbitrary interferences, both from other people and from the federal government. This defense is represented in the American constitutional order under the Fifth (and later Fourteenth) Amendment, under which no person shall “be deprived of life, liberty, or property, without due process of law,” where the state had to justify the reasonable public interest in imposing public force on private holdings. Limits on private holdings by the government had to be declared according to a legitimate public procedure, designed to keep regular citizens informed about the operations of government and to keep law responsive to the average American. Private property took on a particular ideological tone on the frontier as the homestead ethic and the ethic of individual enterprise. The homestead ethic had three key rights: hold a family-sized farm, to enjoy a basic homestead unencumbered by excessive taxation or economic burden imposed by the state, and to occupy a homestead without fear of violence by Indian or outlaw to person or property. The homestead ethic reflects the conception of private

80 Ibid., 6.
82 Ibid., 8.
property as a fundamental right of settlers as they traveled throughout the West and reinforces it as a preexisting side constraint. The expanding capitalist system and the wealth-maximizing motives of agrarian farmers and entrepreneurs are reflected by the ethic of individual enterprise: any individual can achieve great things given the opportunity and the economic resources. The preeminence of the power of individual enterprise was affirmed by the success of “self-made” railroad magnates and “cattle kings” of the nineteenth century.

Private property was acquired in two ways: either legitimately through a federal land title, or illegally by squatting on unsold and unsurveyed public land. While the Preemption Act of 1841 legitimized squatting to some extent, acquisition of public land on the frontier was typically governed by rules of original acquisition. The concept of original acquisition is discussed by Locke, who wrote that “from the state which Nature put them in, by placing any of his labor on them, did thereby acquire propriety in them.”84 Initially, the numbers of settlers were not significant enough so that competition for scarce resources required the demarcation of property rights on local scales, and the principle so “first come first served” to land was respected. At the beginning of the gold rush, enormous amounts of wealth could be extracted from the smallest claim: as historian Charles Shinn writes, gold “was so abundant, and its sources seemed for a time so inexhaustible, that the aggrandizing power of wealth was momentarily annihilated.”85 On the Great Plains, “there was room enough for all, and when a cattleman rode up some likely valley or across some

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well-grazed divide and found cattle thereon, he looked elsewhere for range.”86

However, the productive use of land was essential in determining the legitimacy of informal claims based on original acquisition – for example, the early claims clubs and mining camps of the frontier required that their members productively utilize their land or forfeit their claims to other settlers. This reflects the conception of private property as the basic unit of the release of energy,87 and therefore the legitimacy of informal acquisition based on the principle of employing land for productive use. As Hurst writes of the nineteenth century United States, “we were concerned with protecting private property chiefly for what it could do.”88

Contract played an important role in the nineteenth century legal order. The sanctity of contract was entrenched in the American constitutional order in Article I, Section 10 of the United States Constitution under the “contracts clause,” which states that the federal government may not “pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.”89

Contract was seen as the fundamental instrument of commerce, production, and exchange; by lending the coercive force of the state to the enforcement of contractual promises, the federal government protected individual autonomy in exchange and the right of private decision makes to dispose of property. Land exchange contracts were especially important. Because of its importance to venture capital and business autonomy in the expanding capitalist system of the United States, contract was protected under vested rights doctrine as essential to encouraging productive,

88 Ibid., 24.
positive-sum transfer of property rights. The doctrines of primogeniture, entail, and other feudal provisions based on inheritance and family lineage rather than legal contract were prevalent in colonial America under English rule, primary in the Southern plantation system, until the system of feudal privilege was eliminated after the American Revolution (exemplified by the restriction on the federal government’s ability to “grant any Title of Nobility). The primacy of contracts, declared in the Constitution under the contracts clause and affirmed through common and statutory law after the Revolution, “thus ratified the values early and deeply instilled in the behavior of the people,” uprooting the feudal restrictions and rules of inheritance. “The years of 1800-1875,” wrote Hurst, “were, then, above all else, the years of contract in our law.”

The supreme responsibility of government in the United States was perceived as being responsive to the people, protecting and enforcing property rights and contracts without turning into an arbitrary force itself. The common conception of the United States government by Americans during the nineteenth century reflects the principles behind Nozick’s “minimal state” from Anarchy, State, and Utopia (1974), a state that exercises a monopoly on coercion to enforce individual rights but is treated as illegitimate when it violates rights itself. The expansion of the central doctrines of laws of crime and tort during the nineteenth century reflect the normative preoccupation with the state as the guardian of individual rights to private property and contract. Criminal law was extended to cases concerning embezzlement, receipt of stolen goods or theft, and other acts that accompanied the expansion of a market

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90 Hurst, Law and the Conditions of Freedom in the Nineteenth Century United States, 12.
91 Ibid., 18.
92 Nozick, Anarchy, State, and Utopia, 30.
Similarly, tort law was employed to create a system of liabilities and reasonable expectations necessary to encourage men to rely on one another for productive ends and add to the expansion of the market. “nineteenth-century criminal, tort, and contract law,” writes Hurst, “expressed in another form the regulatory use of the law to promote the conditions for the release of energy.”94 The government, as the supreme law-making and law-enforcing authority in the United States, was regarded as responsible to the social and economic interests of the people and bound to employ its power in their interests.

Expressive Norms

*Expressive norms* are social norms that develop with regard to the values of individuals and the social relationships within and between groups in a larger society. Expressive norms are used in daily interactions as indicators of belonging to a social group. The internalized, rationality-limiting norms within different social groups are a value system: they include cultural or religious norms – like not harming the sacred cow or facing Mecca to pray five times a day – that do not necessarily serve any wealth-maximizing purpose but are treated as moral imperatives anyway. Expressive norms include moral and ethical codes regarding such behavior as prostitution, the consumption of alcohol, and laziness. Basu gives an example of variable norms of politeness:

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94 Ibid., 21-22.
like enquiring how a person is, despite no interest in the answer. In most industrial nations, it is a norm not to ask strangers personal questions; it is considered impolite to behave otherwise. It many developing countries, on the other hand, when you meet a new person, it is considered impolite not to ask personal questions; that would show a lack of interest in the person.95

Within groups, expressive norms function as “solidarity rules, reinforcing trust relationships between the members of a specific group.”96 Between groups, expressive norms structure predictable interactions between individuals with different value systems, defining the relationship between groups in everyday interactions. The custom (and eventual legal codification) of African-Americans relinquishing their bus seats to whites during the 1950s and 1960s is an effective example. Because of the role of expressive norms in determining the relationship between social groups, acts that infringe on expressive norms are violations of interaction justice, or the interpersonal treatment people receive because of the structure of group social relations, both within and between groups.97 In this sense, expressive norms appeal to a social-structural view of conflict: disputes between groups erupt when groups “cannot be heard” through the accepted channels of political communication and aspire to higher representation of their group identity within the larger society.98 In contrast to instrumental norms, the distribution of entitled treatment and just interactions arising under a system of expressive norms can be called social power. For example, a white man in America in the 1950s and 1960s has social power because he commands certain obligations and privileges from the prevailing social

order, like the claim to a specific bus seat despite the overall vacancy of a bus (as in the case of Rosa Parks, in which only three of the usual ten “whites only” seats were filled).

The enforcement of expressive norms is closely tied to the ongoing status quo of power dynamics among racial, class, and religious groups in the history of American society and the institutionalization of these social relationships within a formal body of law. The passage of the Eighteenth Amendment to the Constitution, which instituted prohibition in the United States in the 1920s, is a good example of a group value system (primarily of the Methodists who dominated the prohibition movement) achieving institutionalized social power over other value systems, despite the fact that the consumption of alcohol continued in speakeasies around the country. The enforcement of expressive norms also manifests outside of regular political competition for institutional recognition. For example, norms of white supremacy over African-Americans persisted long after the legal abolition of slavery in the South, so much so that the status quo of social relations kept African-Americans in a subservient role despite their emancipation within the formal system of U.S. law. In both cases, groups exercised social power over outside competition in the social order to maintain a specific value system, both through formal laws and informal interaction justice. Expressive norms define the boundaries between different systems of values, the violation of which can result in severe sanctions and social stigma placed upon individuals as a “non-believer,” “heretic,” or “low” and “criminal” elements of society. They shape both the identity and solidarity of members within a certain group and the social interactions and power dynamics between different
groups in society. We might claim that where instrumental norms define principles of what is “morally right,” expressive norms are essential in configuring our conception of family, community, and of what are or are not “socially acceptable” behaviors.

**Class and Social Groups**

Throughout American history, the relationship between instrumental norms and expressive norms is extremely close. Instrumental norms like the rights to life, liberty, and property which, for economists like Basu and Benson, gradually evolve out of repeated interaction are the equivalent of expressive norms tied up in the American national identity and internalized by American citizens. In *Democracy in America* (1835), Alexis de Tocqueville emphasized that the conditions of material abundance in colonial America initially made hierarchical social structures virtually impossible, as “land is the basis for aristocracy, which clings to the soil that supports it;”99 in New England, he proclaims that “the germs of aristocracy were never planted in that part of the Union.”100 For de Tocqueville, the last aristocratic privileges based on expressive norms of social relations were evident in the institution of slavery in the South. Furthermore, the necessary material interdependence for survival of the American colonists provoked a “natural democracy,” insofar as “the intervention of the people in public affairs, the free voting of taxes, the responsibility of the agents of power, personal liberty, and trial by jury, were all positively established without

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100 Ibid., 46.
discussion.” Regard for personal liberty and the desire for equality, institutionalized under the U.S. Constitution, were taught to Americans from birth. The American “starting point” of material equality and interdependence created a natural inclination towards respect for the rule of law and the sanctity of property rights free from hierarchies based on expressive norms: as historian Richard Maxwell Brown writes, “the American community of the eighteenth and nineteenth centuries was primarily a property-holders community, and property was viewed as the very basis of life itself.”

The instrumental norms of property, individual rights, and freedom from arbitrary power that were the starting point for economic activity and the allocation of wealth in the United States in turn influenced the development of expressive norms of class identity. Brown writes of a three-tiered class structure, consisting of an upper class of businessmen, planters, and capitalists; an industrious, honest middle class of the “legendary, but real American yeoman”; and a lower class of “marginal” or alienated members of the community, often the property-less poor. Karl Marx’s treatment of the relationship between the modes of material production and social relations is an important analogy here, if an imperfect one. For Marx, the capitalist political economy that yields class and class struggle proceeds from the institution of private property, which was the central foundation of eighteenth and nineteenth-century economic growth and the basic building block of American capitalism.

101 Ibid., 39.
103 Ibid., 104.
105 Hurst, Law and the Conditions of Freedom in the Nineteenth-Century United States, 8.
With the growth of specialization and division of labor comes the development of new forms of property, and individuals were divided into distinct classes reflecting their relationships to the means of production.\textsuperscript{106} The division of labor discussed by Marx that is most relevant historically to describing the class differences of the frontier is the separation between production and commerce.\textsuperscript{107} This gave rise to worker and merchant classes, exemplified in the history of the American West by the concentration of capital and wealth in the hands of commercial or agricultural elites and the role of working middle-class community members as wage laborers, miners, and “yeoman” farmers. Expressive norms of class identity and social power in nineteenth century United States were the outgrowth of individualistic capitalism based on instrumental norms of private property and individual liberty.

Expressive norms heavily influenced the nature of frontier violence as instrumental norms were unable to regulate individual interactions as competition for scarce resources increased. When competition over resources would yield violent lawlessness, groups often formed along cultural lines. The American frontier was not just populated by Americans: apart from the Spanish, French, and British settlers who inhabited the trans-Mississippi West prior to it annexation by the U.S., Germans, Scandinavians, Austro-Hungarians, Russians, and Italians found their way into the wilderness in search of economic opportunities. The Gold Rush of 1848 catapulted the frontier into the global spotlight: by 1952, there were 250,000 people residing in California, consisting of immigrants from Asian, Chile, Hawaii, Great Britain,

\textsuperscript{107} Ibid., 178.
Continental Europe, and Mexico.\textsuperscript{108} Isolation was a problem for frontier settlements: even within large developing communities, isolation from eastern states produced a sense of loneliness and self-dependence.\textsuperscript{109} While the isolation from eastern resource created economic and social equality within the most isolated of frontier communities, frontiersmen strove for the “reconstruction of the community [and] the reestablishment of the old community structure and its values”\textsuperscript{110} once subsistence and survival were not more pressing concerns. While these communities were often based along ethnic or religious lines, American frontiersmen of the nineteenth century came from essentially similar communities with a three-tiered structure.

The history of the American frontier has a heavy emphasis on economic principles as a substitute for the ahistorical “law of nature” of the Lockean state of nature: profit-maximizing, the use of the law to encourage the release of individual productive energies, and the role of scarcity in inducing competition. Accordingly, the frontier mutual protection agency follows similar economic logic, both in its formation under the anarcho-capitalist conception of property rights exchanged in a marketplace and the constitutionalist conception of minimizing costs and maximizing gains for settlers. The following chapter will delve in depth into the history of frontier MPAs, their distinct institutional structure, and the economic logic that underpins both.

\textsuperscript{109} Paxson, \textit{History of the American Frontier}, 95.  
\textsuperscript{110} Brown, \textit{Strain of Violence}, 103.
II

The Institutions That Won The West

The frontier mutual protection agency that must be contrasted with the vigilante committee is a general model based on several distinct types of organizations: land claims associations or “claims clubs,” mining governments, and cattlemen’s associations. Each organization took on specific characteristics given the territorial or practical needs of a community. The historical element of this analysis will dissect the development of several types of agencies and the institutional characteristics they hold in common. This chapter is therefore focused on the theoretical formation of claims clubs, mining camps, and cattleman’s associations based on economic logic and the institutional structure they hold in common. This analysis will to seek to develop and articulate an economic theory on the evolution of governance. As I touched on in Chapter I, the conditions of lawlessness on the frontier – the presence of pre-existing norms as Nozickian side constraints, market-based demand for the arbitration, definition and enforcement of those rights in response to competition for land, wealth, and scarce resources – highlight the plausibility of the anarcho-capitalist theory of Anderson and Hill.\(^{111}\) This section will therefore focus chiefly on the social-contractarian features of frontier institutions: how they formed, what functions they performed, and what their goals were. I will show that the economic logic that shaped the frontier mutual protection agencies is exemplified in a unique type of Coaseian social contract, which Mancur Olson calls

the “Coaseian bargain”\textsuperscript{112} after the noted economist and intellectual godfather of New Institutional Economics Ronald Coase.

\textbf{I. Claims Clubs or Land Claims Associations}

The first type of mutual protection agency available for analysis is the land claims association or “claims club,” which scholars of the American West regard as “an illustrative type of frontier extra-legal, extra-constitutional political organization in which are reflected certain principles of American life and character.”\textsuperscript{113} Returning to our definition of social norms, we might say that frontier MPAs reflect instrumental norms of American society because of their focus on the delineation, arbitration, and enforcement of private property rights. Through cession, purchase, and conquest, the United States gained a vast public domain in the first half of the nineteenth century, controlled by the federal government and sold off to private interests through the General Land Office. From the Ordinance of 1785 onward, squatters settled on the public lands despite Congress’ mandate that no legal settlement should be made until the Indian populations had been removed and the land surveyed. To the federal government, the squatters were essentially criminals, illegally taking possession of lands in the public domain and violating the land laws established to encourage orderly emigration. Even with the gradual liberalization of land laws by the government through the Land Act of 1820 and the granting of preemption rights in 1841, many farmers were dissatisfied with federal land policy and remained illegal squatters on the government-held lands until the passage of the


\textsuperscript{113} Benjamin F. Shambaugh, “Frontier Land Clubs, or Claims Associations,” \textit{Annual Report of the American Historical Association} (1900), 69.
Homestead Act of 1862 allowed for private purchase of government lands for a minimal registration fee.\textsuperscript{114} As historian Benjamin F. Shambaugh wrote, “these marginal or frontier settlers (squatters as they were called) were beyond the pale of constitutional government. No statutes of Congress protected them in their rights to the claims they had chosen and the improvements they made. In law they were trespassers; in fact they were honest farmers.”\textsuperscript{115}

The core function of frontier claims clubs was to delineate and enforce property rights for their members and to adjudicate disputes between them. As more American traveled west of the Mississippi river in search of new agricultural opportunities, claims clubs became commonplace on the frontier. The westward migration was composed of both American citizens and foreign immigrants, nearly five million of whom had entered the country by 1850.\textsuperscript{116} Where population densities rose and competition for arable farming land and agricultural resources increased, the demand for the definition and enforcement of property rights increased as well.\textsuperscript{117}

Because of this, claims clubs became common primarily in the Mississippi Valley states like Iowa, Kansas, Minnesota, Nebraska, and Wisconsin, where rich soil from the Mississippi and Missouri rivers provided for fertile farming land and low costs irrigation, although claims clubs also operated in North Dakota, New Mexico, Wyoming, Colorado, Montana, and Washington.\textsuperscript{118} Claims clubs were also active in

\textsuperscript{115} Shambaugh, “Frontier Land Clubs,” 75.
\textsuperscript{117} Anderson and Hill, “An American Experiment in Anarcho-Capitalism,” 15.
California, where mining groups tapped various water sources for hydraulic mining or gold-washing in mountain operations, providing easy access for irrigation and yielding fertile mineral-laden soil.\textsuperscript{119}

Of the myriad claims clubs that dotted the frontier landscape, the Johnson County Claims Association in Iowa deserves special attention as an archetypal case for two reasons. First, the fertility of Iowa farmland led to a high concentration of farmers compared to other frontier states in the 1840s and 1850s. Of the 1.5 million American farmers living in the frontier in 1850, only 119,000 were located beyond the Mississippi, and the 201,903 farms in Iowa at the end of the nineteenth century was more than double the total in larger states like Washington, Oregon, and California combined.\textsuperscript{120} The high concentration of farmers and high agricultural yield of the land generated intense competition for rights to plots of lands made Iowa a crucible for the institutional development of claims associations, with the territory possessing the most claims associations of any territory, operating in twenty-six counties clustered by the Mississippi river on the Missouri border.\textsuperscript{121} Rapid emigration impacted Johnson County the most, as it was the home of the territorial (and later state) capital, Iowa City, until Des Moines became the state capital in 1857. The population explosion that occurred in both Johnson County and the territory of

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\textsuperscript{119} Charles Shinn, \textit{Mining Camps: A Study In American Frontier Government}. (New York: Knopf, 1886), 251. \\
\textsuperscript{120} Bogue, “Agricultural Empire,” 279. \\
\textsuperscript{121} There is some dispute over the actual number of claims clubs existing in the region; Benjamin Shambaugh wrote that there existed “nearly 100 extra-legal organizations” in the entire territory while Allen Bogue’s research shows that claim clubs operated in only 26 counties. Both agree that Iowa Territory was the home of the archetypal claim clubs. Shambaugh, “Frontier Land Clubs,” 72; Bogue, “The Iowa Claims Clubs: Symbol and Substance,” \textit{The Public Lands: Studies in the History of Public Domain}, ed. Vernon Carstensen (Madison: University of Wisconsin Press, 1968), 48.”
\end{flushright}
Iowa is indicative of the vast flood of farmer-settlers and ranchers who migrated to the steadily advancing frontier throughout the entire nineteenth century.

Second, the Johnson County Claim Association is typically regarded by scholars of Western history as “in its organization and administration one of the most perfect…in the West.”\textsuperscript{122} The next largest populations of Iowa claims clubs developed in Fort Dodge, Webster County, and Poweshiek County, all with organizational features virtually identical to the Johnson County Claim Association.\textsuperscript{123} Other well-known claims associations include the Omaha Claim Club in Nebraska, the El Paso Claim Club in Colorado, the Dakota County Claims Association in Minnesota, and the Pikes Creek Claimants Union in Wisconsin, all of which in organization and in functions fundamentally resembled the highly developed institutional model pioneered by the Johnson County Claims Association and the other claims clubs of Iowa.\textsuperscript{124} The structure of the Johnson County Claims Association serves as a general blueprint for the frontier claims clubs of the 1840s and 1850s.

The formulation of claim club constitutions and by-laws resembled a town meeting: members of the new association met and collectively agreed to the purpose, rules, and organization of the club. The acquisition and peaceful possession of public lands were consistently outlined in the preambles to squatter constitutions as the objective of settlers, emphasizing the need to defend against claim jumpers (other

\textsuperscript{123} Bogue, “Iowa Claims Clubs,” 51.
\textsuperscript{124} Paxson, \textit{History of the American Frontier}, 387.
squatters) after initial tracts of land were claimed and improved upon.\textsuperscript{125} Claim club constitutions commonly consisted of articles outlining the objective and related rules of each clubs, providing for officers, and defining the contractual rights and obligations of members to the club and to one another. Basic membership obligations typically concerned mutual pledges to provide assistance in protecting the claims of others and enforcing club guidelines.\textsuperscript{126} With local variations, claims clubs regulated the size of claims allowed, directions for marking, registering, and transferring claims, and procedures for managing disputes between members and dealing with claim jumpers.\textsuperscript{127} A constitutionally-established group of officers or “executive committee” was responsible for carrying out these functions. The Johnson County Claims Association possessed a President and Vice President in charge of calling assemblies of members, a clerk or secretary for recording land claims, seven judges for settling all “disputed lines or boundaries,” and two heavily-armed marshals for enforcing club rules and decisions of the judicial court with the assistance of other signatories.\textsuperscript{128} Members who filled official positions were given a salary, with recorders compensated on a per claim basis and enforcement officers per diem.\textsuperscript{129}

“Criminal” offenses in the committee by-laws consisted of violating individual property rights or neglecting club obligations and punished with expulsion from the group; violent acts against members were met in kind. While the composition of these assemblies varied depending on the needs of the specific club, the basic adjudicative, executive, and legislative functions remained the same. While the top priority of

\textsuperscript{125} Bogue, “Iowa Claims Clubs,” 50.
\textsuperscript{126} Shambaugh, “Frontier Land Clubs,” 78.
\textsuperscript{127} Bogue, “Iowa Claims Clubs,” 50-51.
\textsuperscript{128} Shambaugh, “Frontier Land Clubs,” 76.
\textsuperscript{129} Ibid., 75.
claims clubs was to secure property rights for its members, most claims clubs also enforced the formal civil and criminal codes, where clear and available, of their respective states and territories.

Many historians of the American West suggest that another major function of the claims club was to protect the claims of settlers until they could obtain a legitimate legal title over land during a sale day, when public lands were put up for sale to private individuals by the federal government. Since claims organizations existed “beyond the pale” of federal law and therefore had no legitimate standing with the government, the need for land associations would presumably decline once claims were solidified with the federal land office and fell under the purview of federal courts and peace officers. As such, many claims clubs took intimidatory action to prevent speculators from outbidding their members on land they had already occupied and improved.  

While claims clubs died out to some extent after the Preemption Law of 1841 approved the purchase of legitimate claims by squatter groups before land was offered to public at federal auctions, claims associations persisted into the late nineteenth century in Kansas, Nebraska, Colorado, and California where land titles were “uncertain” or subject to “complex agreements,” suggesting that the ambiguity of land claims and need for adjudication and enforcement organs were the primary impetus for the formation of claims clubs. Likewise, the records of the Johnson County Claims Association suggest that very

few members were concerned with obtaining a legitimate claim on their land at federal sale dates: only 35% of Johnson County members actually purchased their claims from the federal government.\textsuperscript{133} The Poweshiek and Fort Dodge claim clubs (the most prominent in Iowa after the Johnson County association) traded in claims amongst other settlers rather than working to protect the home from the speculator and claim jumper; more often than not, claimants would improve their land and then sell it for above the federal land price of $1.25 per acre, leaving the purchaser with the burden of establishing the claim.\textsuperscript{134} Many claims clubs constitutionally required their members to invest in monthly improvements in order to profit from private land sales after the purchase of a legitimate title for the baseline federal price, the profit of which would be distributed amongst member of the association. Such a practice was common of claims associations directly bordering the Missouri and Mississippi rivers where land and water rights were extremely valuable, such as Minnesota, Iowa, Nebraska, and Missouri.\textsuperscript{135} This evidence suggests that many settlers joined claims clubs not only to define and enforce their property rights, but to accumulate land and engage in the sale and trade of land claims themselves, highlighting profit-maximizing motives rather than the classic image of the noble settler defending his home against “wolves in human form.”

\textsuperscript{133} Bogue, “Iowa Claims Clubs,” 55.
\textsuperscript{134} Ibid., 55-56.
\textsuperscript{135} Ibid., 51; Ritchey, “Claims Associations and Pioneer Democracy,” 93; Byron T. Parker, \textit{Extra-legal Law Enforcement on the Nebraska Frontier}.” PhD diss (Lincoln, NB: University of Nebraska, 1931), 8.
II. Mining Camps

The second type of frontier mutual protection agency available for analysis is the mining camp government. Prior to the famous California gold rush in 1848, mineral lands were available for lease from the federal government by mining companies until the expense of administering the leasing system exceeded its revenues after 1834. In a message to Congress on December 2, 1845, President James K. Polk recommended that the mineral lands for lead, copper, and gold be put up for sale from the public domain, arguing that the leasing system was not only a burden upon the national treasury, but had led to a “wasteful way” of operating the mines and a source of “much friction between the United States and individual citizens.”\(^\text{136}\) The mineral lands were offered up for private sale in 1847. The discovery of gold at Coloma, California in January, 1848 brought an onslaught of settlers from across the country. The low labor costs of panning for gold and minimal specialized knowledge necessary to capture such wealth provided an incentive for many to brave the natural dangers of frontier life. Before the end of the year, nearly 50,000 young men made their way out to the gold fields of California and Nevada.\(^\text{137}\) California’s population grew from 14,000 in 1848 to 100,000 by the end of 1849.\(^\text{138}\) Within California itself, miners flocked from Sutter’s Fort, San Francisco, and Sonoma to Coloma and the Sierra foothills. The city of San Francisco was transformed during the rush into a bustling port by overseas emigration via Cape Horn and the Isthmus of Panama.\(^\text{139}\)


\(^{137}\) Shinn, *Mining Camps*, 102.


The archetypal mining camp is primarily native to California, although similar examples of mining camps emerged with the discovery of rich lodes of gold, silver and quartz in Nevada.\textsuperscript{140} Other major mining centers include the major silver and quartz strike of the “Comstock Lode” at Virginia City, Nevada and the silver lodes at Pikes Peak in Colorado.\textsuperscript{141} Montana, Wyoming, and Oregon in the 1860s and the Black Hills of South Dakota in the 1870s also hosted similar mining operations, all of which possessed mining camps with similar institutional features to the California blueprint.\textsuperscript{142}

California during the gold rush was a portrait of lawlessness. California was still technically part of Mexico, under American military occupation as the result of the Mexican American War until the signing of the Treaty of Guadalupe Hidalgo on February 2, 1848. California was not a formal territory, but the federal government technically could exercise some governance in the region through military personnel left over from the Mexican-American War and under the \textit{de facto} governorship of Colonel Richard Mason.\textsuperscript{143} As a result, there was no territorial legislature, executive or judicial body for the entire region, and local residents operated under a confusing and changing mixture of Mexican rules, American principles, and personal dictates, producing a demand for town marshals and local government.\textsuperscript{144} While the gold fields were technically part of the public domain and therefore subject to federal land policy, there were no legal rules yet in place for determining claims, and no practical

\textsuperscript{140} Shinn, \textit{Mining Camps}, 240-243.
\textsuperscript{143} Shinn, \textit{Mining Camps}., 105.
\textsuperscript{144} Bryant, “Entering the Global Economy,” 198.
enforcement mechanisms. President John Tyler revisited the system of leasing high-value mineral lands for capital investment and development by “industrious citizens” used by the Polk administration, recommending that Congress collect rent from miners and that the mineral land “be disposed of by sale or lease” administered by the military. In the absence of specific legislation, military officials in California adopted a *laissez faire* policy in the gold fields due to an inadequate supply of soldiers to govern such an extensive area.

Like the claims clubs in Iowa, mining camp governance provided definition, enforcement, and adjudication functions in the absence of a formal structure of civil and criminal law. Initially, there was little need for a formal organization to deal with issues arising between miners due to the overwhelming abundance of gold. Claims were staked in terms of original acquisition and often marked by little more than a pile of equipment, while natural limits on the size of an individual claim were derived from local custom in order to both facilitate the efficient partition and utilization of land and to prevent individuals from monopolizing gold-laden areas. Conflicts between members of a camp were initially dealt with through “folk-moot” or informal miner courts which arbitrated disputes, tried cases, and made and enforced laws. Folk-moot courts only persisted in small camps; those with larger populations elected standing committees or council governments to deal with disputes, performing essentially the same functions of moot courts with the addition of recording claims.

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146 Shinn, *Mining Camps*, 104.
Committees primarily consisted of a district recorder and a jury to deal with disputed sales, financed through registration fees paid by all members. The formulation of mining camp constitutions and election of officers followed the “typical frontier democratic fashion” of public mass meetings, where rules and procedure were framed and amended by unanimous consent.\textsuperscript{151} Charters addressed the boundaries of a given mining district, the size of allowed claims, and the methods by which the claims could be enforced.\textsuperscript{152} Criminal codes developed to deal with offenses ranging from horse-theft to murder; enforcement was the responsibility of every miner in a given district until the local standing committee could try and sentence the accused.\textsuperscript{153} The clear demarcation of property rights by mining governments allowed miners to devote their time and labor to the productive use of their claims rather than worry about enforcing their property rights on an individual basis.

The population increases that necessitated a formal standing committee also required more extensive definition and enforcement activities, as the yields of extensive surface mining were significantly diminished in California and Nevada by the end of the 1850s and new mining techniques were becoming more widely employed. More extensive and complicated mining techniques often required organized efforts, leading to cooperative joint-stock associations. River sluices, in which water was run through a box to filter gold nuggets, required additional investments in water diversion and more labor.\textsuperscript{154} Cooperative mining operations took off with the mining of deep lodes in Nevada. Deep mining emerged primarily in

\textsuperscript{152} Anderson and Hill, The Not So Wild West, 111.
\textsuperscript{153} Shinn, Mining Camps, 168-169
\textsuperscript{154} Anderson and Hill, The Not So Wild West, 13.
Virginia City, where the extensive gold and silver deposits of the Comstock Lode were locked in quartz veins some fifty feet beneath the surface and required expensive machinery to mine and refine.\textsuperscript{155}

The switch led to the formation of joint-stock associations of miners for hydraulic mining, ore-crushing mills, blasting, and tunneling operations,\textsuperscript{156} all capital- and labor-intensive activities that required coordinated efforts between multiple individuals. Where individual miners originally claimed a segment of land as private property under a “land allotment” contract with a mining government in a certain district, joint-sock miners sacrificed a land claim for the yield of a specific plot occupied by the company under a “sharing contract,”\textsuperscript{157} under which a miner forfeited his property rights for a cut of the profits from working in a cooperative operation. The individual, land-owning miner was eventually replaced by a daily-wage earner. Miners in the early stages of the gold rush primarily chose land allotment contracts, eventually combining private holdings originally recognized and recorded by the local standing committee under a sharing contract.\textsuperscript{158} Miners were still subject to the civil code promulgated by the district mining governments while operating a claim within its territory, whether private or shared. As the number of joint-stock associations increased, secondary claims to surrounding land and water sources also developed to accommodate the technological demands of improve mining efforts, and mining companies established secondary rules governing the financing of such operations and the contractual relationship between individuals in a joint-stock

\begin{footnotes}
\item[156] Paul, \textit{California Gold}, 149.
\item[158] Ibid., 437.
\end{footnotes}
company, although this varied based on their tasks. Pre-existing mining camp governments adapted to arbitrate new disputes between joint-stock associations and regulate the size of claims to prevent monopolies from emerging. As the practices and methods of mining changed, so did the rules governing it.

III. Cattlemen’s Associations

The third and final type of frontier mutual protection agency is the cattlemen’s association. The Great Plains, consisting of the vast swath of prairie and grassland east of the Rocky Mountains and about 44% of the total continental United States, was well-adapted to cattle breeding, especially in the southern plains of Texas where commercial cattle grazing originated: the winters were mild, while natural expansive grassland provided virtually infinite grazing land. The bulk of commercial cattle grazing in the later half of the century was centered in Colorado, North Dakota, South Dakota, Nebraska, Oklahoma, Wyoming, and Montana under similar environmental conditions beginning in the 1850s and 1860s, following the disruption of southern grazing activity by the Civil War. The cattlemen’s association requires mention separate from the claims club or mining camp because of the difficulty of restricting ranching to specific plots of private property, as the large tracks of land essential for stock-growing made conventional wooden fencing prohibitively expensive. Mobility and flexibility are at the root of the cattle industry, and stock-growing was organized around seasonal cattle drives: while cattlemen operated out of a range headquarters, the fattening of cattle stock required long drives across the unowned, unfenced “open

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160 Merk, History of Westward Movement, 457.
The land laws passed by Congress to encourage orderly settlement of the public domain went unenforced and disrespected, the land was regarded by settlers as “free grass,” “free water,” and “free air.” Like the early stages of the gold rush, land claims were based on original acquisition, since “there was room enough for all, and when a cattleman rode up some likely valley or across some well-grazed divide and found cattle thereon, he looked elsewhere for range.” Water sources in particular were scarce and extremely valuable for establishing ranch headquarters between seasonal cattle drives, and natural boundaries were utilized by cattlemen to demarcate the boundaries of ranches along a stream. Proof of ownership, although tenuous, was rarely contested until the massive influx of potential farmers and ranchers under the Homestead Act of 1862, but even then claims were determined by force: under questioning, a rancher “usually advised those so inquisitive and foolish as to ask for proof of ownership to ‘vamoose the ranch’ or ‘pull your freight, pronto.’”

Like in the gold fields of California, cattleman’s associations developed to define and enforce rights to grazing territories in response to increased competition for scarce resources like grasslands and water sources. Increased demand for beef in the East and the resulting jump in capital investment in ranching resulted in impending scarcity in the grass and water that was previously considered free, as “the good pastures were being overgrazed, the marginal lands were crowded, and no new area of grass was available as an escape valve.”

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165 Ibid., 56.
166 Ibid., 59.
after the Homestead Act from farmers and sheep grazers seeking opportunities for agriculture and grazing on the open range. Homesteaders sought to monopolize prime water resources, as irrigation ditches allowed farmers to radiate outwards from a stream and access prime grassland on the range for agriculture.\textsuperscript{167} Sheepmen and competed for the same water and grass resources, but usually lagged behind cattlemen in settling the range and were therefore regarded by cattlemen as trespassers on their customary ranges.\textsuperscript{168} The usually solitary and individualist cattleman, faced with and overwhelming tide of sheepmen and farmers, gave in to necessity and organized into protective stock associations. The largest stock-growers associations were localized in Colorado, Wyoming, and Montana. The Wyoming Stock Growers Association which formed in Wyoming Territory in 1871 is historically known as an institutional blueprint for other protective groups, identified historians as “the most influential and successful” of the groups.\textsuperscript{169} Other large-scale stock-growing operations that organized in Colorado in 1873, and the Montana Stock-Growers Association in 1885 possessed similar institutional features and performed similar functions to the Wyoming group.\textsuperscript{170}

The stock-growers associations had three primary functions: to preserve individual ownership of their members’ herds by defining property rights, to afford protective and enforcement services to their members, and to regulate the use of public lands to prevent overcrowding and overuse.\textsuperscript{171} Cattleman’s associations met collectively in organized meetings to organize round-ups, discuss issues with theft,

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{167} Ibid., 81.
\item \textsuperscript{168} Kraenzel, \textit{The Great Plains in Transition}, 123.
\item \textsuperscript{169} Ferris, \textit{Prospector, Cowhand, and Sodbuster}, 83.
\item \textsuperscript{170} Osgood, \textit{Day of the Cattleman}, 121.
\item \textsuperscript{171} Ibid., 115.
\end{enumerate}
\end{footnotesize}
and register brands to delineate ownership of cattle; organization was not only for protection “but also for the conduct of their business”\textsuperscript{172} Most stock-growers associations were small: the Wyoming Stock Growers Association, regarded as the largest and best organized of these groups, had a membership of 363 at its peak in 1885, owning almost two million head of stock.\textsuperscript{173} Obligations under a stock-growers organization were relatively straightforward, requiring mutual assistance and abiding by the rules and regulations of the organization. Because of the large area of land covered by any given association, the executive committee that recorded claims and managed disputes generally restricted its activities to organizing round-ups and delineating round-up districts for individual cattlemen.\textsuperscript{174} The great expanse of the open range made enforcement by the association itself difficult, and enforcement duties were outsourced to cowboys and hired guns that made up a human fence, with outposts or “line camps” demarcating the boundary lines on grazing territories. Furthermore, the mobile nature of cattle herds on the open range and the high costs of fencing private ranches led associations to resort to systems of registering the marks and brands of individuals’ cattle and recording their claims with their association.\textsuperscript{175} These associations also hired stock detectives to seek out thieves and cattle rustlers’ intent on picking off part of the stock during a drive.\textsuperscript{176} As the cost of securing ownership of cattle was the primary motivator for investment in the demarcation of property rights, the invention of barbed wire in 1873 lowered the costs of fencing individual claims and allowed cattlemen to specify their property rights more

\textsuperscript{172} Ibid., 120.
\textsuperscript{173} Ibid., 121.
\textsuperscript{174} Ibid., 130-133.
\textsuperscript{175} Ibid., 118.
\textsuperscript{176} Anderson and Hill, \textit{The Not So Wild, Wild West}, 25.
precisely, lowering the demand for enforcement outside of discouraging cattle rustling.\textsuperscript{177} The first lands to be fenced were those with water resources, and private grass plots were demarcated from the rest of the open range. Even after fencing became a viable option and the open range began to decline, stock growers associations continued to employ cowboys and stock detectives to deal with fence-cutters and cattle-thieves.\textsuperscript{178}

\textit{IV. Institutional Features}

Analysis of land claims associations, mining governments, and the cattleman’s association reveals several distinct institutional features that provide insights into the economic underpinnings of frontier mutual protection agencies. The first and most crucial aspect to understanding the frontier MPA is \textit{voluntary collective action}, exemplified by the widespread use of a town meeting by virtually all MPAs as a “constitutional convention” to draw up and amend the terms of a specific collective agreement. The organizational nucleus of the frontier MPA was typically formed at these hall meetings with the election of officers and the signing of a constitution by its members. The rules and regulations of frontier MPAs were accepted voluntarily, and any obligations or costs imposed on each member were contractually defined in the constitution. Since each individual actively negotiated the conditions of the constitution during a meeting until all members accepted its terms (and future amendments, as most had mass meetings every few months), MPA constitutions by nature reflected the individual interests of its members in the advancement of a collective goal. As Olson writes in \textit{The Logic of Collective Action} (1965), purely

\textsuperscript{177} Ibid., 24.
\textsuperscript{178} Ferris, \textit{Prospector, Cowhand, and Sodbuster}, 81-83.
personal or individual interest can be advanced by unorganized action, but groups can often adequately fulfill personal incentives by advancing the common interests of its members:

organizations can therefore perform a function where there are common or group interests, and though organizations often also serve purely personal, individual interests, their characteristic and primary function is to advance the common interests of groups of individual.\textsuperscript{179}

The laws and regulations adopted by various groups differed given the specific economic activity in question: miners coordinated joint-stock mining operations, farmers organized contractual obligations to improve their lands and profit from the sale and exchange of claims, and ranchers developed rules determining the organization of round-ups, cattle districts and brands, as well as the enforcement system that came with it. Voluntary collective action was the vehicle through which the frontier MPA was given both contractual legitimacy and a defined purpose: to increase the wealth of its individual members by advancing their common interests.

We can treat the goal of such collective action – the provision of exclusive “club” goods – as the second distinctive feature of frontier MPAs. The definition, enforcement, and adjudication functions common to frontier MPAs all fall under the definition of club goods by being excludable and non-rivalrous. MPA functions are excludable because the benefits of the legal systems set up through collective action are only enjoyed through membership in the organization. Similarly, these private legal systems are non-rivalrous since it is possible for every member of the organization to equally enjoy the benefits of law and order, as the legal system that

established well-defined property rights and the presence of enforcement organs were both equally available to all members. Frontier MPAs certainly exercised exclusionary behavior in their operations: the Johnson County Claims Association regulated its size by establishing a minimum age of 18 and requiring American citizenship, while American miners in California and Nevada came into conflict with Spanish and French prospectors, leading to the latter’s exclusion from American mining camp governments. Limiting group size served a practical purpose for frontier MPAs: the larger a group is, the less of the total benefit of a collective good members will receive until the group eventually falls short of providing enough of a collective good to justify the costs and obligations of membership. Keeping membership in frontier MPAs low allowed for its individual members to maximize their share of the collective good of rights enforcement.

With this in mind, the third characteristic is wealth-maximizing objectives and behavior. Frontier MPAs functioned to maximize the productive gains of their members, both in terms of eliminating investments of resources in force and by using rules to reduce socially inefficient outcomes. By defining and enforcing property rights, frontier MPAs sought to encourage positive-sum productive activity and transfers for its members. We can to some extent classify the wealth-maximizing functions of the MPA based on their separate goals of profit-maximizing and preventing overuse of common resources. The former refers to activities which involve cooperation in the process of production or trade, such as the organization of land sales by claims clubs, the formation of wage-based joint-stock associations in

mining camps, and the roundups organized by stock-growers associations.

Cooperative activities were typically defined in the context of contractual obligations of membership. For example, members of the Johnson County claim club were required to expend labor worth $50 each month in order to drive up the price of their claims prior to sale and secure extra revenue for all group members.\textsuperscript{182} For most claims clubs close to the Mississippi who engaged in intimidatory tactics at public land sales, their constitutions specified an obligation to appear on a sale day and assist fellow members in securing their claims. In California and Nevada, joint-stock associations formed mutually beneficial capital and labor contracts to exploit resources after property rights to claims were completely defined and enforced; most employed minimum work-day requirements to ensure continual use and defense of valuable claims. For stock-growers associations, the voluntary roundup was both a method to cooperatively manage larger herds and to monopolize the best grazing territories and water resources. Starting in 1874, the Wyoming stock-growers organized a voluntary roundup system that effectively excluded non-members from using the organization.\textsuperscript{183} Many cattle companies profited from exchanging territorial range rights until the influx of sheep in the 1880s, when coupled with the invention of barbed-wire, made fencing far superior to the cooperative roundup.\textsuperscript{184} The frontier mutual protection agency developed organizational, cooperative rules in order to maximize gains for its members.

Preventing the overuse of common resources refers to discouraging economically inefficient outcomes stemming from negative externalities. Land values

\textsuperscript{182} Bogue, “Iowa Claim Clubs,” 51.
\textsuperscript{183} Anderson and Hill, \textit{The Not So Wild, Wild West}, 164.
\textsuperscript{184} Ibid., 167.
for pioneer entrepreneurs were based on, in Anderson and Hill’s words, a “unique asset that cannot be reproduced.” This asset might refer to the fertility of potential farming land, gold-rich streams and lands with heavy concentrations of mineral ore, and prime grazing land and water resources. Land values can be dissipated or destroyed if property rights are poorly defined and enforced and unique assets are subsequently overused or fought over.\textsuperscript{185} The wealth-maximizing goals of frontier MPAs in clearly defining and enforcing property rights encompassed the prevention of overuse and competition.\textsuperscript{186} Americans immediately recognized the need for well-defined property rights and economically efficient rules; cattlemen’s associations emerged in response to the tragedy of the commons in terms of public grazing land, while mining companies working the subterranean lodes in Nevada and Colorado, expecting future returns on investments, were willing to incur prospecting costs and infrastructure investments only if they could effectively claim exclusive right to the benefits from land.\textsuperscript{187} Clearly demarcated property rights diminished the inefficiency of overuse (over-grazing, over-farming, over-mining, etc) and the perpetual devotion of resources towards personal enforcement, allowing individuals to exclusively accrue the benefits of a valuable resource. Coordinative institutional rules used by frontier MPAs limited the selection of individual productive strategies by members that, while individually beneficial yield, socially suboptimal results like the “tragedy of the commons,” by ensuring that benefits of defecting from such rules are greatly outweighed by the potential future gains of adhering to them.

\textsuperscript{185} Ibid., 13.
\textsuperscript{186} Anderson and Hill, \textit{The Not So Wild, Wild West}, 13.
\textsuperscript{187} Ibid., 22.
Frontier MPAs organized developed through collective action in order to achieve the common economic goals of its members, employing a legal framework to maximize profits by deterring outside coercion, coordinating cooperative productive activities, and preventing overuse and exploitation of valuable public resources by defining and enforcing rights to private property. These features – collective action, private goods, and the use of wealth-maximizing rules – all point to a new way to conceive of the classical social contract of John Locke and Robert Nozick based on fundamental economic principles.

V. The Coaseian Social Contract

The economic logic that drives frontier mutual protection agencies is exemplified in a unique type of social contract, based on what Mancur Olson calls the “Coasean bargain” after the economist Ronald Coase. Olson treats the social contract in *Power and Prosperity* (2000) in microeconomic terms. As Olson writes, conditions of production are limited under anarchy, as capital and labor that could be devoted to production is instead invested in individual protection, defense against theft, and safeguarding one’s property rights: anarchy “not only involves the loss of life but also increases the incentives to steal and to defend against theft, and thereby reduces the incentive to produce.” As I have established, an increase in relative scarcity (either by diminishing natural resources or increases in population density) results in increased competition for resources, which imposes extensive costs on individuals as they work to defend themselves. As competition increases, cooperation often becomes more and more appealing to those who do not have the comparative

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189 Ibid., 64.
advantage in force necessary to violently coerce others for resources. As Bruce Benson writes:

“the incentives to cooperate...are largely positive: individuals enter [a] contract because they expect to increase personal wealth by focusing resources in productive activities as a result of reciprocity-based credible commitments to respect each other’s property rights claims, rather than through investments in violence which only produce mutual deterrence.”

The Coase theorem presents the possibility of two rational individuals voluntarily bargaining and contractually agreeing to a set of rules and distinct property rights that will maximize joint gains for both, regardless of the initial distribution of resources, by reducing competition and conflict. Put simply, legal rules are justified in reference to cost-benefit analysis.

Hence, the Coaseian social contract presented by Olson (despite his subsequent rejection of it in *Power and Prosperity* in favor of a non-voluntary model) is characterized by voluntary, collective action to contractually define property rights and adopt rules that allow one to shift economic activity away from personal protection and towards productive, wealth-maximizing endeavors. The contract presented by Olson shares elements outlined by Coase in “The Problem of Social Cost” (1960) and “The Nature of the Firm” (1937). The idea of cooperative bargaining explored in “The Problem of Social Cost” explains why frontier MPAs are characterized by voluntary collective action. Coase presents the benefits of bargaining in his example of a cattle farmer and rancher (remarkably appropriate for our

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historical analysis), where the rancher’s cattle trample on the farmer’s crops, imposing significant costs on the latter. The rancher has no incentive to account for the losses his cattle impose on the farmer, and the situation will be avoided only if the costs of building a fence or exacting restitution are less than the damage endured by the farmer. According to Coase, voluntary bargaining between rancher and farmer would lead to a contractual agreement assigning responsibility and liability for damages. If the rancher is held liable for damages, he will internalize those costs and build a fence before he is obligated to pay for damages; if the farmer is held liable, he will do the same. As long as the property rights of the parties were clearly defined, it does not matter for economic efficiency whether the law makes the rancher or farmer liable.

Legal rules that encourage economic efficiency, arising from voluntary bargaining, are important and evident in the context of the historical development of frontier MPAs for two reasons. The first reason deals with the coordination functions of MPAs: rules, obligations, and punishments are contractually developed to encourage cooperation in productive activities. The examples of claim club intimidation, joint-stock associations, and the cattleman’s roundup have already been described in detail. Coordination activities depend on both the benefits to the members of a group and the costs imposed upon them. As Olson writes, “though all of the members of a group therefore have a common interest in obtaining this collective benefit, they have no common interest in paying the cost of providing that collective good,”192 reflecting the lack of an incentive by the rancher to account for the farmer’s losses in Coase’s analogy by contributing to a public good (a fence) that

could benefit both. The frontier MPA provides an incentive to internalize those social costs through contractually-defined sanctions and liabilities, thus encouraging cooperative productive activities. The necessary conditions for the optimal provision of a collective good through the voluntary and independent action of the members (without devolving into relentless taxation) is at the point when the total or aggregate marginal benefits of membership to a contractual agreement equal the total marginal cost. Brennan and Buchanan succinctly note that any rule which ensures a higher overall payoff when respected by all persons (grazing land boundaries, property claims on cattle, limits on claim sizes, etc) is vulnerable to violation motivated by privately rational behavior, but the backing of such rules by collective enforcement organs and the threat of punishment makes defection unlikely.

The second reason for the importance of Coaseian bargaining for frontier MPA deals with externalities generated by individual activities, both in terms of the tragedy of the commons and the threat of violence. In Coase’s example, both the rancher and farmer have an incentive to bargain for joint gains: by clearly demarcating and enforcing property rights, both the private benefits and social costs of utilizing valuable resources are unambiguously allocated, eliminating the need for individual expenditures in force to determine responsibility and exact compensation for negative externalities and resulting in a positive-sum game. As a result, legal rules also prevent overuse of valuable resources by forcing individuals to internalize

193 Ibid., 31.
the potential externalities of their activities. The presence of violent competition itself can be treated as a negative externality on the frontier due to the rivalrous nature of certain resources with unique values in the public domain, like the watering holes on the Great Plains, the particularly arable fields of Iowa and the Mississippi, and the gold lodes localized at Coloma, California and Virginia City, Nevada. Even if settlers possessed a land claim legitimately purchased by the federal government, the operation of frontier settlers in the absence of an effective federal monopoly on coercive force made unilateral efforts to capture the exclusive benefits of an asset (as Bruce Benson writes, “turning a property claim into actual ownership”)\(^\text{197}\) require an individual to back a claim with a sufficiently strong threat of violence to induce others to abandon their conflicting claims, an allocation that limits productive activity in other areas (operating a mine, building a house, etc) by sinking resources into perpetual deterrence.

There is an immediate question that arises: if individuals can voluntarily bargain over contractually-defined property rights to achieve economically efficient outcomes, why did miners, squatters, and cattleman on the frontier exercise collective action to achieve their goals? Why did they not simply engage one another in bilateral contracts? Even more simply, why did some choose to simply not engage in contracts and rob, pillage, and steal? Coase points to transactions costs associated with Coaseian bargaining:

In order to carry out a market transaction it is necessary to discover who it is that one wishes to deal with, to inform people that one wishes to deal and on what terms, to conduct negotiations leading up to a bargain, to draw up a contract, to undertake the inspection needed to

make sure that the terms of the contract are being observed, and so on. These operations are often extremely costly, sufficiently costly at any rate to prevent many transactions that would be carried out in a world in which the pricing system worked without cost.198

While the Coase’s bargaining example of the rancher and farmer is presented in a scenario where negotiating and contracting are costless, these transaction costs can in reality be prohibitively high, so high that the potential gains from a voluntary exchange would be offset by the expense of achieving the goal in the first place199 and coercive behavior presents a more appealing course of action. In a situation like the American frontier where property rights were poorly defined and enforced, the high costs and risks of voluntary Coaseian bargaining prevented mutually beneficial definitions of property rights from taking place. The two types of transactions costs that were the most prohibitive and therefore those crucial to the frontier MPA are bargaining costs – the costs required to come to an acceptable agreement with the other party to the transaction – and policing and enforcement costs – the cost of “making sure the other party sticks to the terms of the contract”200 through contractually legitimate inspection or coercion. The time and resources devoted to unilaterally engaging in these activities could be allocated to different, more productive activities. On the frontier, where the vast majority of settlers were subsistence farmers, little time could be spared with seeking out every other potential claimant in an area and negotiating the terms of multiple contracts. Furthermore, such

198 Ibid., 15.
199 Olson, Power and Prosperity, 54.
200 The different types of transaction costs also include “search and information” costs, the cost incurred in determining whether a good is on the market or for what price; all three are defined and discussed in Carl J. Dahlman "The Problem of Externality." Journal of Law and Economics 21 no. 2 (1979), 141–162.
time would be a waste if the yeoman farmer could not even guarantee that the terms and obligations of contracts could be followed simply by virtue of being either outgunned or eluded in the frontier wilderness by a violator.

With these transaction costs taken into account, Coase’s theory of the firm provides some guidance to the formation of third-party mutual protection agencies to undertake the functions of defining, enforcing, and adjudicating property rights. The need for a third-party body with a monopoly on force is to some extent self-evident with regard to enforcement and policing costs: even if everyone in an anarchic society contracted with one another to define and respect property rights and maintain a peaceful social order, anarchy would not be eliminated unless that contract was consistently enforced. While individuals may initially agree to follow the terms of a contract, increased competition for valuable resources increases the potential gains from defecting from a contract and engaging in violence. Where individual capacities for coercive action were generally equal (as they were on the American frontier), the threat of coercive contract enforcement decreases. Hence, the need for third-party enforcement arises: as Hobbes wrote in *Leviathan* (1651), “covenants, without the sword, are but words and of no strength to secure a man at all.” Bargaining costs also provide a motivation for developing a third-party group like those frontier mutual protection agencies. The mutual protection agency, like the firm, greatly reduces the transaction costs associated with bargaining and contracting by replacing bilateral contracts between individuals with a single contract with the agency:

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201 The widespread availability of the revolver or “six-shooter” for frontier pioneers gave equal coercive power to nearly everyone. Other resources like the horse and repeating rifle contributed to asymmetric capacities for coercion.

A factor of production (or the owner thereof) does not have to make a series of contracts with the factors with whom he is cooperating within the firm, as would be necessary of course, if this cooperation was as a direct result of the working of the price mechanism. For this series of contracts is substituted one.  

Membership in a mutual protection agency, despite the costs (registration fees, contractual obligations to provide certain services, etc), provides significant benefits in reducing the bargaining costs that individuals would normally face in the process of contractually defining and enforcing their rights with other individuals.

The organizational nucleus of the frontier MPA is part of the collective good provided through collective action. As Coase point out in “The Nature of the Firm,” transaction costs are greatly reduced by forming an organization and “allowing some authority: an entrepreneur to direct resources.” Since the vast majority of mutual protection agencies were initially formed with unanimous consent in a town-hall type mass meetings rather than an individual entrepreneur “selling” a specific institutional framework or protective services on the market, the frontier mutual protection agency is an example of what Anderson and Hill call “collective institutional entrepreneurship.” The coordinating role played by the individual entrepreneur in “The Nature of the Firm” is taken on by the executive committee or officer corps constitutionally established by each group, who undertake the burden of responsibility for provisioning the collective goods of enforcement and adjudication. While Olson writes that, in groups with small enough memberships, one individual

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204 Ibid., 392.
will often obtain sufficient benefit from a collective good that he gains from providing it entirely at his own expense, this was not the case with frontier mutual protection agencies. Mining governments, claims clubs, and cattlemen’s associations all imposed specific costs and obligations of memberships to offset the larger cost of providing for collective goods by an officer corps or executive committee that performs coordinating functions. Squatters in claims clubs were expected to pay regular sums to claim recorders and other club members for their services, although payment was either owed monetarily or in the form of services rendered in assistance to the club itself, such as intimidatory action and land improvement. User charges were utilized to pay the salaries of administrative officials: the claims recorder for the Johnson Country claim club received 25 cents for each claim recorded, while judges and marshals received $1.50 for each day spent “in discharge of the duties of their respective offices.” The cowboys and stock detectives who made up the executive organs of cattlemen’s associations required compensation for their services; numerous gunslingers made themselves available for hire in response to market demand for muscle, while large private enforcement agencies like the Pinkerton Agency and Wells Fargo provided coordination services for a price. The economic model of the frontier MPA is a Coaseian social contract with a firm-like organizational structure, characterized by voluntary collective action, providing club goods, and wealth-maximizing behavior.

III

Pax Vigilanticus

I. Frontier Vigilantism: A Brief History

Vigilantism has been defined differently by historians and political scientists. In *Vigilantism: A Political History of Private Power in America* (1990), William Culberson defines vigilantism as “the communal desire and willingness to enforce existing law or to precipitate a new ‘necessary and proper’ order by popular rule, in order to meet social exigencies.”

H. Jon Rosenbaum and Peter C. Sederberg, addressing vigilantism as a form of illegal coercion, situate vigilante activity between revolutionary and reactionary violence as “acts of threat or coercion in violation of the formal boundaries of an established sociopolitical order which, however, are intended by the violators to defend the order from some form of subversion.”

Outside of academic circles, vigilantism is simply conceived as individuals “taking the law into their own hands.” For the purposes of this chapter, I will appeal to the “classical” definition provided by Richard Maxwell Brown in his comprehensive history of American vigilantism, *Strain of Violence: Historical Studies of American Violence and Vigilantism* (1975): “the vigilante tradition, in the classical sense, refers to organized, extralegal movements, the members of which take law into their own

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This definition not only reflects the shared purpose that generally ties vigilance committees to frontier mutual protection agencies, but emphasizes the popular conception of vigilantism that shapes the way we regard the history of vigilante activity on the frontier. A *vigilance committee* refers to the actual organization of vigilantism, although “regulator” and “committee of safety” were common names in the nineteenth century. Like the mutual protection agency, the vigilance committee consists of private citizens organized together for protection where law enforcement was absent or local government was ineffectual, corrupt, or unpopular. A *vigilante* refers to a member of a larger vigilance committee rather than a lone individual engaged in vigilante activity. Vigilance committee organized to capture, punish, and deter criminals. They organized militias, held trials, and punished criminals. When there was no law, vigilantes were the law.

Before delving into the specific institutional and organization characteristics of vigilance committees on the American frontier, it is necessary to explore the history of vigilantism. While the first claims clubs that heralded the emergence of frontier MPAs developed in the early 1830s, vigilantism was prevalent in American society well before the opening of the frontier and the great migration westward. The earliest recorded vigilance committee in America was the South Carolina Regulator Movement of 1767, which launched a two-year campaign against the frontier crime and civil strife that pervaded parts of colony after the Cherokee War of 1760-1761. The Back Country region of the state was left in chaos as homes were burned and farmlands razed by violent warfare against Native American tribes, and the lack of

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local sheriffs and courts to enforce the law resulted in an organized movement of settlers to deal with the outlaw bands that roamed the war-torn region pillaging from farms and townships. Following the end of the Revolutionary War, vigilante activity was localized in Kentucky, Tennessee, Indiana, and Illinois, all regions experiencing increased post-war migration. Brown writes that there were four major waves of vigilantism during the nineteenth century. The first wave was from 1830 to 1835, taking place mainly in Southern states like Alabama and Mississippi and dealing with horse-theft and counterfeiting. The second wave included vigilante activity in Iowa, east Texas, Illinois, and the Missouri Ozark during the early 1840s, addressing the shift in outlaw elements from the lower Mississippi River to the upper Mississippi and trans-Mississippi southwest after the 1830s campaign. The third wave – catalyzed by the famous San Francisco vigilante movement in the early 1850s – ran from 1857 to 1859, addressing violence on the advancing lawless frontier and including new vigilante movements in Iowa, northern Indiana Regulators, the San Antonio and New Orleans vigilantes, and the Comites de Vigilance of southwest Louisiana. The fourth and final wave of vigilantism occurred in the in period immediately before and after the Civil War, with movements developing in Missouri, Kentucky, Tennessee Indiana, and Florida.

Brown divides frontier vigilantism chronologically and geographically into eastern and western manifestations: eastern vigilantism was situated between the Appalachian Mountains and the 96th meridian (roughly the western side of the Mississippi River) and ended in the 1860s while Western vigilantism began in the
1850s between the 96th meridian and the Pacific Ocean. For the most part, western vigilantism will be the primary focus of this analysis since these vigilance committees emerged under similar circumstances of lawlessness as frontier mutual protection agencies. Rapid increases in local population densities in the Mississippi Valley, the Great Lakes, and the Pacific and Gulf coast regions bred disorder in mining camps, fledging agricultural centers, and on the open range. The same strikes of valuable resources and mining rushes that brought thousands of settlers streaming across the country and created the demand for governance also yielded vigilantism: as Brown writes, “the nature of natural resources of the West determined the types of frontier disorder that gave rise to vigilantism,” from cattle rusting on the Great Plains to sluice-robbing and robbery in mining regions. Western vigilance committees were also more numerous and more violent than their eastern counterparts. Of the 326 recorded vigilance committees in the United States, 210 operated in the West between 1849 and 1902, more than twice as many as in the eastern part of the continent. Of the 729 people killed by local vigilante movements in the nineteenth century (excluding the Ku Klux Klan, a national movement), 511 died at the hands of western vigilantes after 1860.

Finally, western vigilantism possessed two of the most prominent and archetypal vigilante movements in American history: the San Francisco vigilante movement and the Montana vigilantes. Just as frontier mutual protection agencies organized themselves differently to provide law and order under different

216 Ibid., 98.
217 Ibid., 100.
218 Ibid., 101-102.
circumstances of frontier lawlessness, vigilance committees varied in activity depending on the particular needs of a region.

II. The San Francisco Vigilante Movement

The San Francisco vigilante movement was divided into two distinctive movements: the Vigilance Committee of 1851, and the larger Vigilance Committee of 1856. Both committees organized as a direct result of rapid economic growth and population increases in the wake of the California Gold Rush. The San Francisco vigilante movement, because of the notoriety of its two distinct committees, is considered the most famous in American history. The Committee of 1851 is an example of crime-control vigilantism and the first organized vigilance committee of the period Brown defines as western vigilantism. The Committee of 1856 is generally considered a turning point in the history of vigilantism, the first instance where vigilante justice was applied in a metropolitan setting to combat political corruption instead of private coercion and outlaw activity.

The onset of crime and metropolitan violence was precipitated by a population explosion. San Francisco was the closest seaport to Sutter’s Mill, the site of the gold strike touched off the Gold Rush and the population of the city jumped from 812 in 1848 to 25,000 by the end of 1849. Makeshift buildings were replaced by permanent roads and infrastructure virtually overnight.219 As Alan Valentine writes, “ex-convicts from Australia and crooked lawyers and politicians from the East were getting more numerous and powerful every day, and they were twice as dangerous as they were

beginning to work together.”\textsuperscript{220} San Francisco’s rapid economic growth resulted in a culturally and ethnically diverse society: nearly half the population was foreign-born, making San Francisco a cosmopolitan city of Englishmen, Scots, Irish, French, Germans, Italians, Polynesians, Mexicans, South Americans, Chinese, Jews, and others. Because of this, the first major crime wave developed along ethnic and cultural lines: a group of organized thieves and outlaws dubbed “The Hounds” raped and pillage from the relatively poor Chilean and Mexican population. Around 230 citizens, led by local importer and former councilman Sam Brannan, formed a vigilante gang, although the Committee of 1851 formally organized only after prominent members of the community, with Brannan at the head, distributed handbills calling upon the citizens of San Francisco to organize and address the violence and lawlessness pervading the city.\textsuperscript{221} Seven hundred people eventually joined the movement. The vigilantes incarcerated seventeen of the Hounds in the brig of a ship anchored in San Francisco’s harbor (there was no permanent jail at the time) and drove the rest from town before the captured bandits were delivered to a legitimate court and the Committee of 1851 dispersed.\textsuperscript{222}

The Committee of 1851 also responded to new instances of intercultural strife when conflict erupted between Chinese, French, Italian, and Spanish citizens and fires deliberately lit to cover for the robbing and looting of Chinese laundries and restaurants caused extensive damage to the city on Christmas Day, 1849. Arson was a perpetual danger to the city, whose wooden buildings were hastily erected in response to the influx of emigrants. The city lacked volunteer fire fighters (and even a fire

\textsuperscript{221} Ibid., 46.
\textsuperscript{222} Madison, \textit{Vigilantism in America}, 45.
engine) and suffered four huge conflagrations between 1849 and 1851.\textsuperscript{223} San Franciscans hired “The Nightwatchmen,” a quasi-police force, after the Christmas 1849 fire, but the group operated “not so much to guard against crime as to watch for the initial smoke from fires.”\textsuperscript{224} Arson and larceny were closely connected for the Committee of 1851, and the string of devastating fires provided an incentive to organize. While the Committee did use the municipal legal organs available in the city and deliver their captives to established courts, they also formed their own mass courts to deal with the criminals. Ninety-one men were seized, but only four men were hanged, while twenty-eight were banished, forty-one freed, and sixteen received “less damaging punishments.” The goal of the Committee of 1851 was not to replicate lynch law and simply hang every offender, but to carry out local criminal law in the absence of an effective state authority: as Arnold Madison wrote in \textit{Vigilantism in America} (1973) “the psychological effect of the group, however, was even more sweeping…. hundreds of criminals fled the area.”\textsuperscript{225}

While the population of San Francisco jumped to 50,000 by 1856, local law enforcement organs had regular civilian crime relatively under control compared to the San Francisco of the 1851 Committee.\textsuperscript{226} Instead of rampant violence, San Francisco of 1856 was plagued by soaring municipal debt, rising taxes, and bankruptcy under the corruption of New York political operator David C. Broderick. Civilian crime was not as serious for the 1856 Committee as for its predecessor, but

\textsuperscript{224} Ibid., 106.
\textsuperscript{225} Madison, \textit{Vigilantism in America}, 45-46.
\textsuperscript{226} Brown, \textit{Strain of Violence}, 141.
the vigilantes of 1856 inherited a San Francisco that was a “seething caldron of social, ethnic, religious, and political tensions in an era of booming growth.” The Broderick political machine reflected and intensified the ethnic tensions within the city, strong-armeining elections and mobilizing the Irish-Catholic and mostly Democratic working class of the city as its political backbone. The 1856 committee was galvanized into action after the murder of Daily Evening Bulletin editor and former 1851 vigilante James King was shot and fatally wounded by Irish-Catholic political operator James P. Casey for blasting the corruption of the Broderick machine. King’s editorials had created a “near-panic psychology” concerning municipal crime (despite low crime rates reported by the California Alta) and the real corruption presented by the Broderick machine, especially after the murder of U.S. Marshal William Richardson by Italian-Catholic gambler and Broderick crony Charles Cora. King’s murder provoked a public reaction so strong that the membership of the 1856 vigilance committee reached nearly 6,000 men virtually overnight. Since the municipal government, freed of harassment by King and the Bulletin, had looked the other way on Cora and Casey’s sentencing due to their status as political operatives, the vigilantes regarded the municipal courts as corrupt and ineffective. The movement was directed by the “Committee of 13,” led by former 1851 vigilante William Tell Coleman. The vigilance committee methodically collected material evidence of election fraud and municipal corruption before whipping and exiling Broderick’s goons (with the exception of both Casey and Cora,

227 Ibid., 134-135.
228 Ibid., 135.
229 Ibid., 136.
230 Ibid., 111.
among the first victims of the vigilante noose). Following the ousting of the Broderick machine, the San Francisco vigilante movement organized the People’s party, running a vigilante-heavy and self-proclaimed Republican ticket in order to insulate San Francisco’s government against further corruption. The People Party, running a platform of law taxes and fiscal reform, controlled the government for ten years before being absorbed into the local Republican Party.

III. The Vigilantes of Montana

Like the San Francisco movement, the Montana vigilante movement comprised two distinct phases: the Bannack and Virginia City movements of 1863-1865, and the movement of the late 1870s and early 1880s that culminated with Granville Stuart’s 1884 vigilance committee in northern and eastern Montana. As the deadliest vigilante movement in American history, the Bannack, Virginia City, and Stuart-led movements claimed thirty-five victims. The Montana movement lacked the rapid economic development, municipal infrastructure, the intercultural strife that defined the focus of the San Francisco committee, despite basing itself organizationally on the legendary San Francisco vigilantes of 1851 and 1856.

After news of mineral strikes at Alder Gulch made their way to cities throughout the West in the spring of 1862, hundreds of miners from California, Colorado, and Oregon immigrated north to Montana. The stampede of prospectors and miners brought men of the “dangerous classes;” while the towns of Bannack and Virginia City sprang up virtually overnight. Virginia City was an especially vibrant mining center; the city had a population of 10,000 by the time Montana was carved

231 Ibid., 139.
out of Idaho Territory in 1864. By the end of 1865, the territory of Montana had a population of nearly 30,000 and a mining industry second only to California. Outlaw gangs known as “road agents” quickly emerged in the Montana back country to prey on the transportation and communication routes between the two mining centers.\footnote{Thomas J. Dimsdale, \textit{The Vigilantes of Montana}. (Norman, OK: University of Oklahoma Press, 1866), 22.} The road agents were a particularly deadly breed of frontier outlaw, killing at least 100 people in the first few months of operation.\footnote{Ibid., 25.} Thomas J. Dimsdale, a firsthand observer and lauder of the Montana vigilantes, writes in \textit{The Vigilantes of Montana} (1866) that “there was never a mining town of the same size that contained more desperadoes and lawless characters than did Bannack during the winter of 1862-63.”\footnote{Ibid., 26-27.} A vigilance committee formed in nearby Virginia City under the direction of young lawyer and future U.S. Senator Wilbur Fisk Sanders to deal with the perpetual theft suffered by settlers in the region, and the vast majority of the outlaws who terrorized Bannack and Virginia City were executed and banished between 1863 and 1864.

The most notable (and questionable) vigilante execution was that of Bannack sheriff Henry Plummer. Plummer was elected sheriff of Bannack in May 1863 despite his previous association with criminal elements as he sought to gain power and wealth as a mine owner.\footnote{Frederick Allen, \textit{A Decent, Orderly Lynching: The Montana Vigilantes}. (Norman, OK: University of Oklahoma Press, 2004), 90-91.} The following winter, robberies and murders in Bannack increased, all while Plummer was absent; suspicion began to build that Plummer was in fact affiliated with the road bandits plundering gold dust and bank notes on the
wilderness trails between Bannack and Virginia City. While the vigilance committee initially operated out of Virginia City alone, the evidence implicating Plummer as part of the Bannack outlaw band led the vigilante executive committee to decide that “parties should be sent from Virginia City to Bannack City” to arrest and execute members of the gang, “the sheriff, Henry Plummer, being one of the members.”

Historians have debated the extent of Plummer’s involvement with outlaw activity in Montana, but with the execution of Plummer and twenty-one other gang members in January of 1864 criminal activity sharply decreased and the vigilance committee gradually ceased operations until the 1880s. Montana’s cities and mining settlements were relatively free of crime in the late 1870s and early 1880s as miners moved on to newer strikes in South Dakota and the population of Montana began to drop. But as the federal government began extending the national railroads to Helena, Butte, and Billings in the northern and central parts of the state and the stream of new settlers increased, the wilderness on the periphery became a quagmire of robbers and vagrants, fueling continual fear of theft and murder in citizens. Using the local legacy of the 1864 vigilance committee, Robert Fisk of the Helena Daily Herald and colleagues in the territorial press extolled vigilante justice as the best way to deal with the “coterie of petty offenders” and “the horde on our borders.” Fisk’s press campaign worked, and the public perception of lawlessness became so unbearable that a new organized vigilance committee emerged in Helena in the fall of 1879, posting the numbers 3-7-77 across town as an ultimatum to Helena’s roughnecks to

236 Ibid., 141.
237 Ibid., 261.
238 Ibid., 354-355.
“Get out of town, using a #3 ticket on the 7 AM stagecoach to Butte, by order of a secret committee of seventy-seven.” 239 Within a few years, vigilance committees popped up throughout the territory, using the “mystic numbers” as a warning to robbers and vagrants. Most local vigilance committees in the Helena area used public trials, following the method and organization of the 1864 committee. The most famous and best organized vigilance committee of Montana’s second vigilante wave included “Stuart’s Stranglers,” a vigilante group led by early Montana pioneer, gold prospector, and cattleman Granville Stuart. The Stranglers organized primarily to deal with horse-thieves and outlaws who were terrorizing the Montana-Canada border and the eastern border by North Dakota. 240 Following the capture and public trial of several horse-thieves on the Montana border and months of banditry, Stuart’s Stranglers shot and hanged thirteen suspected horse thieves without trial. Stuart’s business partner, James Fergus, wrote of the murders: “the vigilantes in all their time never did a braver, nobler, or more necessary act or one that paid better in results.” 241 When Montana gained admission to the Union in 1889 and the fledgling state government began to assert itself, the vigilance committees of the 1880s gradually disappeared.

IV. Non-Contractual Governance

Armed with a history of vigilantism on the American frontier and its significant manifestations in the San Francisco and Montana movements, we can now

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239 Ibid., 353-355.
241 Allen, A Decent, Orderly Lynching, 358.
move on to the specific institutional model that requires a theoretical alternative to mutual protection agency. In Chapter II, I presented Mancur Olson’s account of the Coaseian bargain as a model for the development of frontier mutual protection agencies. In the Coaseian social contract, the cost-benefit analysis behind the formulation of claims clubs, mining camps, and stock-growers associations is relatively clear: individuals collectively bargain and arrive at voluntary agreements to reduce bargaining and enforcement costs and maximize their individual well-being. The main feature of vigilance committees that necessitates a new model is the non-contractual and non-collective basis for organized vigilantism. The major vigilance committees of the American frontier were organized in a “command or military fashion”\(^{242}\) and exhibited authoritarian features, their formation, organization, and activities dominated and directed by a few of their members. Many vigilance committees possessed constitutions, articles, or manifestos to which their members would subscribe, but a pledge of membership in a vigilance committee did not entail the sort of contractual relationship outlining shared benefits, obligations, and rights of its members that MPAs did, nor did they have rules governing its administrative organization (other than by-laws describing the positions of its organizational nucleus). Instead, vigilante constitutions are more like charters\(^{243}\), outlining a purpose for the groups formation and justifying its prerogative to act (although some vigilante charters did provide outline a system for electing officers).

\(^{242}\) Ibid., 109.
\(^{243}\) The difference between a charter and a constitution is not uniformly clear. A charter typically refers to a simple statement of rights or authority, defining the purpose and prerogative for action. A constitution is significantly more complex, outlining the structure, function, procedure, powers, and duties of an organization and formally establishing the rules for a governing body. Most constitutions often open with charters stating the purpose of government (i.e. The Preamble to the United States Constitution).
Furthermore, the enforcement and arbitration functions that were the privileges of membership in mutual protection agencies are essentially *public goods*, available to members of a population subject to a vigilante group’s operation regardless of their contractual subscription to a vigilante manifesto. Where the frontier mutual protection agency had both an organizational nucleus and constituent members who were subject to its activities, non-signatories were regularly subjected to the rules and punishments outlined in vigilante charters while that taking an oath to actively aid a vigilance committee was not a prerequisite to enjoying services of the organization. Membership was not a requirement to benefit from the enforcement and deterrence functions of vigilance committees, making the collective goods provided by the organizational nucleus of vigilance committees public and not private. As Rosenbaum and Sederberg write, the principal goal of vigilantism is “deterrence of unwanted…behavior, its tactics consisting of threats of force and actual enforcement activities.” As deterrent is a change in the behavior of criminals and not a service like actual enforcement which is extended to a few individuals, vigilante deterrence is by nature a public good to the community in which groups operates.

At first glance, historical accounts of American vigilantism during the nineteenth century give the impression of democratic organization, formed through collective action at mass meetings as in the case of frontier MPAs. As William Culberson writes, “the vigilance committee was not considered a mob: they had elected officers, kept records, held trials, and conducted their business in daylight, without masks.” However, the non-contractual, authoritarian nature of vigilante

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244 Rosenbaum and Sederberg, “Vigilantism: An Analysis of Establishment Violence,” 27.
groups is more obvious on closer inspection. While mass meetings and constitutional by-laws regarding the election of officers were common as a legitimacy tool and to gauge popular support, the institutional entrepreneur who engaged in organizing vigilante activity and the elected leadership of vigilante groups was typically dominated by upper-class elites, who had both the resources to engage in potentially extralegal activity and the community clout to mobilize middle-class tradesmen and craftsmen into becoming the rank and file foot soldiers for the movements.

“Community clout” here should not be taken as “charismatic leadership,” a trait that Rosenbaum and Sederberg reject. Rather, vigilante leaderships exercise social influence based solely on their status within the communal social order, as both moral and economic agents. The vast majority of vigilance leaders came from the upper tier of American society: they were businessmen, professionals, and affluent farmers and planters who had a large economic role in the community. While most vigilantes confined formal organizing to charters and statements of purpose (as described above), many included outlines for electing officers to formally legitimize the de facto organizational authority of elites. When elections were held, as they were in San Francisco in 1851 and 1856, the men who organized the elections in the first place typically had their leadership reaffirmed. Rosenbaum and Sederberg agree that vigilante leaders were “basically authoritarian characters.”

246 While I would hesitate here to use the phrase “social capital,” which has several different uses in economics, sociology, and political science, the elites in San Francisco and Montana could be described as “hubs” of social capital. Based on their economic or social role within their communities, vigilante leaders mobilized social networks based on economic interdependence, shared values, and visions of peace and order.
247 Brown, Strain of Violence, 104.
Brown provides the examples of William Tell Coleman of the 1856 San Francisco movement and Wilbur Fisk Sanders of the 1864 Montana movement as examples of the authoritarian vigilante leader in action. Both Coleman and Sanders were members of the elite in their communities: Coleman was initially drawn to San Francisco to regain the reputation and status of his father, a Kentucky legislator, becoming one of the most successful importers in the city.\textsuperscript{249} The public call for vigilante action, based on “the economic administration of public funds” and the “close control of salaries [of municipal officials],” was signed mainly by prominent San Francisco merchants.\textsuperscript{250} The vigilance committee itself, Brown writes, was “in the iron grip of the leading merchants of San Francisco, who controlled it through an executive committee. In this body, William T. Coleman, one of the leading importers of the city, had near-dictatorial powers as president of the organization.”\textsuperscript{251} Coleman headed a “Committee of Fourteen,” consisting of prominent members of the community (among them Sam Brannan of the 1851 committee) who reaffirmed their control of the movement by the approval of the masses of regular citizens at trials and meetings, presenting themselves as an alternative to pure mob rule, “more moderate and cautious…but no less stern.”\textsuperscript{252} When the Committee of 1856 reformed into the People’s Party, leading vigilantes made up the ticket: candidates were chosen very carefully so as to give full representation primarily to the business enterprises, trades, and professions of San Francisco. The call for the first post-vigilante meeting of the People’s Party was signed by the leading merchants of the city, and the “Committee

\textsuperscript{249} Brown, \textit{Strain of Violence}, 111.  
\textsuperscript{250} Ibid., 139-140.  
\textsuperscript{251} Ibid., 134.  
\textsuperscript{252} Valentine, \textit{Vigilante Justice}, 48.
of 21” that was chosen for party nominations was dominated by merchants. Despite San Francisco’s continuing problems with ethnic strife, the appeal of the slate was to commercial groups of the city rather than to religious or ethnic groups, highlighting its organization in the interests of economic elites rather than particular social groups.

Sanders, the prosecuting attorney who originally called for vigilante action, also came from an upper-class background but had not yet made a name for himself in the Montana territory. Sanders had a great deal of standing in Bannack as the nephew of the territorial Chief Justice, assisting in the organization and accumulation of mining claims and the move to legally separate Montana mining camps from the distant jurisdiction of Idaho’s territorial government, seated in Salt Lake City. His participation in the Montana movement eventually led to a career as a leading lawyer and politician, culminating in his election as one of Montana’s first senators in 1889.

The Virginia City vigilance committee led by Sanders formed during the trial of Alder Gulch bandit George Ives in 1863, consisting of five other prominent community members who, as merchants, miners, and professional joined the movement. The core group of merchants maintained control of the group as an executive committee based on the model of the widely heralded San Francisco committee. Mass meetings and trials held by the 1863 committee were dominated by Sanders, whose personality and reputation allowed him to steer the opinion of the assembled citizens towards prosecuting and hanging of road bandits.

The engagement of organized elites in what Terry Anderson and Peter Hill would call “institutional entrepreneurship” certainly reflects economic logic to some

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253 Brown, *Strain of Violence*, 139.
255 Ibid., 193; Dimsdale, *The Vigilantes of Montana*, 120-122.
extent; since elites are better able mobilize the economic and social resources of a community than members of the middle or lower classes, the costs of vigilante organizing are greatly outweighed by the benefits of a stable social order, giving elites an encompassing interest in defending the stability of a community. The “mercantile complexion” of San Francisco Vigilance Committee of 1856 was based on the interests of importers and retail magnates in the local credit rating and tax rate, as the city’s economic stability was being jeopardized under the Broderick machine and the “specter of municipal bankruptcy made Eastern creditors fear for the city.”

The fear of highway robbery by miners on the wilderness trails of Montana led many potential miners to reduce their stagecoach traffic and carry less in their purses, posing a threat to trade and commercial business maintained by the elites. Brown sums up the economic motives behind the elites who called for vigilante action:

> Although vigilantism rested on a bedrock democratic premise that is, “the people” acting to enforce the law, the vigilante operation in practice was often not democratic. Ordinary men formed the rank and file of the vigilante organization, but, usually, its direction was firmly in the hands of the local elite. The local vigilante leaders often paid the highest taxes. They had the customary desire to whittle down the tax rate and keep local expenses in check. From this point of view there was a persuasive economic rationale, for vigilante justice was cheaper, as well as quicker and more certain, than regular justice.

Brown emphasized that elite organization of vigilante activity in metropolitan settings like San Francisco was largely based on the effects of crime and corruption on creditor and investor confidence in the economic stability of the region. He writes of vigilante leaders:

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257 Ibid., 117.
They were the typical frontier entrepreneurs. Their enterprise in commerce or land was often speculative, and they frequently skated on economic thin ice. The delicate balance of their own personal finances could easily be upset; hence, they had a lively awareness of the cost of public services and a yen to keep them down, lest, as substantial taxpayers, their own circumstances should suffer. No better resolution of the conflicting goals of public order and personal wealth could be found than vigilantism, which provided a maximum of the former at a minimum cost to the ambitious and well-to-do.258

Since the non-contractual basis of a frontier institution does not necessarily denote the absence of wealth-maximizing economic motives in those who undertake the trouble and cost of organizing vigilante movements, a new type economic model could potentially explain the formulation of vigilance committees. This is the model theoretically favored by Mancur Olson Jr. over the Coaseian social contract in explaining the evolution of governance in large groups; the tyrannical, or “bandit” government.

V. Olson’s Stationary Bandit

Olson presents bandit government in Power and Prosperity (2000) as an authoritarian alternative to the democratic, voluntary evolution of governance under anarchy. As Olson argues, the economic origins of non-voluntary, authoritarian governance can be found in the distinction between “roving” bandits and “stationary” bandits. The anarchic situation where production is minimal represents a world of predatory roving banditry; theft, coercion, and destruction are carried out by independents or groups of outlaws who move from region to region, pillaging and plundering whomever they encounter. The incentive for innocent civilians to engage

258 Ibid., 111.
in productive activity or commerce is minimal, since anything produced will be stolen anyway. In contrast, a “stationary” bandit remains in the same area and extracts revenue from the same population through relentless taxation rather than occasional plunder. Olson illustrates this distinction with the story of Chinese warlords in the 1920s. As Olson writes, China was controlled by various warlords who conquered territory and appointed themselves lords, using the profit from heavy taxation to serve their own interests. Olson presents the case of Feng Yu-hsiang, who was so noted for the extent to which he used his army to suppress thievery in his domain and exclude other roving bandits that “most people in Feng’s domain wanted him to star as warlords and greatly preferred him to roving bandits.”

259 Olson asks:

> Why should warlords who were simply stationary bandits continuously stealing from a given group of victims be preferred, by those victims, to roving bandits soon departed? The warlords had no claim to legitimacy and their thefts were distinguished from those of roving bandits only because they took the form of relentless tax theft rather than occasional plunder.

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If we assume that the individual interests of both robber and victim are based on wealth-maximizing, how does either benefit from this arrangement? If the threat of robbery leads to decreased production, it seems likely that relentless tax theft by a stationary bandit should lead to strongly decreased production by victims and therefore less revenue for the bandit.

The economic logic behind the stationary bandit presented by Olson is compellingly simple. If the leader of a roving bandit gang is strong enough to suppress the local population and exclude other roving bandits, he can monopolize

260 Ibid., 7.
theft and coercion in the area and become a stationary bandit. As opposed to the roving bandit who steals, flees, and has to compete with other bandits, the stationary bandit has an encompassing interest in the territory as the only one who can tax or steal in the domain, altering their incentives. First, the stationary bandit wants to make sure that his victims have an incentive to produce and engage in mutually advantageous trade, since the more income the victims of theft generates the more there is to take. As such, the stationary bandit reduces the rate of tax theft, so that the periodic robbery by roving bandits or competing stationary bandits is more costly to individuals than continuous taxation.261

Second, the stationary bandit has an incentive to provide public goods that benefit those in his domain subject to taxation. Providing public goods has two major effects. The first is to make society more productive: Olson provides the obvious example of a police force to deter crime and encourage increased production and trade, as well as examples of infrastructure developments like levees to protect against floods and quarantines to limit the spread of disease.262 The second is to essentially buy legitimacy: the bandit has an incentive to “settle down, wear a crown, and become a public-good providing autocrat.”263 The members of a population are more likely to accept tolerable taxation under a good-providing autocrat than go it alone in a world of predatory roving bandits. As Olson writes: “no metaphor or model of even the autocratic state can therefore be correct unless it takes account of the

261 Ibid., 8
262 Ibid., 9-10.
263 Ibid., 10
stationary bandit’s incentive to provide public goods while maximizing his rate of tax theft.” 264

There is one more significant factor that distinguishes a roving bandit from a stationary bandit: timescale. Olson reminds us that an economy will generate its maximum income only if there is a high rate of investment, and the returns on long-term investments are only received long after they are made. For there to be any long-term investment, risk-averse members of a society must have confidence that their investments will be protected and their contracts honored, requiring a forward-looking stationary bandit to promise to enforce contracts over the long term. An autocrat taking the short-term approach will gain from expropriating any capital asset of his subjects whose tax yield is less than its value; he has no reason to consider the future output of society as “his incentives are those of a roving bandit, which is, in effect, what he becomes.” 265 A society managed by a short-term autocrat is a society of high risk and therefore low investment. Hence, the wealth-maximizing stationary bandit with an interest in encouraging investment and trade in his subjects will most likely take along run approach. 266 The stationary bandit is therefore a long-term benefactor as opposed to the roving “smash and grab” bandit group.

VI. The Stationary Bandit and the Vigilance Committee

Olson presents an economic model of non-voluntary bandit governance, characterized by 1) the provision of public goods like law enforcement and infrastructure developments, 2) a long-term presence in a given society, and 3) a low

264 Ibid., 11.
265 Ibid., 26.
266 Ibid., 27.
rate of tax theft (relative to roving bandits or dominant, predatory bandits). The stationary bandits described in Olson’s model correspond to the coercive agents involved in the San Francisco and Montana vigilante movements. The Hounds and Montana road bandits who were the targets of vigilantism are necessarily the “roving bandits” as they display no interest in fostering production, choosing to simply pillage and plunder.267 Similarly, the Broderick machine is indicative of the opposition of a rival dominant bandit who engages in maximum predation and oppression instead of reducing their tax rate like the stationary bandit. The vigilante movements of Montana and San Francisco, competing with several roving bandits and rival dominant bandits, represent the stationary bandits subject to our analysis. While the stationary bandit model is a more appropriate description of vigilantism than the consent-driven Coaseian social contract by virtue of the non-contractual basis and authoritarian, command-based character, historical accounts of American vigilance committees like the San Francisco and Montana movements suggest that Olson’s theory requires some revision in order to accurately describe the factors influencing the development and activity of vigilance committees.

The extent to which vigilance committees provided public goods fits with Olson’s stationary bandit model, albeit to much less of a degree compared to the infrastructure developments discussed by Olson. This is not to claim that vigilance committees did not provide public goods at all. As mentioned before, the practical goal of vigilantism was deterrence of unwanted criminal behavior, its tactics consisting of threats of force and actual enforcement activities through hangings,

267 While the Hounds and Montana road bandits operated in one specific region instead of “roving” like Olsonian bandits, the periodic nature of their predation (as opposed to continual taxation like that of the Broderick machine) fits with the behavior of the roving bandit.
trials, and banishment. The goal of such deterrence, as described in the constitutions of vigilance committees, was the protection of life and property. The constitution of the Committee of 1851 (which, with amendments, would serve the Committee of 1856 as well), appeared in the *Alta California* on June 14, 1851:

WHEREAS it has become apparent to the citizens of San Francisco, that there is no security for life and property, either under the regulations of society as it at present exists, or under the law as now administered; Therefore the citizens… do unit themselves into an association for the maintenance of the peace and good order of society, and the preservation of the lives and property of the citizens of San Francisco, and do bind ourselves, each unto the other, to do and perform every lawful act for the maintenance of law and order.  

Likewise, the Montana vigilante constitution drawn up on December 23, 1863 simply stated the reason for forming the committee as “the laudable purpose of arresting thieves & murderers & recovering stolen property.” The statement of purpose and by-laws regarding the election and functions of officers were the only substantial portions of vigilante constitutions; the only obligation of signatories was to pledge “to never desert one another.” While enforcement organs were comprised of civilians outside of the core executive committee of vigilance committees, every citizen of San Francisco, Bannack, and Virginia City enjoyed the benefits of vigilante deterrence.

Although the deterrence, enforcement, and adjudication functions provided by vigilance committees certainly corresponds with the providing of public goods to make society more productive in Olson’s bandit model, this is a stark contrast to the constitutions of frontier MPAs like claims clubs, mining camps, and stock-growers associations in which cooperative behavior and contractual obligations were

268 “Organization of the Vigilance Committee,” San Francisco *Alta California*, 14 June 1851, 1.
269 Allen, *A Decent, Orderly Lynching*, 195.
extensively outlined and defined. The cooperative behavior of frontier MPAs extended far beyond aiding one another in coercion and deterring crime, aimed at maximizing the wealth of its constituent members through complex legal coordination. Examples of such cooperative behavior in the form of individual obligations – intimidatory action at land sales by claims clubs, organized roundups by cattlemen, and joint stock mining operations in the deep lodes of California and Nevada – are absent from vigilante constitutions. While MPAs provided coordinative functions as well as enforcement and adjudication functions, vigilance committees were significantly less complex and less developed, providing merely deterrence, enforcement, and adjudication.

Similarly, there is little evidence to suggest that vigilance committees undertook providing any public goods in the form of extensive material infrastructure developments or public works. In fact, the Vigilance Committee of 1856 sought to curb expenditures on public works in order to lower the municipal tax rate after wresting control of the state apparatus from the Broderick machine. The People’s Party delivered on its promise to end the high taxes of the Broderick era, slashing municipal expenditures from $2.5 million in 1855 to $353,000 in 1857 and controlling the municipal government for a decade on a platform of lower taxes and fiscal reform.\(^{270}\) Such behavior is indicative in the decreased tax rate that Olson identifies as a feature of stationary banditry. Neither Thomas Dimsdale in *The Vigilantes of Montana* (1866) nor Frederick Allen in *A Decent, Orderly Lynching* (2004) make any mention of the Montana vigilantes building any roads, post offices,

\(^{270}\) Brown, *Strain of Violence*, 140.
or prisons; their activities were confined to the capture, trial, and execution of the highwaymen that terrorized Bannack and Virginia City.

The lack of infrastructure development by vigilance committees is most likely tied to their relatively short lifespan, one trait that certainly separates the vigilance committee from Olson’s stationary bandit. While committees of vigilance are distinguished from lynch mobs and other “one-shot” cases of bystander vigilantism by their regular organization and existence for a definite (albeit short) amount of time, vigilance committees rarely persisted for more than a few years. The San Francisco Committee of 1851 only operated for a few months before the sharp drop in criminal activity made the group unnecessary. The Committee of 1856 last only three months, from its initial organization on May 15th, 1856, to its dissolution with a city-wide parade on August 18th. The Vigilantes of Montana operated during the winter of 1863-1864, although of instances of vigilantism dotted Montana until the major resurgence of criminal activity and horse-theft in the late 1870s and early 1880s required a new regular organization. This suggests that while the Olsonian stationary bandit is more likely to engage in long term investment in making a community more productive (through infrastructure development and complex coordination rules), vigilance committees sought simply to neutralize threats that were diminishing the productivity of society and therefore had no reason to pursue long term regime perpetuity and predation. The exception to the short lifespan of vigilantism is Texas, where groups like the Comanche County vigilance committee (1872-1886) and the El

271 Ibid., 97.
272 Ibid., 138.
Paso vigilance committee (1870s-1880s) persisted for more than a decade\textsuperscript{273} in central Texas, which had a reputation as a “thieves' stronghold.”\textsuperscript{274} Texas had fifty-two vigilance committees during the nineteenth century, more than any other state, denoting exceptional and continual conditions of lawlessness that could not be solved by local vigilante action alone.\textsuperscript{275} While the generally short lifespan of vigilance committees suggests that fostering long-term investment in order to maximize wealth was not a top priority of vigilance committees, their short term operation to deal with specific threats to production and trade reinforces the economic logic based on Olson’s theory.

The critical discrepancy between the vigilance committee and Olson’s stationary bandit mode is based on predation and taxation. In Olson’s model, the stationary bandit certainly engages in profit-seeking tax theft, albeit to such a reduced extent that continuous taxation is preferred by civilians over the periodic theft by other bandit groups. However, instead of simply reducing the rate of tax theft in contrast to the Hounds, the Broderick machine, and the Montana road bandits, the San Francisco and Montana vigilante movements failed to display any coercive taxation of its members or the community at large. This is interesting because it highlights a lack of direct profit-seeking within a given population, despite the fact that vigilante groups did on occasion engage in profit-seeking endeavors. Anderson and Hill point out that some vigilance committees would often outsource their services to frontier MPAs that had no comparative advantage in violence, notably the cattlemen’s associations of the Great Plains that exercised control over vast swaths of

\textsuperscript{273} Ibid., 317-318.
\textsuperscript{274} Ibid., 248.
\textsuperscript{275} Ibid., 101.
The best known instance of vigilante outsourcing is the cattlemen’s Regulator movement in Wyoming, which started with independent vigilante activity in Cheyenne and Laramie (1868-1869). Local vigilance committees and hired guns alike were employed by the Wyoming Stock Growers Association as members of “Wolcott’s Regulators” under direction of rancher Frank Wolcott in the Johnson County War of 1892, a range war waged by the Wyoming stock-growers against both horse-thieves and rustlers on the Montana border and their largest competitor in the state, the Northern Wyoming Farmers and Stock Grower's Association.

What is curious to Anderson and Hill is that these committees and private gunmen rarely banded together and preyed on cattleman’s groups and mining camps as the highwaymen in Montana did, becoming the dominant bandit group in an area and devolving into relentless tax theft without providing public goods. Olson notes that while the stationary bandit is not a predatory entity in the same sense of the kleptocratic roving bandit or a dominant bandit group, every stationary bandit runs the risk of devolving into predatory form and engaging in extortion and rampant taxation. This was not the case for American vigilantism. Even in the case of the San Francisco Committee of 1856, which serves as an excellent example of a dominant stationary bandit in action during its control of the municipal government, never devolved into conspicuous consumption or predation and even kept municipal taxes low during its decade in power. For the most part, vigilance committees rarely engaged in any sort of systematic coercive taxation; they typically emerged to combat

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280 Olson, Power and Prosperity, 15-16.
such predatory banditry, disposing of criminal and unsavory elements before promptly disappearing.

The difference in tax behavior that differentiates stationary bandits and vigilance committees is best articulated by Olson in *The Logic of Collective Action* (1965) in his distinction between “latent” and “privileged” groups. Olson defines a *latent group* as a group whose members have no personal incentive to provide any level of a collective or public good to a large sharing group (i.e. providing deterrence to a larger community) because “however valuable the collective good might be to the group as a whole, it does not offer the individual any incentive to pay dues to any organization working in the latent groups’ interest, or to bear in any other way any of the costs of the necessary collective action.” In communities like San Francisco, Bannack, and Virginia City with relatively large populations due to mining rushes, the members of a latent group are average citizens who do not have a strong enough incentive to engage in vigilante activity when they could simply free ride. The members of latent groups require “selective incentives” (incentives tailored to meet individual preferences) that appeal to the individual interests of rational individuals, “mobilizing” the members of a latent group to engage in the group-oriented activity of providing for public goods. Hence, members are “latent” as they have the capacity to act but require the proper incentives. Selective incentives can be negative or positive; the stationary bandit can either threaten coercion if individuals do not bear the allocated share of costs in providing a public good or provide positive inducements in the form of payment or some other material reward. Olson’s

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281 Olson, *The Logic of Collective Action*, 50
282 Ibid., 51.
stationary bandit mobilizes the population of a given area to finance collective goods through the threat of coercion, resulting in continuous tax theft. While the benefits of public goods certainly provide an incentive to engage in group action, the public goods provided by stationary bandits are not “selective” incentives since, according to Olson, they operate “indiscriminately” on the group as a whole and not on rational individuals within the group. Therefore, the selective incentives provided by stationary bandits tend to be negative in the form of direct bodily coercion.

The vigilance committees of the frontier, comprised of merchant elites who undertook the responsibility of organizing vigilante movements, appear more indicative of a “privileged group.” Olson defines a privileged group as “a group such that each of its members, or at least some one of them, has an incentive to see that the collective good is provided, even if he has to bear the full responsibility of providing it himself.” In San Francisco and Montana, the costs of providing the public goods of deterrence, adjudication, and enforcement (including the costs of mobilizing and organizing coercive action, mass meetings, and public trials) were endured almost entirely by the executive committees of each vigilance committee without any tax theft to finance their operation. Hence, the vigilance committee exhibits characteristics more typical of a privileged group than Olson’s stationary bandit.

However, this example of a privileged group is far from perfect in describing the vigilance committee. While they did not engage in tax theft or other coercion to gain support from average citizens, frontier vigilance committees did mobilize some individuals from the community at large to engage in vigilante activity, thereby dispersing the costs of enforcement while the remainder of the larger population.

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283 Ibid., 49-50.
continued to free-ride. The controlling elites in San Francisco and Montana are therefore not entirely a privileged group since they didn't perform the enforcement duties functions of vigilance committees entirely themselves and therefore did not bear the entirety of the costs of providing law enforcement. While the vast majority of citizens were free riders, the enforcement organs of the vigilance committees was comprised primarily of members of the middle class, most of whom had different economic incentives than the “privileged” merchant elites in San Francisco and Montana. As Brown writes, the rank and file vigilante was the “industrious, honest middle class,” the “core of the community,” and the “legendary, but real American yeoman.” The outlaw groups who were consistently the target of vigilante action were typically comprised of the lower and “discontented” tier of society, “marginal or alienated from the remainder of the community.” They were primarily day-laborers, vagrants, and poor people who have little economic interest in abstaining from criminal activity, let alone engage in vigilante activity. The middle class community members who comprised the vigilante militias in San Francisco and Montana were essentially members of the latent group who had been mobilized to provide for a level of collective good, making up the enforcement part of the vigilance committee. Therefore, the main differences between the stationary bandit and the vigilance committee are 1) the Montana and San Francisco elites did not use or threaten coercion to mobilize private citizens and 2) civilians in Montana and San Francisco did not provide deterrence and enforcement through financial support as in

285 Brown, Strain of Violence, 104-105.
286 Ibid., 105.
the stationary bandit model: they engaged in enforcement by risking their own lives in vigilante activity.

The absence of taxation is the critical difference between the vigilante group and the stationary bandit that makes a theory based on historically-situated social norms possible. While Olson’s model of the stationary bandit is extremely helpful in articulating the institutional difference between frontier MPAs and vigilance committees like those in San Francisco and Montana, it fails to provide a completely convincing economic theory behind the organization, and operation of vigilante groups in the United States during the nineteenth century. If the elites who first formed vigilance committees did not provide selective incentives through the threat of coercion or by simply “paying” members of the middle class with public goods, how did they mobilize members of the larger community to engage in vigilante activity? What incentives, if not material or coercive, were critical in organizing individuals into large vigilante movements? What organizations can we now classify as vigilance committees, and what do they contribute to our definition of vigilantism? In the next chapter, I will explore an alternative normative explanation for the nature of vigilance committees and derive a social theory of vigilantism from the vigilante experience of the American frontier.
IV

A Theory of Vigilantism

In the previous chapter, I established the core difference between the vigilance committee and Olson’s stationary bandit. While the stationary bandit uses tax theft and coercion as selective incentives to induce members of a population to take part in providing public goods, the vigilance committee does not engage in any sort of tax theft or coercion of its constituent members. The vigilance committee, comprised of economic and social elites, appears to be an example of a privileged group: the elites have a strong enough economic interest in law enforcement, deterrence, and adjudication to provide those functions on their own, even if the larger community free-rides. However, the founding elites of the San Francisco and Montana vigilance committees did not provide these public good of enforcement on their own as a privileged group suggests: they mobilized middle-class members of the community to actively engage vigilante coercion. The major question posed by this model is: what incentive does a rational individual have to actively endure the risks of being potentially injured or killed in vigilante activity (even if the costs were spread over a large militia) if they are unlikely to benefit as much as organizing elites and could simply free-ride instead? Put another way, if vigilance committees did not use the threat of tax theft to induce rational individuals to take part in providing of public goods, what incentives did they provide to encourage them to engage in organized coercion? Middle-class citizens certainly did not necessarily have the same economic incentive to participate in providing enforcement at the risk of their own lives. The
absence of predatory taxation as an incentive renders the model of a vigilance committee based on Olson’s metaphor of the stationary bandit – defined by “providing public goods while maximizing his rate of tax theft”\textsuperscript{288} – imperfect and requires a supplement.

In this chapter, I will present a social theory of vigilantism, one that accounts for the institutional differences between vigilance committees and the Olsonian stationary bandit. The defining factor for our “vigilante strain” of the Olsonian stationary bandit is the role of historically-situated social norms and social structure in shaping the incentives of elites and average citizens alike. Vigilance committees are not only a response to criminal activity as an imposition of material costs, but also normative costs such as threats to the structure and values of a community: they mobilize not just to fight criminals, but social underdogs and moral lepers who are perceived to be dangerous to the status quo. Vigilante elites endure the costs of organizing to protect their particular niches of privilege and power. Vigilance committees respond to social exigencies that deal with norms involving social groups and social power, as well as criminal or violent exigencies that threaten norms of property, contract, good government, and ownership. Hence, vigilantism is not merely a reaction to crime in the “classic” sense, but a conservative reaction to social disorder and discord created by social exigencies like war, revolution, class conflict, crime, and moral decay. I will refer to a social exigency and the following experience of disorder as social crisis and will address the phenomenon in depth later in this chapter.

To this end, I will present a definition of neovigilantism as a broad phenomenon of *norm enforcement* in contrast to the narrow focus of classical vigilantism on *law enforcement*. In the process of outlining a social theory of neovigilantism, I will address several different topics. First, I will differentiate between “norm enforcement” and “law enforcement” while exploring the types of norms that are the focus of vigilante activity. Second, I will appeal to new definitions of vigilantism and vigilante activity, encompassing not only responses to criminal activity but to other forms of disorder and examining them as modes of norm enforcement. Third, I will integrate our new conception of vigilantism and the vigilance committee with the vigilante strain of Olson’s bandit model described in Chapter III, using historical examples of the operation of the Ku Klux Klan and (to some extent) the White Caps after the Civil War as representative of vigilance committees that follow the vigilante strain model without reacting to just lawlessness. Finally, with a new definition and vocabulary for addressing vigilantism affirmed by historical evidence, I will outline a theory of vigilantism based on social crisis that treats vigilance committees as “norm entrepreneurs” in developing an organized reaction to social crises.

### I. Norm Enforcement

Before we can formulate a new definition of vigilantism, the distinction must be drawn between “law enforcement” (or the “enforcement of rights” as discussed in the context of mutual protection agencies in Chapter II) and “norm enforcement.” I should note here that despite my departure from the language of economics into a more abstract theoretical treatment of law and order, devising a social theory based on
norms does not preclude application of the economic principles of rational choice, cost-benefit analysis, and maximizing individual well-being that shaped the institutional development of vigilance committees and frontier mutual protection agencies. This theory merely presumes that individual preferences, the law of diminishing marginal utility, and inefficient initial allocations of goods and services (or resources) are not the only sufficient conditions for trade and economic interaction to occur.\(^\text{289}\) This normative theory seeks to supplement our institutional model of vigilantism with a parallel explanation of selective incentives and preferences based on the historically-conditioned environment of norms and customs within which the rational agents who engage in vigilante activity are situated. Their preferences are not only linked to issues of wealth and scarcity, but to issues of right, justice, and social norms.

“Norm enforcement” deals with social norms, both throughout a larger society and within particular a social group, which regulate the expectations and interactions of individuals. As I stated in Chapter I, social norms are the behavioral expectations or informal rules and mores that govern a society or group. Law enforcement – even when illegitimate or extra-legal, as was the case for frontier mutual protection agencies and vigilance committees – is the organized implementation of norms codified within formal system of rules and regulations. In contrast, “norm enforcement” encompasses the organized enforcement of any particular system of rules or values that shapes the behavior of a group or society, whether formally reflected in the formal structure of law or not. Group-wide or society-wide cohesion is tied to the strength and consistency of social norms as “trust rules” or “solidarity

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rules,” formal law being the “most visible” form of social solidarity. Based on this distinction, norm enforcement can actually encompass law enforcement, since the norms that operate in the absence of the law enforcement overlap with the codified norms enshrined in formal bodies of law. Recall from Chapter I that rights (mainly to property in the case of MPAs) not only existed on the frontier, but commanded respect and legitimacy as Lockean natural laws and Nozickian side constraints so that anarchy was not the immediate result. These rights command legitimacy because they are sustained by a system of social norms that defines the acceptability of the rights, privileges, and duties of individuals.

There are a few critical points to take from this examination of norms. Crime control vigilantism, as conceived as a form of law enforcement, can be alternatively be regarded as a form of norm enforcement. While the Montana and San Francisco vigilante movements worked to primarily to enforce instrumental norms of private property and ownership, the elites who formed and organize vigilance committees also had an interest in enforcing expressive norms of the three-tiered community structure to solidify their status. As I discussed in my brief treatment of Alexis De Tocqueville and Karl Marx in Chapter I, the system of instrumental norms of property and contract are closely tied to expressive norms of class in American history. For vigilante elites, their status as members of the upper class was not based on their ability to coercively enforce some arbitrary hierarchy of “upper,” “middle,” and “lower” classes, but on the saliency of the private property regime and preoccupation with free markets in the nineteenth century that gave rise to the three-tiered community structure and their privileged status within it as businessmen,

professionals, affluent farmers, and planters. In *Vigilantism: A Political History of Private Power* (1990), William Culberson agrees that the relationships between social groups are necessarily tied to the nature of production and commerce, echoing Marx when he writes: “interaction produces a social consciousness of relationship arising from the needs and necessities of intercourse with other people…consciousness, individual and social, is the product of the actual life processes as conditioned by the definitive development of forces that are mentally and materially productive.”

Upper-class elites reaffirm their position of dominance by ridding society of the criminal elements that threaten the instrumental norms of property and life that are the foundation of their social position. As Brown writes of classical vigilantism, “vigilante leaders wished to establish and strengthen the three-level community structure and the value of life and property that supported it,” highlighting the enforcement of instrumental norms as a means to solidify the dominant relationship of merchants and traders as members of the “upper class” over other members of society.

II. Neovigilantism: A Typology

Armed with alternate conception of crime control as norm enforcement, we now attempt a revision of Richard Maxwell Brown’s classical definition of vigilantism as private citizens “taking the law into their own hands” in the face of criminal activity, one that treats vigilantism as norm enforcement rather than law enforcement. While vigilantism was often necessitated by population pressure, the absence or impotence of government institutions, and rapid economic growth that

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292 Ibid., 111.
gave rise to criminal activity, vigilantism as norm enforcement often occurred where criminal activity was under control and or posed no overt threat to the local population. Appropriately, Brown identifies the San Francisco Vigilance Committee of 1856 as the starting point of “new vigilantism” or “neovigilantism,” representing a historical pivot in the aims and purpose of vigilantism from addressing the classic “pioneer lawlessness” to a “much broader and complex thing,” namely what I have dubbed a reaction to social crisis. Indeed, the history of American vigilantism is replete with vigilance committees operating under very different circumstances and towards different ends than the classical crime-control vigilantes of the frontier. Brown’s fourth wave of vigilantism in particular, centered around the immediate social and political turmoil of the Civil War, suggests that vigilantism is certainly tied to the upholding the saliency of social norms and the stability the social order. The fourth wave movements – highlighted by the Ku Klux Klan in Tennessee and the White Caps in Indiana – were centered well outside the “wild” frontier in states like Missouri, Kentucky, and Florida, further highlighting the importance of the post-Civil War vigilance committees in expanding our definition of vigilantism.

In Vigilante Politics (1976), H. Jon Rosenbaum and Peter C. Sederberg propose three distinct types of vigilantism, differentiated by their specific purpose: crime-control vigilantism, social-group-control vigilantism, and regime-control vigilantism. This typology of vigilantism suggests a unifying focus of vigilantism as norm enforcement in the face of social crisis, including criminal lawlessness.

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293 Brown, Strain of Violence, 134.
Crime-control vigilantism, defined as coercive violence “directed against people believed to be committing acts proscribed by the formal legal system,” corresponds directly to our classical definition of vigilantism. Rosenbaum and Sederberg write that such acts “harm persons or property, but the perpetrators escape justice due to governmental inefficiency, corruption, or leniency of the system of due process.”

Because of the nature of frontier law enforcement as established in Chapter I and the competition for land and resources described in Chapter II, most frontier vigilante activity in American history falls under the category of crime-control vigilantism. The San Francisco Vigilance Committee of 1851, constituted in response to the threat of arson and theft during the Gold Rush, is a good example of crime-control vigilantism, although the cosmopolitan composition of San Francisco’s population lends a social-group-control tinge to its activities. The Montana vigilante movements, reacting entirely to the absence (or, in the case of Sheriff Henry Plummer, to one instance of corruption) of law enforcement organs and perpetual threat of robbery and murder, is a pure example of crime-control vigilantism. Crime-control vigilantism is an example of pure instrumental norm enforcement, targeting violations of norms of private property, ownership, and life.

Regime-control vigilantism is defined by Rosenbaum and Sederberg as “the use of violence by established groups to preserve the status quo at times when the formal system of rule enforcement is viewed as ineffective or irrelevant.” Perhaps the rarest breed of frontier vigilantism, since most established local “regimes” on the frontier were tenuous at best, regime-control vigilantism is exemplified by crusade of

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296 Ibid., 11.
297 Ibid., 17.
the San Francisco Vigilance Committee of 1856 to rid the city’s municipal
government of corruption and the control of east-coast political operatives. While the
Committee of 1856 purportedly constituted itself to deal with providing “security of
life and property” against criminal activity as the Committee of 1851 had, local law
enforcement organs had ordinary civilian crime relatively under control298 despite
James King’s attacks on the Broderick machine in The Bulletin. King’s criticism of
the Broderick machine extended to the laxity of the judiciary in letting Charles Cora
go free, as well as the municipal government’s toleration of wide-open prostitution
houses: when the Committee of 1856 was in control of the city, they allowed regular
law enforcement to go about its business.299 As Brown writes, “the main thrust of the
San Francisco committee of vigilance was not against the regular criminal activity
that characteristically energized the old vigilantism but against what the vigilantes
saw as a greater threat to the public good: the ruthless, corrupt political machine of
Broderick and the Irish-Catholic Democrats.”300 Regime-control vigilantism is not
based on creating new institutions to combat violence and disorder, but rather seeks to
replace state organs that ineffectively enforce the law with personnel who reflect both
the interests and values of a given society. As Rosenberg and Sederberg write (with
apologies to Marx), this type of vigilantism is establishment violence “intended to
alter the regime, in order to make the ‘superstructure’ into a more effective guardian
of the ‘base.’”301 While regime-control vigilantism is closely related to crime-control
vigilantism and perceived violations of distributive justice arising from excessive

298 Brown, Strain of Violence, 141.
299 Ibid., 361.
300 Ibid., 143.
301 Ibid., 18.
taxation, the conflict between the Protestant Republican vigilantes and the Irish-Catholic Democratic Broderick machine suggests that the enforcement of expressive norms by groups with rival values systems was also an important factor. Hence, regime-control vigilantism resembles a combination of both instrumental and expressive norm enforcement.

The final type of vigilantism proposed by Rosenbaum and Sederberg is social-group-control vigilantism. Social-group-control vigilantism consists of violence “directed against groups that are competing for, or advocating a redistribution of, values within the system.”302 By “redistribution of values,” Rosenbaum and Sederberg refer to altering the expressive norms that form the social structure of a community in order to benefit a specific group. This type of vigilantism is typically characterized by the use of private coercion in response to racial or cultural strife, or violence exercised by those “threatened by the upwardly mobile segments of society or by those who appear to advocate significant change in the distribution of values.”303 The first manifestation of the Ku Klux Klan (KKK) is perhaps the best historical example of pure social-group-control vigilantism. In the case of the KKK, social-group-control meant preserving a Southern status quo that involved the social domination of African-Americans by whites, despite the newfound mobility of former slaves as freedman following the abolition of slavery. Social-group-control vigilantism is an example of pure expressive norm enforcement; social group-control vigilance committees often organize along communal or “primordial” characteristics such as race, religion and culture. A good example of

303 Ibid., 13.
non-racial social-group-control is the activity of the White Caps – essentially an 
organizational offshoot of the KKK in the 1880s – that targeted “immoral” and “low” 
elements of society. Since the goal of social-group-vigilantes is to intimidate or 
violeently oppress upwardly-mobile groups vying for increased representation in or 
control of the state apparatus, the San Francisco Committee of 1856 could also serve 
as an example of social-group vigilantism, highlighted by the dichotomy of political 
and religions value systems between the Protestant (and often Republican) merchant 
vigilantes and lower class Irish-Catholic Democrats. This example suggests that 
social-group-control vigilantism and regime-control vigilantism often go hand in 
hand: however, the focus of the Committee of 1856 was primarily on soaring public 
debt and high taxes that defined the municipal government and is not as clean an 
example of social-group-control as the KKK (or the White Caps). The Ku Klux Klan 
and White Caps are examples of pure expressive norm enforcement, targeting forces 
that threaten both their internal value system and the social relationships of power 
between groups.

III. The Ku Klux Klan and White Caps

The history of the Ku Klux Klan and White Caps as examples of social-group-
control vigilantism are important in legitimizing this typology and related definition 
of vigilantism as norm enforcement for several reasons. First, both the KKK and 
White Caps exhibit the same organizational features as the San Francisco and 
Montana vigilance committees that defined my vigilante variant of the Olsonian 
stationary bandit: authoritarian command structure, formation and coordination by 
elites, and the absence of the threat of tax theft to mobilize members of the middle
Second, the KKK and White Caps did not respond to threats to material wealth, such as theft, arson, and counterfeiting in order to minimize losses from such activity, highlighting an absence of wealth-maximizing interests and an emphasis on enforcing expressive rather than instrumental norms. Coercive activity was employed to suppress and intimidate “unwanted” or “low” parts of society and reestablish the social order with vigilante elites maintaining their high status.

The Ku Klux Klan is also an important test case because of the circumstances of its formation. Despite its geographical origins east of the Mississippi River in Pulaski, Tennessee, the KKK falls within the temporal range of the fourth wave of western vigilantism (emerging in the immediate post-Civil War South) and is noted for its tremendous size (550,000 members nationwide during its tenure) and strength outside the South; according to Brown “the strongest state Klan was in Indiana, and such wholly un-Southern states as Oregon and Colorado felt its vigor.”

The simultaneous emergence of KKK chapters east of the Mississippi during vigilantism’s fourth wave and in the west suggests that vigilantism is not only a reaction to lawlessness emerging from a localized absence of regulatory institutions or rapid economic growth, but also the threat of sudden upheaval in American society – in this case due to the legal emancipation of slaves by President Lincoln – and the conditions resulting from a bloody and destructive war. Following the Civil War the area below Mason-Dixon line was in desperate straights. The rural and agricultural economy, based on the plantation system, had been uprooted by both the legal emancipation of the African-American slaves and by “scorched earth” warfare. Parts of the South

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304 Brown, Strain of Violence, 28.
305 Madison, Vigilantism in America, 57.
endured conditions of lawlessness similar to those of the expanding frontier during the aftermath of the Civil War, as states that had been part of the Confederacy were temporarily divided into military districts while existing governments were disbanded and new ones instituted under Reconstruction. While the Union army dealt with criminal activity in the South’s metropolitan centers, bands of roving thieves and marauders plagued rural parts of Southern states, leading local citizens to form vigilance committees to protect their lives and property. Although the KKK itself did not address crime, these classic crime-control committees were part of the fourth wave post-Civil War movements that developed alongside the KKK in the South.\textsuperscript{306}

Apart from the economic ramifications of warfare, discontent with the new status of the Union as an occupying power and of African-Americans as free individuals was widespread, highlighting Klan vigilantism as a reaction to the violation of expressive norms governing the relationship between whites and African-Americans and the security of the Southern order. With the institution of new Union-loyal state governments by the U.S. federal government in 1867 and 1868, “southern tempers boiled and the ranks of the Klan overflowed.”\textsuperscript{307} As a vigilante movement, the KKK is a perfect example of social-group-control vigilantism based on the enforcement of expressive norms of social relations, particularly the supremacy of white Americans over African-Americans that was no longer secured by the formal structure of U.S. law. As David M. Chalmers wrote in \textit{Hooded Americanism} (1965), “to the white Southerner, the Ku Klux Klan was a law-and-order movement because it was directed at the restoration of proper order...proper order as in proper southern

\begin{itemize}
  \item \textsuperscript{306} Brown, \textit{Strain of Violence}, 99 – 101.
  \item \textsuperscript{307} Madison, \textit{Vigilantism in America}, 57-58.
\end{itemize}
African-Americans were not the only targets of vigilante violence: “Yankee businessmen,” as well as Union politicians, were driven from southern towns, regarded as agents of the social discord that ravaged the South. Abolitionists, northern Republicans, and freed slaves were all the target of intimidation and organized violence, although of 3,337 lynchings nationwide between 1882 and 1903, around 60% (1985) were perpetrated against Southern blacks. In January 1869, the national Ku Klux Klan organization was dissolved by Klan leader Nathan Bedford Forrest, only to make a comeback in its second manifestation in the 1920s. Following its dissolution, splinter groups of former Klan members carried on its activities.

The organization of the Ku Klux Klan reflects the structure of frontier crime-control vigilance committees like those of Montana and San Francisco, displaying a hierarchical command structure, control by elites, and short lifespan. The KKK organized into its strict hierarchical system in 1867, with former Confederate Army General Nathan Bedford Forrest as Grand Wizard of the national organization. Local Klan chapters operated semi-autonomously with smaller versions of the national hierarchy; since most of the Klan's members were veterans, they were used to the hierarchical chain-of-command structure of the organization. Chapter leaders were comprised of elites from the ranks of southern anti-Unionists, former military officers, and organized their chapters according to the national system. Forrest was a former slave trader and owner, like the majority of the Southern landowners and ex-Confederate generals who filled the Klan hierarchy. The incentives of these former

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308 Cited in Ibid., 63.
309 Brown, Strain of Violence, 151.
311 Madison Arnold, Vigilantism in America, 59.
elites to act as a privileged group and bear the costs of organizing the KKK as champions of white supremacy were inherently bound up with their economic interests as disenfranchised Southern planters and the desire to reestablish social control of the black labor force and potentially reinstitute some form of the plantation system, despite the fact that the legal emancipation of slavery made the prospect of maximizing material wealth in the traditional ways nearly impossible.

Like the Montana and San Francisco vigilance committee, the Klan had a constitution, but following the style of vigilante charters it simply laid out the hierarchy and purpose of its organization instead of specifying by-laws and regulations, calling upon its members to take an oath to defend what they saw as “the weak, innocent, defenseless, and oppressed” as well as the Constitution of the United States.312 The executive committee of the Klan consisted of a set of complex roles ranging from “Grand Wizard of the Empire and his ten Genii” to a “Grand Scribe and Grand Exchequer” to carry out secretarial and financial functions. Rank-and-file foot soldiers were designated simply as “Ghouls.”313 As a partially secret society, information regarding the organization, size, and details of the Klan was maintained by the original six founding members, plus the Grand Wizard, who exercised a virtual “monopoly on information” regarding the Klan to both the public and its local chapters.314

The first manifestation of the Ku Klux Klan, despite its widespread activity and popularity, only lasted in its pyramidal, command organization from 1867 to

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312 Ibid., 60.
314 Quarles, The Ku Klux Klan and Related American Racist and Anti-Semitic Organizations, 30.
1869, when Nathan Bedford Forrest dissolved the national organization. In the cases of the San Francisco and Montana movements, vigilantism arose to deal with specific local problems, dissolving after achieving its intended goal. While the national organization was forced to disband, Klan activity did not cease in many states during Reconstruction. But as Reconstruction ended with the Compromise of 1877 and southern African-Americans were effectively forced back into virtually un-free status through the “black codes,” the system of debt peonage, and other forms of institutional segregation, the expressive norms that governed the relationships between African-Americans and Southern whites were partially restored and former Klan members witnessed the realization of their goals. 315 Klan violence subsided until the formation of the 1920s Klan.

The White Caps is a notable supplement to the Klan as another historical example of social-group-control vigilantism in response to the perceived violation of expressive norms, although the differences in organization and purpose are minimal and the movements itself is uninteresting compared to the virulent presence of the Klan in the U.S. The KKK of the Reconstruction era had a huge influence on the development of other social-group-control vigilantes, who sought to act as agents of moral stability. Brown writes that the White Caps were “in origin and thrust…a movement of violent moral regulation,” organized on the same military model as the KKK and drawing its members from middle-class community members. Prior to the Civil War, organized vigilantism was initially a Western occurrence on the frontier states and the unorganized lynching of African-Americans a primarily Southern phenomenon (with the exception of the KKK, which as described above has a unique

315 Ibid., 31-33.
character in its scope. However, White Cap vigilantism occurred primarily in the North and East; of the 239 cases that occurred between 1887 and 1900, 102 occurred in Northeastern states from Iowa to New Hampshire.\(^{316}\) Brown cites the threat of social change as the impetus behind White Cap vigilante activity, writing that “the decades from 1880 to 1910 were violent ones in America. Aside from industrial violence, race riots, and forebodings of proletarian revolution, these years were scarred by vigilantism and lynch law, and victims continued to mount in number.”\(^{317}\) As an example of social-group-control, the White Caps, instead of pursuing individuals on the basis of racial characteristics as the KKK had before them, focused more on the moral characteristics that defined social groups and sought to impose their own value system on “lower” elements. The most common victims were “wife beaters, drunkards, poor providers, immoral couples and individuals, lazy and shiftless men, and petty neighborhood thieves.”\(^{318}\) Some manifestations of the White Caps did engage in vigilante activity along racial lines, mainly “anti-Negro in northern Texas and southern Mississippi and anti-Mexican in southern Texas.”\(^{319}\) White capping eventually died out in the early twentieth century, as a number of states took measures to suppress vigilante activity.

\*IV. A Theory of Vigilantism*  

The examples of the KKK and White Caps as social-group-control vigilantism highlight the necessity a new definition and vocabulary of vigilantism: despite their different focuses, both the Montana and San Francisco examples of classic

\(^{316}\) Brown, *Strain of Violence*, 150.  
\(^{317}\) Ibid., 150-151.  
\(^{318}\) Ibid., 151.  
\(^{319}\) Ibid., 24.
vigilantism and the post-Civil War examples of neovigilantism share the same organizational model in the variation on the Olsonian stationary bandit outlined in Chapter III. To properly reconcile both classical vigilantism and neovigilantism into a single institutional model, I can define a vigilance committee as a *non-contractual, command organization that provides a public good of norm enforcement during periods of social crisis*. I have to some extent addressed the problem posed by the vigilante-variant of Olson’s stationary bandit at the end of Chapter III: since the vigilante elites do not use the threat of physical coercion or material rewards to mobilize members of society, we can conclude that members of the *middle class join vigilance committees because they have a strong enough personal demand for norm enforcement to engage in providing it*. This new definition of vigilantism as norm enforcement in the face of social crisis reflects the possibility of middle class citizens having non-material normative incentives to engage in vigilante activity, and that as such are subject to “broadly dispersed, idiosyncratic, subjective moral costs” that cannot be accurately measured by a regular criminal process.\(^{320}\) The important question now for examining the formation of vigilance committees is: *what are the necessary normative conditions of a “social crisis,” uniform for crime-control, regime-control, and social-group-control vigilantism, which motivates common citizens to engage in organized norm enforcement?*

Since my focus is on the personal preferences and incentives faced by rational individuals, I propose that a social crisis is comprised of both a *social exigency* (a perceived norm violating act) that disrupts the social order and a *psychological experience of disorder* that changes individual incentives to engage in vigilante

activity. To this end, the actual experience of a social crisis is variable depending on an individual’s subjective preferences, which are to some extent tied to social status and material wealth. In the case of vigilantism, elites feel the effects of an exigency on both their economic and social power and therefore are the most strongly affected (and hence more likely to shoulder the costs of organizing a vigilante reaction), while the lower classes, benefiting little from the existing sociopolitical order, simply do not join vigilance committees. Middle-class members of society have a strong enough incentive to engage in vigilante activity, but not enough incentive to undertake the costs of coordinating organized violence.

I will outline this theory in three parts: 1) an examination of the nature of norm violations as a psychological and social phenomenon and their role in stimulating the formation of vigilance committees, 2) a description of the role of vigilante elites as “norm entrepreneurs” in mobilizing other members of society, and 3) a discussion of the legitimacy of vigilante coercion as a non-norm violating act.321 Based on the subjective experience of a social crisis as the impetus for rational engagement in vigilantism, I will historically examine the extent to which vigilante elites and the middle-class members of vigilance committee were affected by a social exigency by tracking the psychological experience of relative deprivation in the form of fear, anxiety, and frustration. Using the historical examples of Rosenbaum and Sederberg’s vigilante typology – the San Francisco movement, the Montana

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321 My discussion of non-state coercion as an example of a norm violation will prove problematic in terms of understanding vigilante violence, carried out by private citizens, as a constructive act instead of a disruptive influence on the social order. My contention is that vigilante groups legitimate themselves within the context of a prevailing system of social norms so that, despite the fact that they may violate the law or other norms involving violence, they are not widely perceived as norm violating agents by other people in a society.
movement, and the Ku Klux Klan – we can arrive at two potential modes of the normative entrepreneurship in the institutional framework of the vigilance committee.

**Social Crisis, Norm Violations, and Disorder**

Norm violations occur when “people perceive injustice when they do not get what they believe they are entitled to get by virtue of what they have done or who they are.”322 These violations represent a disparity between individual expectations of shared social values and relationships and the actual state of affairs. While norm-violating acts can range from violations of distributive justice (theft, arson, and other unjust transfers of entitlements) and interaction justice (groups attempting to change the nature of social relationships), they produce widespread effects throughout a given society, primarily decreased confidence in the stability of normative expectations and therefore the capacity of individuals to act without surprises and without moral outrage. Petty norm violations, like jay-walking or littering or other instances that impose little moral cost on society, do not immediately produce a sense of social crisis. However, both serious and repeated violations impose large personal costs on individuals. When norms are repeatedly violated without any adequate consequences or sanctions (namely punishment by a state or by the larger community), the likelihood of future violations increases as individual realize that the costs imposed by state or community sanctions are no longer a sufficient incentive to abstain from norm violating acts. For example, consider a stable social norm of not

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stealing from others: when a single individual violates this norm without any sanction, more people are likely to engage in theft since they enjoy the benefits of violating the norm are while paying only an expected cost of punishment diluted by the uncertainty of enforcement. As fundamental solidarity rules and social norms are continually violated and break down, individuals become less confident in the stability of their economic or social status within a community.

Every social crisis based on norm violations has two components: internal psychological dissatisfaction and external social dysfunction. Psychologist Richard Schacht presents dissatisfaction as relating to an individual’s internal psychological states, involving perceptions and attitudes concerning their situation and the relationships in which they find themselves.323 Dissatisfaction is a characteristic of individuals: this form of discord is experiential and subjective, dependent on individual “value expectations” (the values, economic and social, that people feel they are justly entitled to). In contrast, dysfunction is dependent on the state of the prevailing system of social relations, namely “the lack of integration or ‘mutual fit’ of the behavior and activities of individuals with the conventions and expectations of groups and with the law and institutions of the socio-politico-economic order in which they life.”324 Dysfunction is a characteristic of the social order, based on that relationship between individual “value capabilities” (the perceived capacity to attain and maintain entitlements) and the current status quo. Dysfunction should be treated as the social state resulting from norm violations in which individuals do not meet the

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324 Ibid., 136-137.
normative expectations of behavior and social interaction, representing a weakening in social norms. While Schacht presents dissatisfaction and dysfunction as dual explanations for the experience of alienation, the two are closely related for our conception of social disorder. The presence of a social exigency in which individuals are perceived to have violated instrumental or expressive norms creates social dysfunction, while the psychological experience of dissatisfaction arises in reaction to norm violations. Dysfunction within society gives rise to dissatisfaction within members of society: individuals experience relative deprivation, in which their subjective value expectations exceed their actual value capabilities.\(^{325}\)

The relationship between dysfunction and dissatisfaction is treated well by both Robert Nozick and sociologist Emile Durkheim. Because of their effect on society-wide (or group-wide) solidarity rules, norm-violating acts that indicate dysfunction are not simply singular acts but public wrongs that produce psychological dissatisfaction in a society. The distinction between “private” and “public” wrongs is well articulated by Robert Nozick in *Anarchy, State, and Utopia* (1974) where he writes that “private wrongs are those where only the injured party need be compensated; persons who know they will be fully compensated do not fear them…public wrongs are those people are fearful of, even though they know they will be compensated fully if and when the wrongs occur.”\(^{326}\) The possibility of an unjust transfer of entitlements produces fear in a population so far that even the prospect of compensation is not necessarily enough to guarantee the mitigation of a public wrong since “the difficulty is that the knowledge that one is living under a


system permitting this, itself produces apprehension.”327 The difference between public and private wrongs is further illustrated in the legal distinction between crime and tort. Torts involve the involuntary transfer of entitlements from one private individual (a cost bearer) to another (an imposer), the latter of whom usually must compensate the victim. But crimes “have many victims; in addition to the substantial costs suffered by the direct victim (or his survivors)…criminal acts create fear and moral outrage in members of the community not directly party to the act itself.”328 Durkheim also regards crimes as public wrongs, defining them as acts that “offend the strong, well-defined states” of a collective body.329

Public wrongs that undermine the stability of social norms produce anomie in a society, represented psychologically as fear, frustration, and anxiety. In The Division of Labor in Society, Durkheim wrote that formal bodies of law produce social solidarity by regulating the relationships between individuals, namely the contractual relationships arising from the division of labor and economic interdependence. Social norms that embody society-wide trust rules and shared values, when respected and enforced, perform the same function: formal law itself is “nothing more than [the organization of social life] in its most stable and precise form.”330 Durkheim famously presented the concept of anomie or “normlessness” as the condition “when society is disturbed by some painful or by beneficent but abrupt transitions, it is momentarily incapable of exercising [social influence].”331 Anomie essentially refers to a social condition in which a prevailing system of norms begins

327 Ibid., 67-68.
328 Adelstein, “Victims as Cost Bearers,” 137.
329 Durkheim, The Division of Labor in Society, 39.
330 Ibid., 25.
331 Emile Durkheim, On Suicide (Glencoe, Ill., Free Press, 195), 252.
to break down. “Abrupt transitions” are social exigencies – theft, arson, revolution, war, economic growth, and social change – that affect confidence in the stability of existing social norms and therefore produce a disparity between value expectations and value capabilities. Under conditions of *anomie*, individuals experience psychological dissatisfaction: as Durkheim wrote in *On Suicide* (1897): “No living being can be happy unless its needs are sufficiently proportioned to its means; for if its needs surpass its capacity to satisfy them, the result can only be friction, pain, lack of productivity, and a general weakening of the impulse to live.”[^332]

*Anomie* encompasses both a social exigency and the psychological perception of relative deprivation, experienced as fear, anxiety, frustration, and a disconnect from the social world that, for Durkheim, ends in suicide.

With these philosophical, economic, psychological, and sociological treatments of norm-violating acts and social disorder, we can now define a social crisis as a phenomenon that encompasses both perceived social dysfunction brought about by norm-violating exigencies that, as public wrongs, produce a psychological reaction throughout society that requires rectification. This definition of social crisis certainly applies to the history of crime-control, regime-control, and social-group-control vigilantism? Our historical cases of the San Francisco movement, the Montana movement, and the Ku Klux Klan each possess the components of social crisis: a perceived norm violation that creates a social exigency, and the resulting experience of *anomie* as relative deprivation by members of the larger society.

For crime-control and regime-control vigilantism, both norm-violating social dysfunctions and psychological dissatisfaction are focused on instrumental norms.

[^332]: Ibid., 246.
regarding entitlements. The major criminal activities that provoked eastern 
vigilantism (horse-theft and counterfeiting) and western vigilantism (regular larceny 
and arson) are both classic examples of public wrongs. The public nature of crimes as 
engendering uncertainty in instrumental norms is affirmed both theoretically in 
Olson’s stationary bandit model and historically in the behavior of the Montana and 
San Francisco vigilantes. Olson implicitly recognizes the role of the stationary bandit 
in mitigating public wrongs by becoming the dominant source of coercion in a given 
region: under anarchy, there is little motive for extensive production or voluntary 
cooperation since, in the absence of any salient norms of private property and 
voluntary contracts, individuals with a comparative advantage in force will simply 
plunder and pillage.\textsuperscript{333} Under the protection of a stationary bandit that promises to 
enforce instrumental norms of life and property, the former victims have a motive to 
produce more. For my crime-control model, this means that vigilante elites not only 
have an interest in mitigating private offenses to their own possessions, but an 
encompassing interest in upholding instrumental norms for the entire population. This 
is highlighted by both the crime-control and regime-control vigilantism in San 
Francisco and Montana. A lack of confidence of eastern creditors and investors in the 
economic stability of San Francisco was based on the threat of arson to city’s 
infrastructure in 1851 and the local credit rating and tax rate under the Broderick 
machine in 1856 that placed the city under the “specter of municipal bankruptcy.” 
The presence of highway robbery by miners on the wilderness trails of Montana led 
many potential miners to reduce their stagecoach traffic and carry less in their purses, 
posing a threat to trade and commercial business maintained by the elites. While the

\textsuperscript{333} Mancur Olson, \textit{Power and Prosperity}. (New York: Basic Books, 2000), 63-64
vigilante elites themselves do not comprise a privileged group (since they relied on mobilizing other members of the community), the vigilance committee as a whole behaves as a privileged group does, bearing the costs of providing a public good of norm enforcement without taxing the larger population.

The history of the Montana vigilantes and San Francisco Committee of 1851 affirms the presence of a psychological experience of public wrongs corresponding to criminal activity and crime control vigilantism. The threat of arson and a series of robberies and “particularly heinous” murders in San Francisco from 1849 to 1851 created an atmosphere of alarm among anxious citizens, and the string of false alarms by the inexperienced Nightwatchmen and new system of volunteer firefighters put the population into a state of perpetual fear. The *California Alta* pronounced on April 1, 1851 that “the annals of crime are as black as ever,” reflecting the sentiments of desperation felt by citizens. A prison break on April 23rd 1851 of eight convicts, whose convictions ranged from rape to assault to grand larceny, led the *Alta* to attack the municipal government’s capacity to maintain order, writing that “truly the branches of government, judicial, aldermanic an police, are of all of a piece – just good for nothing.” The citizens of Bannack, Virginia City, and Helena were also subject to the same public sense of fear during the Montana vigilante movement. The public fear of the Bannack road bandits was at a breaking point prior to the formation of the 1863 vigilance committee. This is best exemplified by the acquittal of road bandits Buck Stinson, Haze Lyons, and Charley Forbes in the murder of Bannack

335 Ibid., 69
deputy D.H. Dillingham, directly preceding the Ives trial that led to the formation of the Montana vigilance committee of 1863. As Dimsdale writes, “after the failure of justice in the case of the murderers of Dillingham, the state of society, bad as it was, rapidly deteriorated, until a man could hardly venture to entertain belief that he was safe for a single day.” The banditry in the wilderness on the periphery of Helena, Butte, and Billings fueled fear of theft and murder. Robert Fisk’s writing in the territorial press in the 1870s exacerbated the sense of lawlessness until the public fear exploded in a string of vigilance committees, culminating with Stuart’s Stranglers and their battle against horse-theft in 1884.

The regime-control San Francisco Committee of 1856 reacted to the norm-violations perpetrated by the Broderick machine somewhat differently. Because of the nature of municipal taxes, the upper-class were the most directly affected by the Broderick machine, so that the psychological frustration of municipal corruption was primarily centered commercial elites like Sam Brannan and William Tell Coleman. Municipal taxation, although carried out through legitimate channels, was perceived by elites as a violation of instrumental norms regarding the sanctity of private property as free from arbitrary interference. However, the vigilante elites were able to galvanize support by engendering public frustration with the Broderick government’s lax stance towards criminal behavior and the moral decay of the city, presenting the Broderick government as violating both instrumental norms regarding

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337 Ibid., 89.
the role of the state in protecting its citizens and expressive norms of moral turpitude. Former 1851 vigilante James King, in his role as editor of the *Daily Evening Bulletin*, did his best to create a “crisis atmosphere,” calling on the citizens of San Francisco to “rise in the majesty of their strength…drive hence the gambler and the harlot…restore the tone of moral health and purity.” The subsequent highly public murders of James King and U.S. Marshal William Richardson by James P. Casey and Charles Cora, when coupled with the “near-panic psychology” concerning municipal crime created by the *Bulletin’s* editorials, created a public reaction so strong membership of the 1856 vigilance committee reached nearly 6,000 men virtually overnight. The public perception of the municipal government’s role in both perpetrating and tolerating criminal acts created an environment of fear despite low actual crime rates as reported in the *Alta*, indicating that the subjective, psychological experience of fear and frustration was more of a motivator for vigilante action than the real norm-violations perpetrated by the corrupt Broderick machine.

For social-group-vigilantes like the KKK, the presence of potential threats to the *status quo* undermined the perceived saliency of expressive norms of social group relations. The public wrongs that created a perception of fear are not necessarily related to specific acts like those resulting from criminal behavior, but rather the perceived threat and actual occurrence of real changes in the prevailing system of relationships. This is best exemplified by both the “Great Fear” in the South as southerners “gloomily awaited the almost certain election of Lincoln” prior the Civil War and the operation of the KKK following it. Brown, on the “Great Fear:”

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Forebodings of violence, never far from the surface, were suddenly realized in the Great Fear that swept across the South in the summer of 1860. From the Rio Grande to the Atlantic plot after plot by secret abolitionists and unionists for the raising-up of slaves in a bloody rebellion were exposed. At this distance it seems that the fears of slave uprisings were groundless, but parts of the South were in the grips of hysteria that was real enough. Vigilante groups and self-styled committees of safety sprung up. The Great Fear of the South in the summer of 1860 seems to have been as baseless in fact as the remarkably similar *grande puer* (Great Fear) that gripped the French peasantry in the first year of the French Revolution. Both the Great Fear in the American South and the *grande puer* in France revealed the profound anxieties that lacerated the white southerners and the French peasants in the summers of 1860 and 1789.  

The psychological impact resulting from loss of the Civil War and the legal emancipation of African-American slaves was widespread, suggesting a reaction to expressive norms damaged by the new status of the Union as occupying power and of African-Americans as free individuals. Arnold writes: “during the Klan’s formative years, discontent was spreading in the North over President Johnson’s handling of the South’s Reconstruction. [Southerners] saw their onetime enemies [abolitionists and Union soldiers] back in power.” Southerners were “demoralized, disgraced, and filled with hatred” as the African-Americans previously considered inferior beings now walked the streets of Southern cities as free men.  

The resulting fear amongst Southerners was tremendous:

Before the Civil War, instructing a black in reading had been a serious crime. The Southerners’ perpetual fear – black insurrection - was lessened by the slave’s ignorance. With the advent of freedom and education for the former slaves, the Southerner knew his control over the black was greatly weakened.

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343 Madison, *Vigilantism in America*, 57-58.
344 Ibid., 62.
The emancipation of African-American slaves and the Union occupation of the South greatly upset the Southern social order, producing psychological feelings of relative deprivation amongst Southerners whose expectations of dominant social relationship over African-Americans were no longer legally reorganized in the formal body of U.S. law. The perceived violation of expressive norms regarding not only the social status of Southerners but their relationship to the Union and to African-Americans produced a psychological reaction; the result was vigilantism.

**Norm Entrepreneurship**

Now that we have a theory explaining the relationship between the nature of norm violations as public wrongs and the psychological experience of anomie or relative deprivation, we now turn to the actual act of vigilantism. Instead of law enforcement, norm enforcement is the basic public good provided by the vigilante strain of stationary bandit. Coercion, both through threats and sanctions, was employed by vigilance committees to deter norm-violating acts and to uphold social norms. Coercive sanctions, since they are employed against norm-violating acts that are public wrongs and have a widespread effect on public confidence in social norms, are therefore subject to different sanctions than private wrongs. Bodies of law regulate social life through two types of sanctions administered by the states: *repressive* sanctions, which impose injury or other costs on the perpetrator of an act, and *restitutive sanctions* that “consist of restoring the previous state of affairs, re-
establishing relationships that have been disturbed in their normal form.” While frontier MPAs typically employed solely repressive sanctions to compensate its members for costs endured by violence or crime, vigilantes substituted their own repressive and restitutive sanctions to reestablish social stability in the absence of regular government law enforcement organs.

The extent to which individuals with different social and economic preferences and interests are affected by a social crisis influences the degree to which they contribute in providing a public good of coercive norm enforcement. Vigilante elites, because of their status at the top of the hierarchical class structure that is threatened (as with the importers and commercial elites in Montana and San Francisco) or completely undermined (as with the former Confederate military officers and landowners in the post-Civil War South), have an encompassing personal interest in mitigating a social crisis and restoring the status quo and therefore have an incentive to undertake the essential organizational and coordinative functions of providing norm enforcement (recruiting, holding mass meetings, conducting trials, planning coercive strategy, etc). Members of the middle-class also have an incentive to engage in vigilante activity, although not as much as that of the elites as there is less of a gap between their value expectations and their value capabilities during a social crisis; elites “have further to fall” in terms of experiencing relative deprivations of social or material power. The extent to which middle-class members of the voluntarily join vigilante elites in providing public goods is dependent on the extent to which elite and middle-class members of society experience similar relative deprivation in values during a social crisis.

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With this in mind, we can imagine two models of a vigilante strain of the Olsonian stationary bandit: 1) an *exogenous deprivation* model, in which the perception of norm violations in a social crisis is consistent enough across a society that elites need only engage in organizing to mobilize the middle class, and 2) an *endogenous deprivation* model, in which the disparity in relative deprivation is large enough between classes that vigilante elites must actively engage in producing a public perception of norm violation through a “moral panic,” providing an incentive to the middle class to engage in vigilante norm enforcement.

In the exogenous deprivation model, vigilante leaders need not provide selective incentives to members of the middle class. The disparity in deprivation between the two classes is marginal enough that both (or neither) have a rational incentive to provide norm enforcement. The elites, with their marginally larger interest in the *status quo* and their resulting material and social power, have an incentive to engage in the institutional entrepreneurship described by Anderson and Hill and bear the costs of organizing and coordinate vigilante action. This type of vigilance committee typically occurs where norm-violating public wrongs impact the vast majority of a community. The perpetual threat of arson and larceny affected *everyone* in San Francisco; Sam Brannan needed only paper the streets with fliers calling for action to recruit 200 middle-class men for the San Francisco Vigilance Committee of 1851.346 The road bandits put the populations of Bannack and Virginia City in a state of continual fear, and while Vigilantes of Montana initially attempted to operate in secret, captain of the guard and 1864 vigilante James Williams could recruit any number of average citizens to dispense justice merely by commanding,

“men, do your duty,” a phrase that would enter Montana folklore as a vigilante motto.

The psychological reaction to the loss of the Civil War and the legal emancipation of slaves was so uniform among Southern whites that – opposed to the San Francisco and Montana movements that primarily drew from the middle-class for support – all classes of white Southerners were drawn to the movement, from former plantation owners to poor, rural whites. The incentive for individuals to join a vigilante movement is purely *exogenous*, the psychological reaction to a *genuine* social crisis and its disruption of social norms.

The endogenous deprivation model typically emerges when there is a large disparity between the relative deprivation of vigilante elites and that of other social classes. This type of vigilance committee occurs when the experience of a public wrong is unequally distributed across a society. The violation of instrumental norms in the form of *tax theft* instead of criminal theft or arson by the Broderick machine in 1856 is an appropriate example. Commercial and import magnates like Sam Brannan and William Tell Coleman, as well as former vigilante elites like James King of the *Bulletin*, had a large incentive to engage in regime-control vigilantism and wrench control of the municipal government from the Broderick machine since they were the most burdened by high taxes: import and export tariffs made shipping commercial goods expensive, while high property taxes made capital investment costly as well. Most of the middle-class, as honest wage laborers unaffected by such commercial taxes, did not share the same relative deprivation as elites. Similarly, Montana’s

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347 Allen, *A Decent, Orderly Lynching*, 192. James William initially gave the command during the trial and execution of George Ives, the trial that led him to join the vigilance committee of 1864. Ives, moments away from the gallows, wildly accused another citizen of committing the crime he was about to be executed for. “Men, do your duty” in Montana folklore in a reminder of the common interest in upholding the law, regardless of personal preference or identity.
political and business leaders had a huge stake in encouraging emigration back to the territory and increasing commercial activity after diminishing surface deposits of gold resulted in capital flight in the 1870s, but the influx of new settlers yielded vagrancy and banditry that made the territory unappealing and kept population growth down.\footnote{Ibid., 354.}

The vigilante leaders in San Francisco in 1856 and Montana in the 1870s had an encompassing interest in providing engaging in vigilante activity and reducing their relative deprivation, an interest that was not shared by the middle-class.

As a result, vigilante elites engage in both institutional \textit{and} norm entrepreneurship. Vigilante leaders – like Olson’s stationary bandit – had to provide selective incentives to mobilize members of the middle class to engage in norm enforcement. Using the press, vigilante elites essentially created the \textit{perception} of norm violations, stimulating a psychological state of relative deprivation in the middle classes large enough to provide an incentive to join a vigilance committee. The use of the press as a means of providing selective incentives is crucial since it allows us to classify this incentive as a \textit{moral panic}, or a period in which certain groups come to be perceived as threats to the social order. The key element of a moral panic is the definition of an individual or group as a threat and their depiction within a media source, followed by the rapid build-up of public concern and a reaction from some authority.\footnote{Kenneth Thompson, \textit{Moral Panics} (London: Routledge Press, 1998), 8.}

The instrumental use of the press by James King prior to the formation of the San Francisco Committee of 1856, and by Robert Fisk with the Helena vigilantes in the 1880s to generate a perception of social instability despite relatively low crime rates, are critical examples of vigilance committees that employ
a moral panic as a selective incentive. In San Francisco, King did his best to portray the city in the grip of the “second class” of men – those who steal – despite the effectiveness of municipal law enforcement in deterring larceny and petty theft:

_The second class_ stands all day at the street corner, flourishing whale bone canes and twirling greasy mustachios. At night they clock to the gambling halls, abounding in all our thoroughfares, where they feast and carouse, bet and blackguard, damn their own souls and take the damn of God in vain. Or else, flushed with wine and lust, they throng the houses of prostitution…

Through the _Bulletin_, King tied the criminal lawlessness and moral decay – norm violations relevant to the honest, Protestant middle class – to the “domination of political plunderers.” “Men without one particle of claim to the position,” he wrote, “have filled the post of Mayor and Councilman in the city, for the sole purpose of filling their pockets with the ill gotten gains of their nefarious schemes, their pilfering and dishonesty.” In Montana, Robert Fisk exaggerated the problem of bandit gangs as “the horde on our borders,” using the _Helena Daily Herald_ and territorial press to lament the nature of lawlessness and call for a new vigilance committee:

There is no disguising the fact that Helena at this time is the rendezvous for a score or more of very hard characters – men that have no visible means of livelihood and that are watching for opportunities to rob and even murder, if necessary, to carry out their infamous purposes. Would it not be a wise precautionary step to invite some of these desperate characters to “take a walk” or shall we wait for outer murders and robberies, and perhaps until they burn the town down again?

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351 Ibid., 579.
352 Allen, _A Decent, Orderly Lynching_, 355-356.
In this model, the selective incentives for middle-class individuals to engage in vigilante activity are *endogenous*, coming from within the vigilance committee itself through the elites’ use of the press to create moral panics. Instead of coercing or paying people to join, the vigilante elites *scared* them into it by creating a sense of relative deprivation in the middle class comparable to their own, despite the uneven experience of public wrongs to begin with.

**Sovereignty and Legitimacy**

While our theory of vigilantism as norm enforcement corresponds to the historical focus of vigilance committees on norm entrepreneurship, the restitutive coercion employed by vigilantes still poses problems for our model in terms of the *sovereignty* of vigilance committees, or the legitimate right to exercise authority. Since vigilante violence is necessarily carried out by private individuals outside the legal and juridical institutions normatively considered “legitimate” by Americans, why did vigilante violence not uniformly inspire fear and frustration throughout communities like criminal violence and necessitate an organized counter-vigilante response?

Violent coercion is not categorically a norm-violating act. Violence undertaken by a sovereign state, when exercised in adherence to the legal norms of a constitutional order like those that protect property (such as unreasonable searches and seizures in the Fourth Amendment and due process in the Fifth Amendment), does not induce the same psychological reaction of relative deprivation in individuals that private violence does unless it exceeds its normative constraints. For the federal
government and frontier MPAs, the sovereign right to violence is legitimate when based on the express consent of the governed which actively establishes the constitutional boundaries for state action. This type of sovereignty is well articulated in the political philosophy of Jean-Jacques Rousseau, who in The Social Contract (1762) identified the sovereign state, which “owes its being solely to the sanctity of the [social] contract,” as the embodiment of the “general will” of the body politic. To individual citizens, a sovereign state, “since it is formed entirely of the individuals who make it up, has not and cannot have any interests contrary to theirs.” This description reflects the logic of collective action described by Mancur Olson, highlighting voluntary consent as the basis for sovereignty and therefore legitimate coercion. The sovereign entity for the frontier MPA is the organizational nucleus charged with coordinating group behavior.

Because of its non-contractual and public nature, vigilantism necessarily appeals to a different breed of sovereignty rooted in its reaction to crisis. Vigilantism, as described by Rosenbaum and Sederberg, consists of violent acts that stand “outside of the formal boundaries of an established sociopolitical order which, however, are intended by the violators to defend that order from some form of subversion.” In this sense, the nature of vigilante sovereignty closely resembles the paradigm of government stemming from the idea of a state of exception, developed by Carl Schmitt in Political Theology (1922) and treated by Giorgio Agamben in State of Exception (2005) as the basis for “emergency powers” in constitutional governments.

354 Ibid., 53.
While the state of exception is presented as an abstract and overly complex philosophico-juridical concept by Schmitt and Agamben, it is relevant as a basic allegory for vigilante sovereignty. The state of exception refers to a suspension of the regular legal and juridical order for the sake of defending under “the extraordinary situations of necessity and emergency.”\textsuperscript{356} A sovereign power defined as “he who decides the state of exception”\textsuperscript{357} or the individual or group who have the right to claim exemption from the law to preserve it. Vigilantes necessarily infringe upon preexisting legal and social norms in their efforts to stabilize the social order, operating within a state of exception from accepted social conventions as they engage in arbitrary violence in the face of a social crisis. If the right of vigilantes to decide a state of exception and engage in extralegal violence is not based on sovereignty established by the express consent of the governed, what social norms legitimized American vigilantism so that instances of violent vigilante coercion were not themselves considered norm-violations?

It is certainly true that vigilance committees often became so excessively violent that they were a destructive social presence rather than constructive agents of stability and induced fear in a given population. The KKK was regarded by Northerners and abolitionists as an illegitimate terrorist group, as they instrumentally used fear-inducing tactics against African-Americans. The Bald Knobbers of the Missouri Ozarks of 1883-1889 engaged in a violent crusade against “the evils of theft, liquor, gambling, and prostitution” in Taney County until federal marshals were

\textsuperscript{357} Ibid., 1.}
called in to deal with the escalating coercion.\textsuperscript{358} Often, counter-vigilante committees would emerge to combat vigilante action that was seen as “arbitrary,” as the Law and Order movement did briefly in Montana in 1867 as highway robbery was waning.\textsuperscript{359} Counter-vigilantism often resulted in bloody conflict, like the Regulator-Moderator War (1840-1844) in east Texas between two committees.\textsuperscript{360} Vigilante violence does induce fear and panic in a society as social exigencies do: when it does, it becomes \textit{terrorism}.

Vigilantism is classified as a domestic, internal reaction of private power to maintain stability or enhance the status quo of a society by sustaining accepted values and norms. But there is vigilantism that incorporates fear, mayhem, and murder. Terrorism on the other hand is radical and uses violence as a power source for social control. The control weapon of terrorism is fear.\textsuperscript{361}

Since violent acts are norm violating acts when they go beyond the accepted social norms, there must be a system of norms prevalent in American society that legitimizes vigilante coercion. Historically, the sovereignty claimed by vigilance committees was seen by participants and other as legitimate based on a \textit{doctrine of vigilantism} that, while exercised only in cases of extreme emergency, always existed as a latent social force in the structure of American society during the nineteenth century.\textsuperscript{362} The doctrine of vigilantism was a fixture of frontier culture on the West, a symptom of the “frontier psychology” developed by harsh conditions and isolation.\textsuperscript{363} As Brown writes, vigilante movements rarely posses an autonomous ideology of what

\textsuperscript{358} Brown, \textit{Strain of Violence}, 23.
\textsuperscript{359} Allen, \textit{A Decent, Orderly Lynching}, 347.
\textsuperscript{360} Brown, \textit{Strain of Violence}, 121.
\textsuperscript{361} Culberson, \textit{Vigilantism: A Political History of Private Power}, 40.
\textsuperscript{362} Ibid., 36.
\textsuperscript{363} Brown, “Violence,” 397.
“ought to be,” appealing more to the prevalent belief system of “what is” for guidance: just as vigilantes appeal to the current status quo for their focus in combating norm-violations, they also appeal to the social order for justification of their actions. The three components of the doctrine of vigilantism are thus self-preservation, the right to revolution, and popular sovereignty.

Self-preservation is the “legitimate and sacred defenses against arbitrary power,” considered an inherent right and a legitimate basis for private coercion. The right to self-preservation in American is closely tied to the political philosophy of John Locke, whose works profoundly influenced the United States Constitution and the Declaration of Independence. Locke wrote that

whosoever uses force without Right, as everyone does in Society, who does it without law, puts himself into a State of War with those, against whom he so uses it, and in that stat all former ties are cancelled, all other Rights cease, an everyone has the right to defend himself, and to resist aggression.

The right to preservation was regarded as a pre-political, pre-constitutional right, bound up in the very instincts of the human race. Locke’s view of self-preservation was one of temporary action, after which individuals would return to the former laws of the political order that had been violated in the course of self-protection. The short lifespan of vigilance committees reflects this temporary conception of private coercion. Self-preservation was not without legal and normative precedent in the

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364 Brown, Strain of Violence, 114.
365 Ibid., 115
366 Culberson, Vigilantism: A Political History of Private Power, 10.
368 Culberson, Vigilantism: A Political History of Private Power, 11.
West: the right to self-defense was bound up in the doctrine of “no duty to retreat” that transitioned from English common law regarding homicide. Self-preservation normally deals with external threats to life, and is fundamental in justifying crime-control vigilantism in particular. Many frontier vigilance committees explicitly presented the Lockean principle of self-preservation, like the *Comites de Vigilance* in Louisiana in 1859 and the Pierce County, Washington Vigilance Committee of 1856, who declared that “self-preservation [as] the first law of society, & the basis upon which its structure is built.” Self-preservation struck a strong note in lawless Montana. In Dimsdale's account, the Bannack vigilantes of 1864 had narrowed the question of dealing with road bandits to “kill or be killed,” since “self preservation is the first law of nature.”

The *right to revolution* is closely related to the right to self-preservation as the right to defend oneself against arbitrary coercion, but instead of dealing with private power addresses unjust rule by government. The right to revolution also has its grounding in Locke’s political philosophy. Locke argued that corruption and political subterfuge, where “Legislators act contrary to the end for which they were constituted,” are examples of arbitrary power, “introducing a Power, which the People hath not authoriz’d, they actually introduce a state of war, which is that of Force without Authority.” The right of revolution is an attempt to reaffirm traditional constitutional and political norms in a chaotic system. In the nineteenth

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372 Locke, *Two Treatises of Government*, 416.
373 Ibid., 417 (emphasis mine).
century, the right to revolution was usually presented as a legal or constitutional justification for vigilantism as an inherent facet of the U.S. Constitution, cited explicitly in the Declaration of Independence:

That whenever any Form of Government becomes destructive of these Ends, it is in the Right of the People to alter or abolish it, and to institute a new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness.

Several U.S. states have the right of revolution as an explicit part of their constitutions. The New Hampshire constitution calls the doctrine of nonresistance against arbitrary power “absurd, slavish, and destructive of the good and happiness of mankind” while guaranteeing its citizens a right to rebel under Article 10 of its bill of rights. Virginia and Delaware have similar provisions. The right to revolution is closely related to regime-control vigilantes responding to government ineffectiveness: the Illinois Regulators of 1816, responding to a wave of horse-theft and ineffectual law enforcement organs formed what Governor Thomas Ford called “revolutionary tribunals…under the name of regulators.” The legacy of the American Revolution played an important role as an example of immediate revolutionary success, legitimizing the use of violence for “constructive” political ends.

Popular sovereignty, another ideological offspring of the successful American Revolution, is simply the principle of rule by the people based on concept of the

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378 Brown, 118.
379 Ibid., 7; Fritz, “Popular Sovereignty, Vigilantism, and the Constitutional Right to Revolution.” 42.
“general will” articulated in Rousseau’s political philosophy. The principle of popular sovereignty accompanied the maturing belief in democracy from the birth of the nation, culminating under administration of President Andrew Jackson who declared that: “law emanates from the people, written or not, and is nothing but certain rules of action by which a people agree to be governed, the unanimous decision among the people to put a man to death for the crime of murder, rendered the act legal.”

Popular sovereignty was widely appealing, with many vigilante groups like the La Grange and Noble Regulators in Indiana who declared in 1858 that “we are believers in popular sovereignty.” In the case of vigilantism, people accepted “more completely…the concept that government is the servant of the people, subject to their immediate control” and engaged in enforcing their vision of the constitutional order in the face of a social crisis, despite the fact that the vigilance committees that justified their actions on popular sovereignty did not utilize a social contract to gauge the general will of a given region. Popular sovereignty is often employed to justify social-group-control vigilantism as an imposition of expressive norms of a social group under auspices of the general will of “the people.” In the nineteenth century it was constitutional orthodoxy to reject literal attempts to promote popular sovereignty as a form of constitutional revision, as James Madison and other federalists sought to limit the practical invocation of popular sovereignty and the right of revolution by constraining federal constitutional revision to Article V

383 Ibid., 44.
procedures and judicial review. However, the force of popular rule strongly dominated vigilance committees, creating “the feeling of community and the sense of ‘freedom’ produced by participating in the group throughout their members” despite the strict control over vigilante operations by elites.

In this capacity, acts of vigilante coercion are not in themselves norm violating acts because they grounded in the constitutional and social norms of American society, embodied in the doctrine of vigilance that was a fixture of frontier culture. Vigilante sovereignty is that based on a state of exception, conceived of as “breaking the law to uphold the law” which as a sort of paradoxical form of private coercion does not induce fear in a society despite my earlier treatment and definition of norm violating acts. Because of vigilantism’s ideological grounding in the constitutional norms that are potentially valuable for every American citizen regardless of social group or class, vigilantism was regarded throughout the nineteenth century as a completely legitimate form of private power, despite its potential to become a norm-violating act.

As my analysis has revealed, every aspect of vigilance committees – their origins, formation, goals, and legitimacy – is deeply rooted within the prevailing social order which they operate within. While vigilance committees are necessarily responsive to economic logic in their institutional structure and features, its motivations and goals are inherently bound in the personal values and beliefs of the private citizens who engage in vigilante violence and their relationship with the world around them.

384 Ibid., 43.
Conclusion

While my historical analysis has focused primarily on the formation of vigilance committees in the United States during the nineteenth century, my theory of vigilantism is built on principles that can potentially be applied to any given region, nation, or historical epoch. The economic logic of collective action that influenced the formation and institutional features of vigilance committees is necessarily ahistorical. Similarly, the normative components of vigilantism – the reaction to social crisis, engagement in norm entrepreneurship, and the legitimacy of vigilante activity – must also be treated as deeply-seated psychological experiences, endemic to human consciousness and action, in order for vigilantism to have significance as a potentially universalizable political and social phenomenon. There is certainly significant evidence of organized, conservative vigilantism outside of the United States. There were numerous instances of vigilantism by white Afrikaners against the African and colored populations of South Africa during the 1920s and 1930s, especially in the Transvaal region.\textsuperscript{386} In other parts of Africa, young militants organized into vigilante groups to uphold native traditional values from erosion under British indirect rule on the continent during the 1960s, with vigilance committees emerging in Uganda, Malawi, Zambia, Tanzania, and Zanzibar. The committees addressed issues ranging from support for a particular political regime to

“decency of dress” in response to increasing popularity of Western fashion. Vigilance committees formed in Southeast Asia following the end of World War II in Cambodia were comprised primarily of Chinese and Indian elites and violently suppressed ethnic minorities (or “pariah” communities) in Laos, Cambodia, Thailand, and Burma clamoring for better political representation.

I. Hamas: The Islamic Resistance Movement

A remarkable example of a non-American vigilance committee is the Islamic Resistance Movement, or Hamas (Arabic for “zeal”), a military offshoot of the Muslim Brotherhood (MB) that formed following the violent riots of 1987 that signaled the beginning of the first intifada in Israel. Prior to the formation of Hamas, the history of Islamic movements in Israel essentially corresponds to the history of the Muslim Brotherhood, founded in Egypt in 1928 by Hasan al-Banna and stressing revival, organization, and upbringing to revitalize the strength of Islam in the Middle East. The goal of al-Banna’s movement was to “transform society to approximate as closely as possible that established by the Prophet Muhammad” by reinforcing the expressive norms of Islamic religious dogma and culture and create a social order based on Islamic norms. Following the 1967 occupation of the West Bank and Gaza Strip by Israel, the MB’s emphasis on the Islamic restructuring of society and religious education “seemed to have little relevance for a population that was seeking

liberation from foreign occupation.” Following the 1987 riots, leading members of the MB met to discuss ways to utilize religious and nationalist sentiments among Palestinian Muslims and encourage opposition to Israel, resulting in the formation of Hamas in January 1988. Hamas, with its dual nature as both “warmongers and worshippers,” attracted a tremendous amount of popular support in its coercive activities, aimed primarily against the removal of the Israeli regime and the creation of a Palestinian state. Hamas shares both the institutional and theoretical features of the vigilance committees of the American frontier, particularly the regime-control and social-group-control aspects of the San Francisco Vigilance Committee of 1856.

Hamas displays the institutional features of the vigilante strain of Olsonian stationary bandit: a hierarchical command structure, the providing of public goods, and the substitution of voluntary contributions instead over coercive tax theft. The organization of Hamas was relatively simple compared to the complex bureaucracy of its secular nationalist counterpart, the Palestinian Liberation Organization (PLO), comparable to the simple command structure of the Committee of 1856. Leadership was concentrated in the hands of community elites such as physicians, teachers, and spiritual leaders. Examples include Shaykh Salih Shihada, instructor at Islamic University, and Sheikikh Yasin, spiritual and financial head of the Islamic Center established by the MB in Gaza in 1973. While the MB of the 1950s had grown to become a “classless, populist movement that drew members from all walks of life,”

390 Ibid., 7, emphasis mine.
393 Ibid., 10.
394 Knudsen, “Crescent and Sword,” 1376.
the core membership of both the MB and Hamas came from the urban middle class of young professionals\textsuperscript{395} like the vigilance committees of the American frontier. The size of Hamas’ is difficult to ascertain because of the absence of free and democratic elections amongst its constituent members,\textsuperscript{396} further highlighting the concentration of power in the hands of community elites like that enjoyed by William Tell Coleman and Sam Brannan in San Francisco in 1856.

Hamas also provided public goods for the larger population of the Gaza Strip and West Bank, although in a markedly different manner than the Committee of 1856. While the Committee of 1856 provided a public good of norm enforcement by ousting the Broderick machine and reducing the relentless taxation and climate of corruption lawlessness among the citizens of San Francisco, Hamas’ engagement in norm enforcement was directly tied to providing material public goods, particularly institutions designed to promulgate Islamic values and teachings within Gaza. Like the MB, Hamas established an extensive infrastructure in order to expand its base of operations, providing nursery schools, kindergartens, social and sports clubs, libraries, and heavily subsidizing the Islamic University, all “useful vehicles for spreading Hamas’ ideas and influence and enlisting supporters.”\textsuperscript{397} Hamas’ total organizational budget ranges from $70 to $40 million, and about 95% of its revenue is allocated towards social services.\textsuperscript{398} The social welfare network provided by Hamas affected nearly everyone in the West Bank and Gaza Strip: as of 2005, about one in every six Palestinians in the Occupied Territories benefited from support from

\textsuperscript{395} Ibid., 1375.
\textsuperscript{396} Abu-Amr, “Hamas: A Historical and Political Background,” 14.
\textsuperscript{397} Ibid., 14.
\textsuperscript{398} Knudsen, “Crescent and Sword,” 1382.
Islamic charities. Charity aid and zakat donations were preferentially distributed to widows, female-headed households or families of slain martyrs, as well as to orphaned children. These services, despite their role in strengthening expressive Islamic norms, were certainly public goods as there is no evidence that Hamas or other Islamic charities provided assistance conditional upon political or religious support.  

The absence of coercive tax theft further solidifies Hamas’ status as a vigilance committee rather than a predatory Olsonian stationary bandit. Since its inception, Hamas has received about 85% if its finances from Muslim benefactors in Gulf Countries. A smaller amount, about 15% is collected locally through religious endowments (waqf), which made up 10% of the real estate in Gaza and alms. While the institution of zakat could potentially be seen as forceful taxation because of its status as an “obligatory” alms tax, all contributions to Hamas made through the zakat committee at the Islamic Centre were entirely voluntary based on zakat’s basis as one of the five pillars of Islam. In this sense, the public goods provided by Hamas were also religious incentives for Palestinian Muslims: the Hamas charter states that “parts of social welfare consists of helping all who are in need of material, spiritual, or collective cooperation… it is incumbent on members of the Islamic Resistance Movement to look after the needs of the people as they would their own needs.” Those non-Muslims who benefited from the charities and social welfare programs provided by Hamas were essentially free-riders with no religious incentive

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399 Ibid., 1383.
401 Knudsen, “Crescent and Sword,” 1382.
402 Ibid., 1383.
to contribute. Where the middle class and elites in San Francisco had an incentive to contribute to providing vigilante norm enforcement of instrumental norms of property and government, the urban middle class Muslims had a religious incentive couched in the expressive norms of Islamic doctrine.

The formulation of Hamas reflects the reaction to social crisis indicative of the vigilance committee. The catalyst for the formation of Hamas as a distinct branch of the MB can certainly be treated as a social crisis, possessing both a social exigency and the psychological experience of disorder as described in Chapter IV. The social exigency at the heart of Hamas is the occupation of Israel by the Israeli government, considered a norm-violating act based on Islamic dogma. The riots between Palestinian Muslims and occupying Israelis that catalyzed the first and second intifadas, manifested over the most banal of circumstances (the first intifada in 1987 was touched off by a motor accident between an Israeli truck and Palestinian motor vehicles in the Gaza Strip) reflect the heightened tension between Palestinians and the Israeli regime. Are Knudsen emphasizes the hostile living conditions in the Occupied Territories as more significant than Hamas’ political platform and ideology in making the West Bank and especially Gaza the center of Hamas’ support. Furthermore, the Muslim Brotherhood’s lack of commitment to an “all-out struggle against Israel” was the focus of major criticism by Hamas, emphasizing the perceived impotence of the MB in reflecting the interests of Palestinian Muslims. Hence, the major difference between the MB and Hamas – the “place of Palestinian state in priorities” and “the means of action” (i.e. aggression against the Israeli state) – are critical to

403 Ibid., 1383.
understanding Hamas’ popularity and its status as a vigilance committee: while the MB sought to renew and revive Islam throughout the Middle East, Hamas sought to protect Islam and build social solidarity in Israel by actively eliminating a source of norm-violations through force.

The psychological experience of a social crisis that is indicative of a vigilance committee was certainly salient amongst Palestinian Muslims during the first and second intifadas. As Ziad Abu-Amr writes, Hamas has benefited from “a trend toward conservatism that has been growing in the territories since the outbreak of the intifada. The atmosphere of oppression, deprivation and hopelessness has moreover contributed to the spread of an Islamic climate.”405 The high relative deprivation experienced by generations of Palestinians is a major reason for the gradual rise of Islamism in the Occupied Territories and the success of an Islamic nationalist group like Hamas in contrast to secular nationalist political groups like the PLO.406 The upswing in Hamas support following the beginning of the second intifada in September 2000 further highlights the experience of relative deprivation for Palestinians. The violence of the second intifada badly hurt the Palestinian economy and caused massive unemployment, to the point where two-thirds of the Palestinians in 2005 were below the “poverty line” in Israel and survived on a mix of “informal assistance“(remittances and local credit facilities) and zakat administered by Hamas. As Knudsen writes, “It is likely that it is in this disenfranchised segment of the population that Hamas and other Islamist movements find their core support.”407

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405 Ibid., 18.
407 Ibid., 1384.
the two *intifadas*, and the impotence of the MB and the PLO’s brand of secular nationalism in addressing these issues led to a rise in support for Hamas.

With this in mind, Hamas represents a type of regime-control vigilantism much like the Committee of 1856 in its opposition to both the PLO and to the state of Israel, albeit with a much stronger social-group-control tinge. Hamas’ Islamic nationalism has gradually outdone the secular nationalism of the PLO in competition for political leadership of the Palestinian people and its quest for statehood.\(^{408}\) Since its inception, Hamas has continually competed against Fatah, the PLO’s major political faction, for control within the Palestinian Authority (PA), criticizing the PLO’s secular nationalism, recognition of Israel, and acceptance of a two-state solution\(^{409}\) as incompatible with complete Islamization based on the creation of an Islamic state “on the ruins of political Zionism.”\(^{410}\) Recognition of Israel in any respect, or any acceptance of Palestinian authority confined to the Gaza Strip, was perceived as a norm-violation, an affront to Israel’s status as a *waqf* within Islamic dogma. Hence the relationship between Hamas and Fatah reflects that of the San Francisco Committee of 1856 and the Broderick machine, with Hamas regarding Fatah as a regime that does not accurately reflect the interests of Palestinian Muslims.

Concurrently, the state of Israel is regarded not simply as an occupying force, but as an affront to Islamic doctrine. As the Hamas charter proclaims: “the land of Palestine is an Islamic trust (‘*waqf*’) upon all Muslim generations until the Day of Resurrection. It is not right to give it up nor any part of it… for giving up any part of the homeland

\(^{408}\) Ibid., 1373.
\(^{409}\) Ibid., 1378.
\(^{410}\) Ibid., 1378-1379.
is like giving up art of the religious faith itself.”\textsuperscript{411} This is further emphasized by Hamas’ hostility towards Arab regimes throughout the Middle East with strong ties to the West like Saudi Arabia, Egypt, and Jordan. Since 1992, Hamas has gradually come to rival Fatah in elections for control of the Palestinian government, despite the fact that Fatah today still remains the dominant political party in the PA.

Like the vigilance committees of the American frontier, Hamas legitimizes its claim to the use of sovereign violence on the system of expressive norms shared by the Muslim community within Gaza, namely the principle of \textit{jihad} as a just war. In Islamic dogma, the presence of the Israeli state in Palestine was automatically grounds for legitimate aggression, since “when an enemy occupies some of the Muslim lands, jihad becomes obligatory to every Muslim.”\textsuperscript{412} Hamas’ attempts to legitimize itself within the prevailing system of expressive norms among the Islamic denizens of Gaza and the West bank is also discernable in Hamas’ organizational vision, which portrays it as an ingrained part of the Palestinian people’s hopes, goals, and aspirations, making the ‘people’ and the ‘organization’ inseparable. This involves an ‘invention of tradition’ on Hamas’ part, also evident in the organizations use of religious symbols for political ends.\textsuperscript{413} Like the vigilance committees of the American frontier, Hamas derives its sovereign right from the prevailing system of Islamic norms and dogma among the Palestinian Muslims of Gaza and the West Bank.

\textsuperscript{411} Abu-Amr, “Hamas: A Historical and Political Background,” 12.
\textsuperscript{412} Ibid., 12-13.
\textsuperscript{413} Knudsen, “Crescent and Sword,” 1378.
II. The Vigilante Peace

The contemporary parallel of Hamas, apart from providing an example of a vigilance committee outside of a purely American system of norms, highlights the perpetuity of the vigilantism as a mode of spontaneous order, irregardless of historical epoch or geographical region. To this extent, I believe that I have accomplished my goal of making state of nature theory relevant to modern conceptions of spontaneous governance. The vigilance committee represents an alternative mode for state formation, one that can be conceptualized through state of nature theory and applied historically to the institutional development of governance in the face of social crisis. The state of nature can no longer be treated literally as a complete absence of governance and therefore confined to the realm of thought experiment and heuristic device. Rather, the new state of nature is the realm of social crisis, constituted by disruption and conflict of social norms. This is especially important in making state of nature theory relevant in a world where the anarchic state of nature as the absence of governance no longer exists (with the exceptions of a regions embroiled in perpetual civil war like Somalia). The Pax Vigilanticus represents not merely the elimination of violent conflict, but stability under the hegemonic regime of a vigilance committee that embodies the social, political, and historical norms threatened by change.

Michael Hardt and Antonio Negri’s elegant postmodern conception of global civil war provides a hint of the potential applicability of vigilantism to modern development of political and social institutions. “War,” write Hardt and Negri, becomes the general matrix for all relations of power and techniques of domination, whether or not bloodshed is involved…War has become a regime of biopower, that is, a form of rule aimed at not only
controlling the populating but producing and reproducing all aspects of social life.  

The modern *bellum omnium contra omnes* is no longer characterized by conflicts between individuals and nation-states for resources, but a conflict for the influence over the nature of the prevailing *status quo* of social norms, exercised through transnational power structures (such as the U.N., the I.M.F. and other multinational organizations) that mediate and regulate the nature of global social relations. Instead of a Hobbesian *war of all against all*, Hardt and Negri imagine the continual conflict between forces of the *multitude*. The concept of *multitude* represents a plurality of interacting social value systems based on “ontologically different lifeworlds,” whether ethnic, racial, sexual, political, or national in nature. A lifeworld is the totality of any system of values and norms, from those of American capitalist to Islamic Palestinian, as coherent groups that comprise “the plural multitude of productive, creative subjectivities.”

For Hardt and Negri, a vigilante may be someone who perceives that their lifeworld is falling apart, that the very values and social relationships within which they find meaning and identity are threatened with deterioration and subjugation. For settlers on the frontier it was the values of property and liberty; for Palestinian Muslims, the word of Allah; and for individuals like Rorschach and Batman, the moral fabric of society. Vigilantism, from its

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415 Ibid., 99-100.
origins in American vigilance committees on the lawless West to its “postmodern” manifestations on the fault lines of ethnic and religious groups from Ireland to South Africa to Israel/Palestine, is a natural thrust towards self-preservation in the conflict between differing norms and values. While revolution and counter-revolution take on different forms as armed uprisings, political parties, and social movements, vigilantism represents a type of organized movement that is inherently bound in maintaining the very values and norms that make life livable. I believe that vigilantism, conceptualized as a political, social, and economic phenomenon emerging from a tumultuous state of nature, provides insight into the most fundamental human impulses towards order and stability. The popularity of vigilantism in popular media is not without reason. Fictional characters like Rorschach and Batman, despite their violent breed of heroism, will always resonate with something deeply ingrained, almost unconsciously understood, within the human experience. Despite the rational and logical basis of vigilantism in its institutional development and organization, the impulse to restore the status quo in the face of chaos points to something fundamentally instinctual in the nature of state formation. “We do not do this thing because it is permitted,” says Rorschach in Watchmen (1987). “We do it because we have to, we do it because we are compelled.” Vigilantism will never simply be a path of state formation; it will remain a fundamental component of the human experience in the face of sheer disorder.

417 David Gibbons and Alan Moore, Watchmen no. 6 (New York: DC Comics, 1987), 3.
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