

**THE COWBOY LEGEND: OWEN WISTER'S VIRGINIAN AND THE CANADIAN-AMERICAN FRONTIER** by John Jennings

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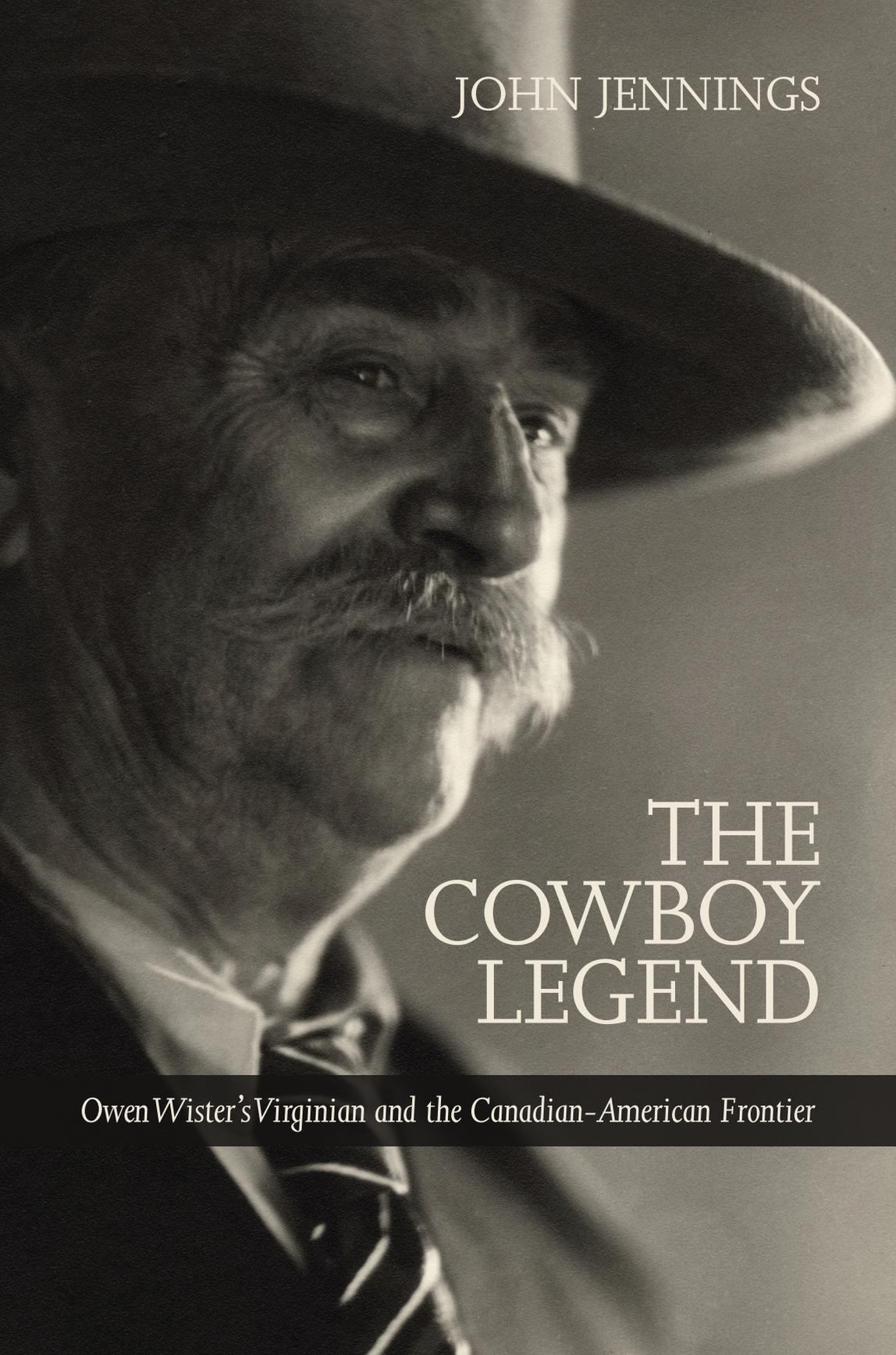
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A black and white portrait of Owen Wister, an older man with a prominent mustache and a wide-brimmed cowboy hat. He is looking slightly to the right of the frame. The lighting is dramatic, highlighting his facial features and the texture of his hat and clothing.

JOHN JENNINGS

THE  
COWBOY  
LEGEND

*Owen Wister's Virginian and the Canadian-American Frontier*

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COWBOY  
LEGEND

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# THE COWBOY LEGEND

*Owen Wister's Virginian and the Canadian-American Frontier*

JOHN JENNINGS

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*To Jean Johnson*



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All historians of the Canadian West are very fortunate to have the Glenbow Archives and Library. It is a fabulous resource, as are the people who work there. I would especially like to thank Hugh Dempsey and Sheilagh Jameson for sharing their vast knowledge of the early western Canadian frontier, first when I was working on my doctoral thesis on the early Mounted Police and Native relations and, later, as I was researching the history of the early Alberta range. I would also like to thank Doug Cass, a former student of mine at the University of Calgary, and now Director, Library and Archives, at the Glenbow Museum, for all his help over the years.

This book required research in a number of archives in both eastern and western United States: the American Heritage Center at the University of Wyoming; the Buffalo Bill Center of the West in Cody, Wyoming; the Library of Congress; the Houghton Library at Harvard University; the Historical Society of Pennsylvania in Philadelphia; the Historical Society of New Hampshire in Concord; and the Remington Museum in Ogdensburg, New York. Without exception, the staff of these institutions were generous with their time and often bombarded me with extra material that they thought might prove useful.

A number of individuals were also very generous with their knowledge. In Wyoming, Bill Henry, the grandson of Mike Henry, the model for

Wister's Judge Henry, put aside a busy day to show me around the ranching country of Wyoming and to provide me with useful material. In the ranching community of Johnson County, Wyoming, and in its urban centre, Buffalo, I met many people with an extensive knowledge of early Wyoming history and a refreshing openness to share it with me.

I have been very fortunate in receiving generous advice from historians of the Alberta ranching frontier, starting with Lewis G. Thomas, the dean of Alberta ranching history; Simon Evans, who read an early version of the manuscript and gave me much invaluable advice and detailed suggestions; David Breen, whose work on the Alberta ranching frontier is the starting point for any work in the area; Donald Smith, one of Canada's foremost experts in the field of Native history; Ted Chamberlin, whose broad knowledge and fresh insights into both the history and the literature of the early West were exceedingly useful; Rod Macleod, the foremost historian of the Mounted Police and early law in Alberta; and my great friend Max Foran, who stood up with me when I was married in the little log church in Millarville in the heart of Alberta ranching country. Max is equally ferocious in his pursuit of history and on the squash court!

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And, finally, to my wife Nicola, a very special thanks for your unwavering encouragement, your keen eye for mistakes, and discerning ear for the English language. This book owes much to you.

## Preface

The cowboy is, arguably, America's foremost folk figure. The creation of this most American of folk heroes began quite suddenly with the publication of Owen Wister's novel *The Virginian* in 1902. The romantic cowboy that Wister created launched a deluge of cowboy literature that firmly placed the cowboy at the forefront of American popular culture. It is the main contention of this book that Wister's Virginian was based on Everett Johnson, a cowboy from Virginia, who lived on the cattle frontiers of Wyoming and Alberta during their most exciting and decisive times.

Sidney Freifeld, in his delightful *Undiplomatic Notes: Tales from the Canadian Foreign Service*, recounts an incident in 1967 when he was part of Canada's delegation to the United Nations during one of the most tense moments in that institution's history – the Six-Day War in the Middle East. Canada was then a member of the Security Council and the Cold War was at its height. In the midst of round-the-clock negotiations, an old boyhood friend from Ottawa who happened to be in New York asked Freifeld for a tour of the UN. The friend in question was Lorne Greene, fresh from the set of *Bonanza*, the most popular western TV show of the time. Greene starred as Ben Cartwright, the patriarch of the Ponderosa Ranch. *Bonanza* was a Sunday night institution across North America.

On Greene's arrival at the UN, one of the most fraught debates in the history of the UN almost ground to a halt. Translators became distracted; delegation members began to leave their seats to climb the stairs to the gallery for autographs. At lunch in the delegates' dining room, heads of state were shunted aside for Freifeld and his guest.

Then, in the corridor on the way to the delegates' lounge, they met the Soviet Ambassador, Nicolai Federenko, and the Soviet Foreign Minister, Andrei Gromyko. As Gromyko stood bemused, Federenko greeted Greene with outstretched arms, "My distinguished representative from Ponderosa, my dear Ambassador Cartwright from Bonanza, I want you to know that for years you have been one of my own family. You are with us after dinner in our family living room in Moscow. You are with us in our living room in New York. You are one of our very own. You must autograph something for my children."<sup>1</sup> Before departing, he urged Greene to visit him in Moscow.

Fast forward several decades to June 4, 1989, the day that the first free election in Poland since the Second World War resulted in the overwhelming renunciation of Polish communism and a victory for Solidarity, the Polish union movement. Solidarity's campaign poster perfectly captured the mood that started the unravelling of communism, the Cold War, and the Soviet Empire: a picture of Gary Cooper, the sheriff in the famous western film *High Noon*, symbolizing the day of reckoning for Dodge City East!

It all started with Wister. Before Owen Wister's publication of *The Virginian* in 1902, the image of the cowboy was essentially one drawn from the dime novel – a rough, violent one-dimensional drifter – or the stage cowboy variety found in Buffalo Bill Cody's Wild West show. Wister's novel transformed, almost overnight, this image of the cowboy.

This book sets out to do three things. First, its purpose is to tell Everett Johnson's story. His life is interesting in its own right. He was witness to a fascinating period in the development of the American, and later Canadian, western frontiers. His story, as he told it to his daughter-in-law, is worth recording for all the people, places, and events he touched – the Texas cattle trails, Deadwood at the height of its gold frenzy, Buffalo Bill Cody, Wild Bill Hickok, Wyatt Earp, Wyoming and Alberta in their early frontier days, Butch Cassidy, and Johnson's best man when he married in Alberta, Harry Longabaugh – otherwise known as the Sundance Kid. The list goes on. But what gives Everett Johnson's story its special importance is his connection with the emergence of the cowboy legend, the most powerful legend yet produced by America. It is the contention of this book that Johnson was the initial and most important inspiration for the creation of Owen Wister's cowboy, the Virginian. Wister, with his two accomplices, Frederic Remington and Theodore Roosevelt, literally created the popular image of the cowboy. The alchemy performed by these three is both fascinating and, in places, quite unexpected. Together they manufactured a myth that has been extraordinarily powerful and lasting.

Third, Everett Johnson spent a significant time on both the Wyoming and Alberta ranching frontiers. His life on those frontiers gives the historian an unusually good chance to compare them. Comparative history is often like weighing apples and oranges. It is not often that the historian – through the lens of one individual’s life – is able to study two frontiers at almost the same stage of evolution. As well, a comparative study of these frontiers says much about the political and cultural underpinnings of the societies that produced them. A major argument of this book will be that, although the two western cattle frontiers were remarkably similar in many ways, the very different legal institutions, in both criminal and land law, caused them to develop in very different ways.

Law is at the very heart of a society. Despite the great similarities between the frontiers of Wyoming and Alberta – the geography, the day-to-day life of the cowboy, the shared equestrian culture, and the dynamics of the cattle business – the one thing that set the two frontiers apart was the law. Not only was there a clear difference in the way the law functioned on either side of the line, but that difference was the most important factor distinguishing the two frontiers. Johnson’s life on these two ranching frontiers offers an ideal opportunity not only to study the repercussions of the two very different legal systems in Wyoming and Alberta but also to look at the wider picture. Law, as it evolved in the two countries, is arguably the feature that most differentiates Canada from the United States, both then and now.

Here is a double-edged sword. Legal institutions and customs were brought to the frontier from the East in both Canada and the United States. In Canada, the law that came west was imposed on the Canadian West by the federal government in the form of the Mounted Police, and was little changed by the frontier. In the United States, what is often thought of as uniquely western law was first brought to the frontier by easterners, the legacy of the Revolution and the Mexican and Civil wars. Easterners also brought to the West the legacy of a fierce belief in populist local self-determination. (Billy the Kid was more a product of inner-city New York than of New Mexico.) The American West, in turn, shaped the law, giving it a distinct flavour of western romance, energy, impatience, and lack of deference. In a fascinating transformation, the West gave back to the nation a legacy of law based on the mythology of the frontier and a romantic vision of the handgun. From this mythology came the justification of vigilantism as a positive force, despite its use, for example, as a tool for racial intimidation by the Ku Klux Klan. This devotion to vigilantism has had a profound influence on American society into the twenty-first century.

\* \* \* \* \*

I barely remember Everett Johnson. I was only five when he died in 1946. He was then eighty-six and had been, for some time, a patient of my father's in Calgary. Little could he imagine that the small boy who was allowed, as a very special treat, to stay up past his bedtime to listen to his memories would someday be writing his story.

This book is very special to me. I grew up steeped in the aura of Ed Johnson and the West that he represented. He was a frequent visitor to our house, and his wonderful stories of the early West undoubtedly influenced my choosing history as a profession. He had that carefully honed gift, now almost a lost art, of spinning out an interminable story, which drew in the listener irresistibly. And then the punchline, which turned the story on its head. I can remember my parents just looking at each other and bursting out laughing as they remembered one of his tales.

Ed Johnson was introduced to my parents by Jack Reid, the son of Bill Reid, one of Johnson's great friends from Wyoming days, who had been a key figure in the Wagon Box Fight in 1867. Jack Reid, after a fascinating career – the only one I know of – as a lawman on both sides of the border, settled down to farm near Calgary. He later became a renowned gunsmith. He met my father through rifle competitions and the two became fast friends. I mention this because it was only as a result of this friendship with the son of Bill Reid that Johnson let down his reserve with my parents and told them about some of his early experiences. Ordinarily, he was almost painfully reticent.

Over the years, the links between our families grew. Johnson's son, Laurie, was a very fine horseman and one of Alberta's best polo players. At a time, in my teens, when most of my waking hours in the summer were devoted to thoughts of horses and training and playing polo ponies, Laurie Johnson was very generous with his advice. Laurie's wife, Jean, was also a very fine horsewoman – and polo player. She used to tell a marvellous story of her women's polo team, composed of Alberta ranching women, which travelled to New York to play a women's team in the 1930s. They planned to show these New York women a thing or two about riding and polo and then sell them their ranch-bred ponies. Instead, they were thoroughly trounced and couldn't sell their horses, returning home with a new respect for the toughness and economic canniness of New York women.

And I have known Laurie and Jean's daughter, Donna Butters, for many years. Her parents' horsemanship and love of horses were certainly passed

on to her. We have competed together for many years in horse shows and cross-country jumping events.

I have also spent many special hours on the Butters' ranch in the Ghost Valley, one of the most spectacular ranching areas in Alberta. The family is still carrying on the ranching tradition there, which began with Everett Johnson. As I write, the smell of their log ranch house is vivid in my mind.

Only Johnson's family and a few others know the story that is told here. Over the years, his daughter-in-law, Jean, put together his story as he told it to her. I have tried to stay as close as possible to that story, but I have also added considerable material because Johnson's life touched so many fascinating and important moments in western history. Since he was on two very different cattle frontiers – Wyoming and Alberta – which developed almost at the same time, his life gives the historian an ideal chance to compare these two areas, especially regarding the institutions and customs that shaped and coloured life on these frontiers.

I have also added many details concerning the lives of a few of the more colourful characters that Johnson knew. The original manuscript is frustratingly tight-lipped regarding people such as Bill Cody and Harry Longbaugh (the Sundance Kid). At times, I have worried that I have strayed too far from my subject. Originally, I had planned simply to edit Jean Johnson's manuscript, which resides in the Glenbow Archives in Calgary, Alberta. But the deeper I got into the subject, the more I realized that the events that Johnson witnessed were just too important to skim over. His story transcends personal biography.

I have also worried, of course, about the credibility of his recollections. I have very little proof that Johnson's story is true. Normally this would not matter. Many cowboys have recounted their lives without any proof and have still been published by reputable publishers. However, this story obviously demands more evidence because of the link with Wister and the claim that Johnson was the original inspiration for the character of the Virginian.

During my years of research on Johnson and Wister – in Alberta and Wyoming – and on the trail of Wister at the Library of Congress, the Pennsylvania Historical Society, the Houghton Library at Harvard, St. Paul's School near Concord, New Hampshire, and at the Remington Museum in Ogdensburg, New York, I have had many disappointments in not being able to prove some of the important claims of this story. Once Johnson got to Alberta, his story is easy to verify. By then he was important. But before that, it is almost impossible to prove that he even existed. He was a minor player in most of the events that he witnessed, and thus his presence was

not recorded. Also, he was living in the American West at a time when the recording of events was spotty at best. Newspapers were just coming into existence, few records were being kept; most of the people who were shaping events in the West were far too busy or too illiterate to record what was happening.

As I researched this story, I realized, after exhaustive detective work, that certain claims in the manuscript could not be verified. Quite simply, I have almost no physical proof that Owen Wister ever laid eyes on Johnson. Nor have I any proof that some of the events in *The Virginian* were based on Johnson's life. For instance, a great deal of time was spent trying to track down the man that Johnson claimed to have killed in a gunfight in Buffalo, Wyoming, the man that Wister would transform into the villain Trampas. Newspapers were no use whatever; at the time of the gunfight in the 1880s, the Buffalo newspapers were just beginning in a haphazard way. Court records were no better. In 1895, Clear Creek, which runs through the middle of Buffalo, flooded and destroyed all the records at Buffalo City Hall. Finally, I was sent to a Buffalo funeral home, where the coroner's records for the period were kept. When I explained my mission, the owner of the funeral home just shook his head and told me that I was wasting my time. If the fight was considered fair, then there was probably no inquest, and thus no record. He told me that he could show me a number of unmarked graves from that period; they just dug them in, no questions asked. The *Billings Gazette*, in an article on early days (August 20, 1965), reported that there were fifty-two unmarked graves at Buffalo from the early days and no records of who those people might be. I was no more successful in proving a link with Bill Cody or Nat Boswell. The records surrounding both men's lives were depressingly casual.

On the other hand, I was able to find considerable material that filled in much of the background for the events discussed here. One of the great satisfactions of being a historian is to talk to people who can still remember interesting bits from the old days; their generosity and enthusiasm make historical sleuthing a delight.

I particularly remember one rancher in the Powder River country of Wyoming who was able to tell me a lot about the Powder River Cattle Company. Somehow, we got onto the subject of rattlesnakes, and I admitted that I had a near phobia of snakes. I made the mistake of telling him that, as I was sleuthing about, my solution to the problem was to sing very loudly to scare them away. He gave me one of those long western looks and said, "Singin' to rattlers don't do much good, you know. They got no ears. They don't hear worth a shit."

Despite the lack of hard evidence for some of the claims in Johnson's manuscript, I never lost faith in his truthfulness. On occasion, I thought his memory might have been playing him tricks, such as having Wyatt Earp in Deadwood in 1876 when almost every source had him in Dodge City and the standard books on Deadwood made no mention of him. But nowhere did I find that he had said something that was clearly untrue. For instance, I finally did find Wyatt Earp in Deadwood, in the firewood business!

My obsession was to prove the link with Wister. This I was able to do only in a tenuous way. But, again, after exhaustive research, I was unable to find anything that disproved his story or indicated that the Virginian was clearly someone else. In every case where Johnson indicated that Wister based *The Virginian* on his life, I could find no convincing evidence to the contrary, either in Wister's papers or in Wyoming archives.

And, finally, through all my research into the Wister connection, I was encouraged by one fact. Soon after the publication of *The Virginian*, Wister sent Johnson a copy, inscribed "To the hero from the author." Unfortunately, that one piece of proof, together with some letters from Wister, was destroyed in a fire. But I have no doubt whatsoever that they existed. Both my parents told me that they had seen the book and its inscription.

Johnson was not just an old-timer with an active imagination. He did not go around making claims about himself; he told his story only to his family and a few close friends. It was his old friends from Wyoming who made the claims for him. He was the real thing.

There is one great sadness in the writing of this book. Jean Johnson died in the spring of 1992, before she could see the completed manuscript. This book is for her. Though I have tampered considerably with her original manuscript, this book rests on her years of patient work. My efforts are dedicated to her memory.

When I try to give my students in western history a picture of frontier women, Jean is my model. She would have bristled if someone had called her a feminist, but in her quiet way, she was as determined and outspoken as the best of them. She was one of that breed of women that made the West. She could ride with any man and loved the ranching country with a passion. She could come back from an all-day cattle drive and ten minutes later be serving an elegant tea with grace and wit. She was widely admired for her gentleness, toughness, and subtle humour; she is greatly missed.

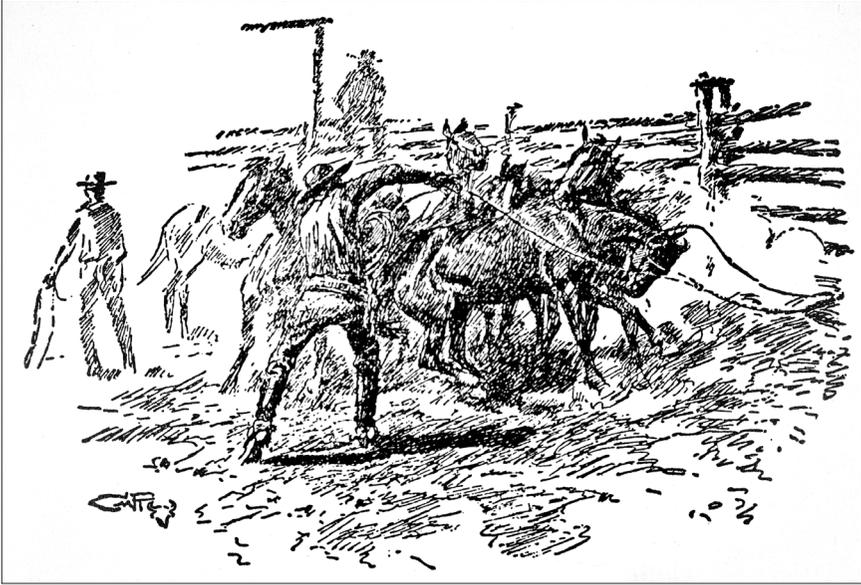
## Prologue: A Synopsis of *The Virginian*

To understand the chapters dealing with Wister's novel, a basic outline of the story or a quick refreshing of the plot will be helpful. *The Virginian* is essentially a stringing together of episodes depicting cowboy life and manners that is intended to portray Wister's central theme: the cowboy as the true American. The western frontier will save America from becoming over-civilized, effete, and decadent.

The novel begins with Wister, the narrator, leaving the newly constructed railway at Medicine Bow, a real "no-account" little town in southern Wyoming, midway between Laramie and Rawlins. Here Wister is met by Judge Henry's trusted man, the Virginian, for the journey by buckboard to the ranch, where Wister is to spend the summer. Throughout the novel, the hero is never given a name. He is always just the Virginian. Thus, a certain mystery surrounds the Virginian, and Wister creates an air of authenticity by recounting events through his own eyes.

Wister's first sight of the Virginian is a glimpse of him roping with great skill. Wister describes his hero as a tall, dark-haired Southerner, in his mid-twenties, gentle of speech, "a slim giant, more beautiful than pictures."

Wister immediately introduces the reader to the atmosphere of Wyoming in a card game at Medicine Bow. Wister and the Virginian have to stay the night in Medicine Bow before setting out for the ranch, 260 miles to the north. The Virginian decides to fill the evening with a game of poker, and Wister notices that he prepares for the game by taking his pistol from its holster and shoving it between his overalls and shirt. (A number of famous "shootists" preferred this method of quick draw.)



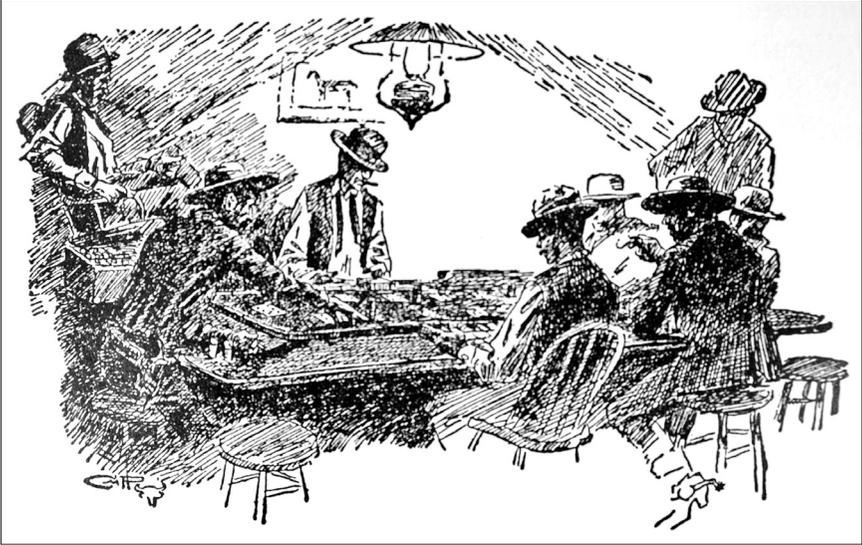
Charles M. Russell illustration for the 1911 edition of *The Virginian*. All the illustrations in the synopsis are by Russell.

In conversation over cards, it comes out that the Virginian has recently been in Arizona and now works for Judge Henry's Sunk Creek Ranch. As the game progresses, it comes to the Virginian's turn to bet. As he hesitates, the dealer, a man named Trampas, says with impatience, "Your bet, you Son-of-a- —."

*The Virginian's pistol came out, and his hand lay on the table, holding it unaimed. And with a voice as gentle as ever, the voice that almost sounded like a caress ... "When you call me that, smile."*

Trampas backs down from the challenge, but from this instant the final showdown between the two is set. And into western literature enters one of its most famous phrases.

In the squalid little town of Medicine Bow, beds are at a premium and in such circumstances, it was usual for travellers to share a bed. The Virginian's good friend Steve enters into a bet with the Virginian that he can't get a bed to himself. This bet sets the scene for the first example of the Virginian's wicked genius. In this incident Wister demonstrates both the unique



flavour of western devilment and his superb capture of western language. The Virginian is to share a bed with a travelling salesman – a “drummer.” As an expectant crowd gathers at the bedroom door, the Virginian undresses and prepares to get into bed with the salesman.

*Many listeners had now gathered at the door... We made a large company, and I felt that trembling sensation which is common when the cap of a camera is about to be removed upon a group.*

*“I should think” said the drummer’s voice, “that you’d feel your gun and knife clean through that pillow.”*

*“I do,” responded the Virginian.*

*“I should think you’d put them on a chair and be comfortable.”*

*“I’d be uncomfortable then.”*

*“Used to the feel of them, I suppose.”*

*“That’s it. Used to the feel of them. I would miss them, and that would make me wakeful.”*

*“Well, good night.”*

*“Good night. If I get to talkin’ and tossin’, or what not, you’ll understand you’re to –”*

*“Yes, I’ll wake you.”*

*“No, don’t yu’ for God’s sake.”*

*“Not?”*

*“Don’t yu’ touch me.”*

*“What’ll I do?”*

*“Roll away quick to your side. It don’t last but a minute.” The Virginian spoke with a reassuring drawl.*

*Upon this there fell a brief silence, and I heard the drummer clear his throat once or twice.*

*“It’s merely the nightmare I suppose?” he said after a throat clearing.*

*“Lord, yes. That’s all. And don’t happen twice a year. Was you thinking it was fits?”*

*“Oh, no. I just wanted to know. I’ve been told before that it was not safe for a person to be waked suddenly that way out of a nightmare.”*

*“Yes, I have heard of that too. But it never harms me any. I don’t want you to run risks.”*

*“Me?”*

*“Oh, it’ll be all right now that yu’ know how it is.” The Virginian’s drawl was full of reassurance.*

*There was a second pause, after which the drummer said:—*

*“Tell me again how it is.”*

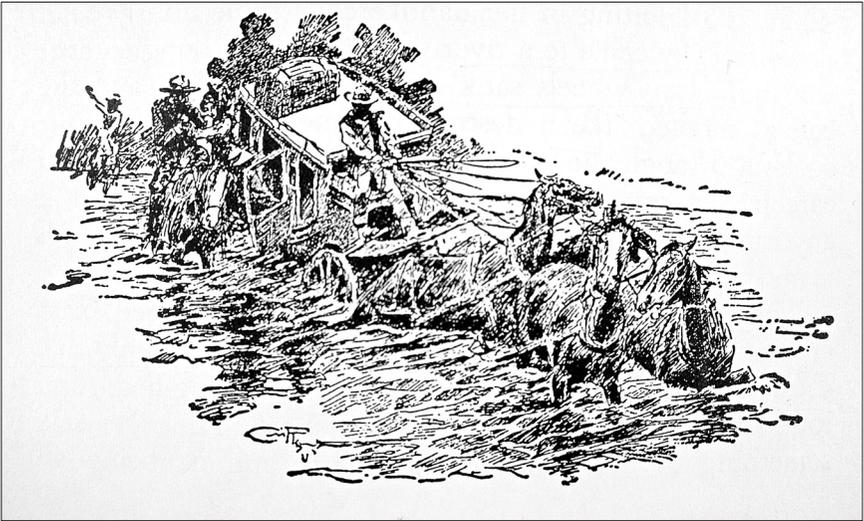
*The Virginian answered very drowsily: “Oh, just don’t let your arm or your laig touch me if I go to jumpin’ around. I’m dreamin’ of Indians when I do that. And if anything touches me then, I’m liable to grab my knife right in my sleep.”*

*“Oh, I understand,” said the drummer, clearing his throat. “Yes.”*

*Steve was whispering delighted oaths to himself, and in his joy applying to the Virginian one unprintable name after another.*

*We listened again, but no further words came. Listening very hard, I could half make out the progress of heavy breathing, and a restless turning I could clearly detect. This was the wretched drummer. He was waiting. He did not wait long. Again there was a light creak, and after that a light step. He was not even going to put his boots on in the fatal neighbourhood of the dreamer. By a happy thought, Medicine Bow formed into two lines, making an avenue from the door. And then, the commercial traveller forgot his Consumption Killer. He fell heavily over it. Immediately from the bed the Virginian gave forth a dreadful howl.*

*And then everything happened at once; and how shall mere words narrate it? The door burst open, and out flew the commercial traveller in his stockings. One hand held a lump of coat and trousers*



*with suspenders dangling, his boots were clutched in the other. The sight of us stopped his flight short. He gazed, the boots fell from his hand; and at his profane explosion, Medicine Bow set up a united, unearthly noise and began to play Virginia reel with him. The other occupants of the beds had already sprung out of them, clothed chiefly with their pistols, and ready for war.*

*“What is it?” they demanded. “What is it?”*

*“Why, I reckon it’s drinks on Steve,” said the Virginian from his bed. And he gave the first broad grin that I had seen from him.*

The next morning Wister and the Virginian set off for the ranch, and Wister describes the landscape of Wyoming which so bewitched him. He also comments on the Virginian’s cultivated politeness toward him, and the “bar of his cold and perfect civility.” Two important themes have been introduced: the rhapsodic beauty of Wyoming and the proud reticence of the Southerner.

Wister arrives at Judge Henry’s ranch and almost immediately earns the title “tenderfoot” for his ability to become entirely lost shortly after breakfast. So Judge Henry decides to have the Virginian look after him, much to the Virginian’s humiliation. However, the Virginian bears the situation in courteous silence. At this stage in the story, Wister sets himself up as the rather pathetic and effete Easterner, a perfect foil for the many superior qualities of his untutored but innately gentlemanly Southerner – the natural aristocrat.

Molly Wood, the schoolmarm, now enters the story. She traces direct descent from Molly Stark, the wife of General John Stark of Revolutionary War fame, a fact of central importance to the story. Her family has come on hard times with the closing of the mills, so she decided to apply for the teaching position at Bear Creek. On reaching Wyoming, she takes a stage-coach driven by a man somewhat the worse for drink. This condition results in the stage becoming bogged down at a river crossing. As the stage careens, a tall rider suddenly appears and sweeps her from the stage. After setting her down, he disappears just as abruptly, leaving Molly somewhat shaken, and also intrigued!

They do not meet again until the Swinton brothers’ barbeque at their Goose Egg Ranch on Bear Creek. There is much speculation among the cowboys about the new teacher; which one of them might be successful in seeking her favour? In the midst of this speculation, Trampas makes a comment about her that verges on the lewd and impugns her reputation.

*They laughed loudly at the blackguard picture which he drew; and the laugh stopped short, for the Virginian stood over Trampas.*

*“You can rise up now, and tell them you lie.”*

*Trampas replied, “I thought you claimed you and her wasn’t acquainted.”*

*“Stand on your laigs, you polecat, and say you’re a liar.”*

*Trampas’s hand moved behind him.*

*“Quit that, or I’ll break your neck.”*

*Trampas looked in the Virginian’s [eye] and slowly rose. “I didn’t mean —” he began, and paused, his face poisonously bloated.*

Again, Trampas has been very publicly humiliated.

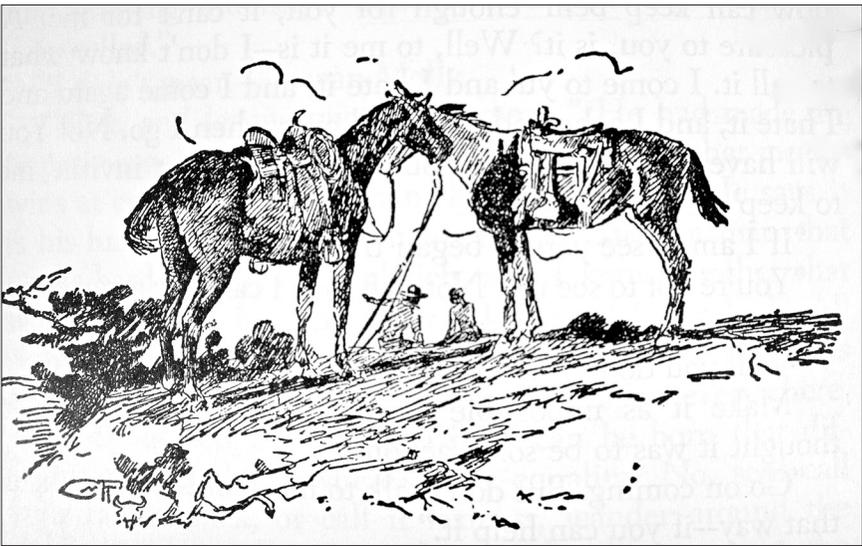
It is at this barbeque that the famous baby swapping takes place, an event claimed by various locales across the West. As Lin McLean and the Virginian are chatting at the whisky barrel, one of the babies in the room adjoining the dance makes a drowsy noise. The idea is born. The Virginian, abetted by Lin, proceeds to his diabolical scheme.

*“If they look so awful alike in the heavenly garden,” the Southerner continued, “I’d just hate to be the folks who has the cuttin’ out o’ the general herd...” This soon led to an intricate process of exchange.... Mr McLean had been staring at the Virginian puzzled. Then, with a joyful yelp of enlightenment, he sprang to abet him.*

*Meanwhile the parents went on dancing and the occasional cries of their progeny did not reach them.*

The barbeque ends, the parents gather their offspring and depart for their distant ranches. It is only some time later that the monstrous scheme is realized and the distraught and murderous parents descend on the Goose Egg to retrieve their rightful offspring. Lin McLean has departed at sunup, and there is some thought of pursuit, but the Virginian owns up in such a charming way that he somehow avoids lynching by the collected mothers. There is evidence in the Wister papers that he first heard the baby-swapping story in Texas, but there are strong claims in Wyoming as well. Such a story would circulate up and down the cattle trails with considerable speed, soon to be claimed and magnified by sundry communities.

There now ensues one of the main themes of the story – the untutored Southerner’s campaign to capture the heart of the reluctant Vermont lady of distinguished background. Several themes now become clear: the coming together of North and South in the aftermath of the Civil War and the



overcoming of eastern gentility by the natural aristocracy of the western cowboy. Except there is a falseness in this theme because it is impossible to imagine any of the other cowboys that Wister portrays in *The Virginian*, or in any of his other western stories, triumphing over Molly's reluctance. It is really the gentle manners of the Tidewater Southerner, coupled with his iron code of behaviour, that finally wins her over. Molly doesn't fall for cowboys as a class; she falls for one very particular cowboy who is not at all typical.

The Virginian becomes the acting foreman of the ranch. In this role he is sent east with a consignment of cattle for Chicago. By chance, Wister, on his way west, meets the Virginian in Omaha and agrees to go back to Wyoming with him and the six hands from the Sunk Creek Ranch who make up his crew. One of them is Trampas, who tries to undermine the Virginian's authority by luring the six off to the gold diggings near Rawhide.

Somehow, the Virginian has to assert his authority over Trampas. He cannot order him to return to the ranch; he must somehow best him in a more subtle way. What follows is the frog story, based on the delicacy of frogs' legs à la Delmonico, which takes up four chapters. It is a classic example of the western tall tale, which is spun out interminably, until the sudden twist at the end, usually at some easterner's expense. But Wister's genius is to make Trampas, the westerner, the butt of the story, while a group of easterners listen in disbelief that a westerner could be sucked in by such a story. The Virginian piles one improbable detail on another in a way that seems quite natural: herding bull frogs into a separate pasture; the diabolical subterfuge of pretending to wander into a new field of anecdote, to be brought back to the main story by his audience; the frog herd breaking through the fence due to a pelican attack; frog trains tearing across Arizona through to New York; and finally, the frog market killed by revenge and disease.

*"Disease?" asks Trampas.*

*"Just killed 'em. Delmonico and Saynt Augustine wiped frawgs off the slate of fashion. Not a banker in Fifth Avenue'll touch one now if another banker's around watchin' him. And if ever yu' see a man that hides his feet an' won't take off his socks in company, he has worked in them Tulare swamps an' got the disease. Catch him wadin' and yu'll find he's webfooted. Frawgs are dead, Trampas, and so are you."*

*"Rise up, liars, and salute your king!" yelled Scipio.*

Trampas is thoroughly humiliated, once again, by the Virginian, and the mutineers return to the ranch.

On returning to Judge Henry's ranch, the Virginian is made foreman and now moves into his own house, just as a visiting preacher appears on the scene unannounced. Dr. McBride is pompous, overbearing, and utterly without humour. And because there are other visitors at the ranch, the Judge asks the Virginian to give Dr. McBride a bed in the spare bedroom where Wister is sleeping. Thus, Wister, our narrator, is able to provide the details of the aftermath of Dr. McBride's mind-numbing sermon to the cowboys. Dr. McBride announces that he is going to spend the week at the ranch; the cowboys of the Sunk Creek outfit deserve his undivided attention! His opening sermon: *"There is no hope in any of you."* And then he invited them all to glorify the Creator of this scheme. His message to the cowboys: *"They were altogether become filthy."*

The Virginian regards Dr. McBride throughout his sermon with a "cream-like propriety." Then, after Dr. McBride is comfortably asleep, Wister hears the door open and the Virginian waking the good doctor.

*"I feel like my spirit was going to bear witness. I feel like I might get an enlightening..."*

After a period of earnest conversation, all is quiet, but just as the preacher is getting back to sleep:

*"Excuse me, seh. The enemy is winning on me. I'm feeling less inward opposition to sin."*

Again, a long period of hushed conversation. The reverend doctor is nicely back to sleep when, again, Wister hears the Virginian's feet padding across the floor.

*"I'm afeared to be alone. I'm afeared. I'm losin' my desire afteh the sincere milk of the Word ... I'm afeared! I'm afeared! Sin has quit being bitter in my belly."*

Then, as the grey light of dawn enters the room,

*"I'll worry through the day somehow without yu.' And to-night you can turn your wolf loose on me again." Once more it was no use. My face was deep in the pillow, but I made sounds as of a hen who*

*has laid an egg. It broke on the doctor with a total instantaneous smash, quite like an egg. He tried to speak calmly. "This is a disgrace, an infamous disgrace."... I cried into my pillow, and wondered if the Doctor would come and kill me.*

The doctor packs and leaves the ranch early that morning in high indignation.

The next incident in the book is completely without humour. While in Wyoming, Wister had witnessed an incident of unspeakable cruelty to a horse. He had done nothing about it and it preyed on his conscience. His way of resolving his cowardice was to have the Virginian mete out his terrible justice on Balaam, the horse abuser.

In the story, the Virginian happens to be at Balaam's ranch to collect two horses belonging to Judge Henry that Balaam has borrowed, when Shorty rides up on his pet horse Pedro. Shorty is down on his luck; Balaam realizes this and seizes the opportunity to buy Pedro, a very superior little cowpony. Poor Shorty, who has been led astray by Trampas, sells his beloved horse with the promise that he can buy him back when he is flush. Then the Virginian and Balaam set off for the Judge's ranch with the Judge's two half-wild horses in tow. The two horses try to escape and Balaam flies into a rage, which he takes out on poor Pedro. Soon Pedro is completely played out, wringing wet and bleeding from the mouth.

*Pedro too tried to go forward – Suddenly he [Balaam] was at work at something.... For a few moments, it had no meaning to the Virginian as he watched. Then his mind grasped the horror, too late. Even with his cry of execration and the tiger spring that he gave to stop Balaam, the monstrosity was wrought. Pedro sank motionless, his head lolling flat on the earth. Balaam was jammed beneath him.*

*Then vengeance like a blast struck Balaam. The Virginian hurled him to the ground, lifted and hurled him again, lifted him and beat his face and struck his jaw.... He fended his eyes as best he could against these sledge-hammer blows of justice. He felt for his pistol. His arm was caught and wrenched backward, and crushed and doubled. He seemed to hear his own bones, and set up a hideous screaming of hate and pain.*

*Vengeance had come and gone. The man and the horse were motionless. Around them silence seemed to gather like a witness.*

*"If you are dead," said the Virginian, "I am glad of it."*



But Balaam soon recovers enough to help the Virginian herd the two horses toward the Sunk Creek Ranch. When they get into the high country, the Judge's two horses become even more spooked and take off into the bush, with the Virginian in hot pursuit. It is then that Pedro, who is being led by Balaam, alerts him to the danger. They are being trailed by renegade Indians, and it is their presence that has spooked the horses. Pedro bolts across a stream, and, in an effort to make him turn back, Balaam shoots to turn him and, by mistake, breaks his leg. Balaam is forced to put him out of his misery. Pedro has saved his life and now lies mutilated and dead. Balaam decides to leave the Virginian to his own devices and heads for home.

Meanwhile, Molly has decided to run away from her heart. She realizes that she doesn't have the strength to refuse the Virginian, but can't face her family's accusations that a Stark would marry beneath herself. So she resigns her teaching post, writes a letter of farewell to the Virginian, and packs for home, with the words of her next-door neighbour, Mrs. Taylor, ringing in her ears, "*Since the roughness looks bigger than the diamond, you had better go back to Vermont. I expect you'll find better grammar there deary.*" With Mrs. Taylor's rebuke burning, Molly saddles her horse and rides off to settle her jangling emotions. On the trail, she finds the Virginian's horse Monte and, close by, the Virginian, badly wounded from an Indian ambush. With great difficulty, she gets him on Monte and leads him back to Bear Creek and her cabin.

More dead than alive, and in a state of delirium, the Virginian mutters about Trampas and then shouts, "*No Steve, it ain't so, Steve, I have lied for you.*" These words mean nothing to Molly, but introduce the next important section of the book: the lynching of the Virginian's good friend Steve, who has become a cattle rustler.

Then, later, on the way to recovery, the Virginian receives Molly's letter telling him that she is leaving permanently for Vermont. He realizes that she is running away from him and the roughness of the West. He confronts her and says,

*"Once I thought love must surely be enough. And I thought I could make you love me, you could learn me to be less – less – more your kind..." At last he looked at her again. "This is no country for a lady. Will you forget and forgive the bothering I have done."*

*"Oh!" cried Molly. "Oh!"... "But," said Molly – "but I – you ought – please try to keep me happy!" And sinking by his chair, she hid her face on his knees.*



*Not with words, not even with meeting eyes, did the two plight their troth.*

When the Virginian has fully recovered under Molly's care, he leaves her with the ominous observation that the cattle thieves are growing more audacious. He has arranged to meet Wister for some hunting in the Wind River country. But when Wister arrives – a few days early – he realizes that he is not expected yet, or wanted. He finds himself in the middle of the lynching of two rustlers by a party of cowboys led by the Virginian. One of the two to be lynched is Steve. And it is shortly implied that two other rustlers have escaped – Shorty and Trampas. On the morning of the lynching, the rustlers and the vigilantes engage in easy, fraternal conversation. Both sides know the game – and the consequences. It transpires that the two have been caught because of Shorty's carelessness with a fire. Wister stresses that Steve "died game," saying goodbye to all the vigilantes – except the Virginian, who is extremely upset by his friend's snub.

Wister and the Virginian, both of them much shaken, depart for some hunting, but soon realize they are following the tracks of two men and one horse. Next dawn they are awakened by something spooking their horses. Somewhat later, they hear a distant shot. They continue to follow the tracks and come upon a very recent camp and a very dead Shorty, shot from behind. The implication is clear. Trampas and Shorty realized that they were



being followed; Trampas knew that they could not evade a posse with only one horse. So, exit Shorty!

By the campfire Wister finds the newspaper that he had given to Steve before he was lynched. Trampas and Shorty had obviously come upon the scene or had been watching and had taken the newspaper, probably to light a fire. In the margin Steve had written in pencil,

*“Good-by Jeff. I could not have spoken to you without playing the baby.”*

*“Who’s Jeff?” I asked.*

*“Steve used to call me Jeff because I was Southern. I reckon nobody else ever did.”*

When word reaches Molly of the lynching, she is, understandably, extremely upset, enough that it is feared that she might call off her engagement. So Judge Henry is recruited by Mrs. Taylor to persuade her of the necessity of vigilante law on a raw frontier. Coming from a federal judge, the justification for vigilante law does make Molly reluctantly reconsider her view and, at last, concede that there is a difference between lynching in Wyoming and the terrible barbarity of the public torture and lynching of Blacks in the South.

Despite her lingering misgivings, the date for the wedding is set. By this point, it has become clear that she is no longer the Virginian's superior, despite all his untutored ways.

*Her better birth and schooling that had once been weapons to keep him at his distance ... had given way before the onset of the natural man himself. She knew her cowboy lover, for all he lacked, to be more than ever she could be, with all that she had.*

Molly and the Virginian ride into town for the wedding, to be met by three of the Virginian's good friends. They warn him that Trampas is in town and on the prod, full of liquor and bravado.

*It had come to that point where there was no way out, save only the ancient, eternal way between man and man. It is only the great mediocrity that goes to law in these personal matters.*

The Virginian goes for a pre-wedding drink with his friends.

*Suddenly Trampas was among them, courageous with whisky... Others struggled with Trampas, and his bullet smashed the ceiling before they could drag the pistol from him.... "Your friends have saved your life" he rang out, with obscene epithets. "I'll give you til sundown to leave town."*

*"Trampas," spoke the Virginian, "I don't want trouble with you."*

*"He has never wanted it," Trampas sneered to the bystanders. "He has been dodging it five years. But I've got him corralled."*

The Virginian goes to the hotel storeroom to get his gun.

*[The pistol] according to his wont when going into risk, he shoved between his trousers and his shirt in front.*

Then he goes to the hotel to tell Molly why he has to face Trampas. He explains that he did everything possible to make Trampas back down from his threats. Still, Molly asks him to come away. Everyone knows he is not a coward. The Virginian replies that this is his home, his life:

*"If folks come to think I was a coward – ... I could not hold my head up again among enemies or friends."*

Molly makes her New England argument: *“There is a higher courage than fear of outside opinion.”*

*“Can’t you see how it must be about a man?” “I cannot,” she answered.... “If you do this there cannot be a to-morrow for you and me.”*

*Suddenly his hand closed hard. “Good-by, then,” he said. And then before his desire could break him down... he was gone, and she was alone.... And next – it seemed a moment and it seemed an eternity – she heard in the distance a shot, and then two shots.*

Trampas has had second thoughts. After five years, it has all come to this. He has made his challenge publicly and can’t go back on it. He had thought of trying to ambush the Virginian, but realized it had gone too far for that. He is now forced into a showdown of his own making.

The Virginian positions himself out on the street with his three friends behind him to cover his back.

*A wind seemed to blow his sleeve off his arm and he replied to it, and saw Trampas pitch forward. He saw Trampas raise his arm from the ground and fall again, and lie there this time, still.*

*“I expect that’s all,” he said aloud.... “If anyone wants me about this,” he said, “I will be at the hotel.” “Who’ll want you?” said Scipio. “Three of us saw his gun out.” And he vented his admiration. “You were that cool! That quick!”*

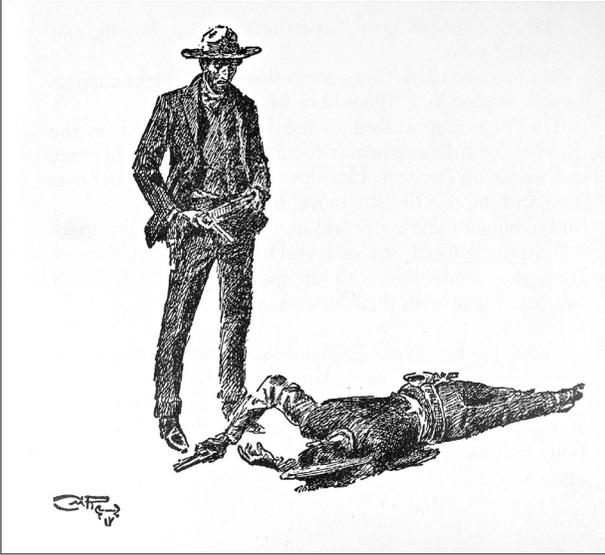
*The Virginian walked to the hotel, and stood on the threshold of his sweetheart’s room. She had heard his step, and was upon her feet. Her lips were parted, and her eyes fixed on him, nor did she move, or speak.*

*“Yu’ have to know it,” he said. “I have killed Trampas.”*

*“Oh, thank God!” she said; and he found her in his arms. Long they embraced without speaking, and what they whispered then with their kisses, matters not.*

*Thus did her New England conscience battle to the end, and, in the end, capitulate to love. And the next day, with the bishop’s blessing, and Mrs. Taylor’s broadest smile, and the ring on her finger, the Virginian departed with his bride into the mountains.*

After the wedding, the Virginian and Molly leave Buffalo and ride up into the mountains, to a very special place that the Virginian selected long ago



– a magical island – where they spend a month before departing for the East to make the rounds of Molly’s family at Bennington.

Bennington is disappointed. Instead of a cowboy with a six-gun at his hip, it got a man in an understated and beautifully tailored suit, whose conversation was fit to come inside the house. Finally, they visit Molly’s great-aunt at Dunbarton. She is the first of Molly’s relations to really understand the Virginian. She shows him the portrait of General Stark, and says, “*There he is.... New Hampshire was full of fine young men in those days. But nowadays most of them have gone away to seek their fortunes in the West.*”

The Virginian talks to her of Wyoming's future, about the end of the free grass era, and about the good land he has chosen close to coal deposits and the railway. The great-aunt sends Molly to bed and stays up talking to the Virginian and showing him her special things. "*We, too, had something to do with making our country.*"

The book ends with the great-aunt's endorsement and with the Virginian telling her his dreams for the future of Wyoming and the West. Molly and the Virginian return to Wyoming and to Judge Henry's wedding present – a partnership in his ranch. The book ends with a vision of the new West and the Virginian's and Molly's place in it as people of substance surrounded by family.

No solitary horseman riding off into the sunset!

## Introduction: America's Gun Culture and the Vigilante Tradition

Before embarking on the particulars of Everett Johnson's life and on Owen Wister's creation of the legendary cowboy figure, some general comments on the nature of law and Native relations on the two frontiers will help to put their actions and thoughts in context. Of special interest in the discussion of frontier American law is the emergence of vigilantism. It became a powerful force, to such an extent that the institution has had a profound and malign effect on modern America.

Both Johnson's life and Wister's novel were deeply influenced by western law or – more to the point – the absence of law. Vigilantism was an important part of Johnson's life in Wyoming and was one of the main themes of Wister's novel, which lay the ground for hundreds, if not thousands, of other western cowboy novels, movies, and TV shows. In fact, the latest book on American vigilantism begins with a discussion of Judge Henry's argument in favour of vigilantism in *The Virginian*.<sup>1</sup> This conception of the cowboy, which Wister initiated, has become the most powerful mythology, thus far, in American popular culture. And Wister's cowboy hero without a gun at his belt would be a very different and diminished figure. The allure of the gun became a central feature of the American frontier and, too, of the literary cowboy that Wister invented. One of the most powerful images in American literature is that of the Virginian, with his hand resting on his pistol as he stares down the villain Trampas during a card game and says, "When you call me that, *smile*." Words said almost as a caress, but with lethal intent. Today, no other industrialized country idolizes firearms

as does America. Nor does any other advanced country come remotely close to America's level of gun ownership and gun violence. There is a direct connection between America's gun-soaked westward movement and America's current firearms crisis, which both fascinates and repels the rest of the industrialized world.

Vigilantism, originally an eastern institution, acquired a gloss of respectability on the western frontier that it had nowhere else.<sup>2</sup> Nor did vigilantism die out with the frontier; it entered mainstream American society of the twentieth and twenty-first centuries in a very different form – as a never-ending theme in American literature and film and also in real life. It was the American frontier West that gave vigilantism and American gun culture their respectability and frisson. Witness the number of state laws today that not only condone, but encourage, American citizens to “Stand Your Ground.” These laws come straight from the American frontier's dictate that a real man had “No Duty To Retreat” from danger or a slight to his honour. This modern vigilantism, coupled with a semi-crazed gun mystique, has had a very sinister influence on modern America.

The doctrine of “No Duty to Retreat,” which evolved on the American frontier, was a direct reversal of the old English common law doctrine which stated that a citizen did, indeed, have a duty to retreat from a threat, unless under extreme provocation. British law was transplanted in Canada essentially unabridged and was brought to the western Canadian frontier by the North-West Mounted Police. As the western Canadian ranching frontier developed and cattle rustling became a very real problem, the Mounties made it very clear that any vigilante action, especially lynching, would be regarded as murder. As a result, western Canada has virtually no history of vigilantism.

When Johnson came to Alberta, he came to a cattle frontier presided over by the North-West Mounted Police and under a different form of land law. Together, these two factors produced a very different frontier. The Mounted Police brought to the Canadian West a brand of law based on British law, and reinforced by the legal beliefs of the losers in the American Revolution – the United Empire Loyalists – many of whom came to Canada with staunch Tory principles that had been repudiated by the Revolution.<sup>3</sup> These Loyalists exercised a double influence. Their voice was removed from the debate as American legal institutions were being shaped. On the other hand, they arrived in Canada as the first “un-Americans.” They were determined to help create a conservative counterbalance to the post-Revolutionary American experiment. Loyalist beliefs strengthened existing Imperial law at a crucial period of Canadian legal development. Together, leading

Loyalists and British colonial administrators vowed never to let the popular voice gain control of the law in Canada. There would be no elected judges or lawmen in Canada. Instead, judges would be carefully selected and lawmen appointed from those who believed firmly in an ordered and structured society. Some generations later, the Mounted Police brought these same institutions and beliefs to the Canadian West. In fact, a surprising number of Mounted Police officers were descendants of Loyalists. Almost all the early commissioners came from Loyalist roots, as did a very significant number of officers.<sup>4</sup> Since the officer corps dictated how the law in the field would be applied, it had a uniformity that was not found south of the border, where sheriffs and marshals were allowed a level of individuality and autonomy that was totally absent on the Canadian frontier. This fact alone says much about the difference in the law that Johnson encountered when he crossed the line to make his new home in the ranching country of Alberta.

Because the Mounties were able to keep the white population more or less in line, relations with the Native peoples on the ranching frontier remained relatively benign, until Native people realized the full impact of the reserve system. Johnson came to Alberta during a period of tension with Native groups just as the buffalo vanished – officially exterminated on the Canadian plains by 1879 – and Native people were being compelled to abandon the hunt and take up farming, as they were shunted aside on reserves to make way for white progress.

The rationale for this dispossession was the same in Canada as in the United States. Native peoples must give up their nomadic way of life and become farmers in the interests of progress. The sad fact is that these hunter-gatherer societies, that had nurtured and cherished their homelands for millennia, were dispossessed to make way for the agriculturalists, the real nomads.<sup>5</sup> Americans were known as the “Restless People,” continually on the move as they looked for greener fields.

But the European view prevailed, and by the time Johnson arrived in Alberta in the late 1880s, the one western Canadian eruption, the 1885 Rebellion, had been quelled and all the Native peoples of the Canadian plains were now being tutored in the joys of farming. They were kept on their reserves and were allowed to leave only with a pass from the Indian Agent, a measure that was totally illegal and that went against the clear promises of the treaties.<sup>6</sup> The sad truth is that peace with Native people on the western Canadian frontier came about through the suppression of Native rights. Canadians should not, perhaps, be quite so proud of their record of a peaceful frontier. It came at a price. And without the presence of the Mounted

Police, it is hard to imagine that the Canadian West would have been as peaceful as it was.

The average Canadian and American in the West were – and still are – not all that dissimilar. Witness the ease with which either group transplanted itself. Canadians in the West were more orderly largely because of the legal institutions imposed on them, just as the vast majority of the Americans who came north were equally law-abiding once under these institutions. The difference was in the far greater ability of Canadian law to deal effectively with the small minority intent on causing trouble.

There has been plenty of violence in Canadian history, as Kenneth McNaught has pointed out in an important article, “Violence in Canadian History.”<sup>7</sup> But very little of that violence has involved guns. The essential difference between Canada and the United States in the late nineteenth century was that in Canada there was a form of gun control and a quick response to violence, especially political violence. Canadian federal governments of all stripes have always argued that violence, and particularly political violence, has no place in Canada. This attitude has been held with equal determination by an English Conservative prime minister in the Winnipeg General Strike in 1919 and by a francophone Liberal prime minister in the FLQ Crisis of 1970. Only after the violence has been quelled does the government stop to consider the cause. The American penchant for violence stems largely from the Revolutionary sanction of civil disobedience and the inability of American law to control the small minority responsible for the vast majority of the crime. As this Revolutionary legacy moved westward over the Appalachians, what law there was took on a new flavour. The ancient English common law doctrine of the “Duty to Retreat” in a situation of threat was turned on its ear.<sup>8</sup> In the American West, territory after territory reversed this edict, on the grounds that a “true man” does not retreat in the face of danger. And it is no surprise that Texas became the strongest defender of the doctrine that it was perfectly legal and justified to take the law into your own hands if threatened. It was only a small step to what became the Code of the West, which dictated that honour was more precious than life, and another small step toward the ideology of vigilantism.<sup>9</sup> In the Canadian West, the Mounted Police upheld the original English doctrine; it was, indeed, the citizen’s duty to retreat, except as a last resort. Vigilantism had no place in the Canadian West; lynching would be regarded as murder.

## AMERICA'S ACHILLES HEEL

The critical views expressed here about American law, and western frontier law in particular, are not those of a Canadian with an anti-American bias. My mother was an American, as was my father's mother. My mother, over the years, showed me many of the wonderful aspects of her country. The United States, in many ways, is the most extraordinary country on the planet, not just because of its political and economic dynamism, but because of its place in the world of ideas. The three small words "We the People," that introduced the Declaration of Independence, launched the most startling idea of the age, the idea that the people, and not the few at the top, could, and should, steer the destiny of the American democratic "experiment." These words would transform, not just America, but the entire world.<sup>10</sup> Perhaps it is because of all the positive energy unleashed by America, the great optimism about the prospects of humankind in a new setting, and the extreme faith in the ability of individuals to better themselves, once shed of the social and economic shackles of the old world, that one critical element has suffered. Restraints on human behaviour are also a critical part of any functioning society. Perhaps Americans were too caught up in the uplifting rhetoric of the Declaration of Independence, and too inhibited by the powerful doctrine of states' rights, to give proper weight to the conservative principles of law and order. It certainly seems, looking from the outside, that the one great failure of America – its Achilles Heel – has been its weak legal structure.

America's one great failing, emerging from the period of the Revolution and the Constitution, was her fashioning of criminal law. Canada, with the benefit of witnessing first-hand the failings of the American legal system, wisely followed a policy of always keeping "a-hold of nurse, for fear of finding something worse."<sup>11</sup> At Confederation, Canada chose to import British criminal law intact and place it in the hands of the federal government.

Despite all the great qualities and achievements of America, her defective legal system has done terrible harm over time. It is the dark side of the American dream. Although the Declaration of Independence, one of the great triumphs of mankind, marked a major turning point in the world's history, it lacked a conservative counterbalance, and this lack had a malignant influence as the United States expanded westward. The sentiments of duty and service, so fundamental to the working of the law, were singularly absent from the declaration.<sup>12</sup>

As the two nations expanded, this westward movement in the United States was guided by the philosophy of the Northwest Ordinance, which

allotted to the local population at an early stage a large degree of self-determination. One of the revolutionary legacies was a strong dislike of authority, whether foreign or congressional. A strong case could be made that a great many of America's shortcomings involved a lack of legal authority at the centre. The strength of states' rights and popular sovereignty were to blame. For instance, the issue of slavery, which was to haunt the United States throughout her history, could not be resolved short of a horrifying civil war because all attempts to soften or eradicate the institution at the federal level were consistently thwarted by the southern states.

In Canada, the opposite tradition took hold. The Canadian Parliament, until a much later stage in territorial development, kept a tight control over all important aspects of western development; the West was kept essentially in the position of a Crown colony. Not until 1888 did the Territorial Council become a Legislative Assembly.<sup>13</sup> All officers of the law were appointed, not elected, and for the critical period of territorial development on the Canadian plains, the Mounted Police, a federal force, held almost total sway. In fact, the Mounties essentially established a police state in the Canadian West; Canadians clearly valued peace and order over human rights and local self-determination.

In the United States, a similar weakness of law at the federal level was a major factor leading to a dismal history of relations with Native peoples. For instance, President Jackson's Indian Removal Act of 1830, a clear policy of ethnic cleansing of Native peoples east of the Mississippi River, which has been called "one of the most morally repugnant movements in American history," saw the Cherokee Nation forced out of Georgia and into exile west of the Mississippi.<sup>14</sup> This situation occurred because of a failure of law. The Supreme Court of the United States under Chief Justice John Marshall ruled both that the Cherokee were subject to the laws of the United States, not Georgia, and that the laws of Georgia relating to the Cherokee were unconstitutional; hence, forced removal of the Cherokee was illegal, unconstitutional, and counter to the treaties with them. Despite this ruling from the highest court in the land, President Jackson, whose sacred duty was to uphold the laws of the United States, stated, "John Marshall has made his decision; let him enforce it now if he can." The flouting of the law by the highest official in the land says much about the American disrespect for the law in the nineteenth century and for the weakness of federal law when opposed by a state like Georgia. At the very least, Jackson showed a blatant contempt for the constitutional principle of the separation of powers between the executive and the judiciary branches of government. No wonder vigilantism gained such strength in this atmosphere. But, as will be seen in

chapter 6, there were many in western Canada who closely echoed the sentiments of Jackson's removal policy. However, the Canadian federal government was able to ignore this sort of local sentiment since very little actual power resided in western local opinion.

The embracing of immigrants was one of the great American success stories of the nineteenth century. The Statue of Liberty welcomed the greatest migration in history to America's shores. But the immigrant experience, in many cases, turned sour, not because of racism and intolerance, which were to be expected, but because the laxity of the law allowed vicious racism and religious intolerance to go unchecked. The Irish and Germans, for instance, each escaping their potato famines at mid-century, were terribly persecuted.<sup>15</sup> Or the Chinese, who were allowed to be badly mistreated in successive mining communities up the spine of America, from the gold rush in California to similar strikes in Wyoming and Montana. At Rock Springs, a coal town in Wyoming, twenty-eight Chinese were murdered by Welsh coal miners for not joining a strike, while the Welsh women laughed and clapped as the Chinese were forced to leave under threat of lynching.<sup>16</sup> There were no convictions. Rock Springs was a familiar theme, played over and over as the mining frontier moved from California to Montana. In most cases of anti-Chinese violence the police were completely ineffectual; the army or the militia had to be called in. One scholar has estimated that, between 1852 and 1908, 143 Chinese were murdered in the American West and over 10,000 displaced, usually chased out of town by white mobs.

The great American "pogrom of lynching and ethnic cleansing" in the American West was essentially unrestrained. Jean Pfaelzer and Alexander Saxon have thoroughly documented an epidemic of roundups and mass expulsions, burnings, murders, and lynchings spreading from California to Colorado and on to Wyoming and Montana. The legal response? Essentially none! Or worse; many local politicians rode the atmosphere of race hatred to power.<sup>17</sup>

A similar anti-Chinese incident occurred in Calgary in 1892, which vividly underscores the difference between legal institutions in the American and Canadian Wests. A riot against the Chinese erupted after a cricket game, fuelled by drink and a receptive crowd because a smallpox outbreak had been traced to a Chinese laundry. Sentiment against the Chinese became extremely ugly after nine people became infected and three died. When the quarantined Chinese were released, a riot ensued, the purpose of which was to run the Chinese out of town. As the mob of about two to three hundred formed, the Mayor of Calgary, Alexander Lucas, and the Chief of Police, Tom English, and his constables all decamped Calgary very

quickly, leaving a complete void in authority. At this point, the Calgary riot had all the earmarks of a typical western American pogrom. Except for the Mounties! Although the Mounted Police no longer had jurisdiction in the city of Calgary, they decided, reluctantly, to move in and take charge of the deteriorating situation. They quickly gave protection to the Chinese in their barracks and dispersed the mob. Thus ended what could have been a very ugly incident. Instead, western Canadian historians have written off these events as a small footnote only because the intercession of the Mounted Police turned it into a minor farce. If they had not stepped in, the riot of 1892 would certainly have punctured the complacency of western Canadians.<sup>18</sup>

The experiences of Chinese immigrants in North America during the nineteenth century provides another important comparison. Between 1878 and 1886, during a period of intense anti-Chinese sentiment in British Columbia, the BC Supreme Court struck down five provincial BC statutes or municipal bylaws that were anti-Chinese. In four of the five cases, the BC judges cited the Supreme Court of California and the federal circuit courts of California and Oregon.<sup>19</sup> There is a very important issue here. In both Canada and the United States, the protection of minorities is far more likely to come from the federal level of law or government. The striking difference between the two countries at the legal and political level is that Canadian federal law could override local prejudice far more easily than was the case in the United States. There was a remarkable similarity in legal outlook between the members of the BC Supreme Court and their American counterparts. But the American Supreme Court and Federal Circuit Court judges fought an uphill and losing battle against the forces of grassroots democracy and local self-determination.<sup>20</sup>

## GUNS AND THE LAW

If there is one area that clearly differentiates Canada from the United States from the nineteenth century to today, it is gun legislation and the attitudes associated with that legislation. Canadians, for instance, simply cannot fathom the popularity and the political power of the National Rifle Association, or the near reverence for the Second Amendment, which supposedly gives Americans the “right to bear arms.” It is important here to establish a context for later discussions of gun violence in the West and also to point out the enormous nationwide repercussions of a gun-happy American West.

Guns, both long and short, were part of the essential working tools of the American cowboy. Cowboys on the cattle trails from Texas required

handguns on occasion, for instance, if attacked, to turn a stampeding herd, or to deal with rattlesnakes. A handgun and spurs became regular items of American cowboy apparel; without them a cowboy felt naked. And a handgun became a necessity for self-protection in the cattle towns, since these towns were bristling with guns and unfinished business from the Civil War. The prevailing Code of the West dictated that cowboys must answer a besmirching of their honour, and the rough justice of the American frontier dictated that, on the occasion of a shooting, the crucial question was whether the bullet entered from the front or the back. If from the front, the verdict was almost always justifiable self-defence, with no necessity for an inquest. This casual nature of the law in early cattle towns required the carrying of a handgun for protection.

The Canadian frontier was entirely different. The Mounted Police brought with them to the West both liquor prohibition and strict handgun laws. There were, of course, smuggled liquor and lots of guns on the Canadian frontier, but the source of the vast majority of violence on the western American frontier – handguns and liquor in the setting of the ubiquitous saloon – was legislated by the Mounties into a zone of relative safety. The Mounties had the power to shut down drinking establishments if they allowed clients to get drunk. They also relied on the local vagrancy act to cleanse western towns of drifters and troublemakers.

From this frontier period in the American West has also emerged an extreme fascination with firearms. Here, perhaps, lies the most distinguishing feature separating the two frontiers: an American frontier defined by the handgun and its Canadian counterpart with strict gun control.

Over time, Canadians have retained a fascination for American gun culture but also a revulsion for the logical outcome of a population armed to the teeth and determined not to let governments erode their right to possess firearms. Today, the rate of firearm ownership in the United States, especially ownership of handguns, is vastly higher than in any other industrialized country. American murder and incarceration rates follow suit. Canada, on the other hand, has some of the strictest handgun legislation in the world and, as a consequence, much lower gun murder rates.

It is impossible to prove in any statistical way, but it would just seem to be common sense that the romantic image of western frontier firearms, especially handguns, that has bombarded generations of movie and TV viewers accounts for a large part of today's continued American fascination with guns. The combination of a free-flowing availability of handguns on the frontier and the ethic of the right to take the law into one's own hands – the ethic of vigilantism and No Duty to Retreat – have put a unique stamp

on the western American frontier. Even accounting for the gross exaggeration of frontier lawlessness and violence found in newspapers of the period, popular literature and, later, movies and TV, there is enough carefully documented American frontier violence to make it stand out from other frontiers, and especially the Canadian frontier.<sup>21</sup>

How violent was the frontier American West? This issue has certainly been a subject of lively debate among historians. Roger McGrath, in his 1984 study *Gunfighters, Highwaymen and Vigilantes: Violence on the Frontier*, has taken a tally. On the side arguing that American frontier violence has been exaggerated, he cited three important historians: Robert Dykstra, Frank Prassel, and Eugene Hollon.<sup>22</sup> For instance, Frank Prassel argued that the westerner “enjoyed greater security in both person and property than did his contemporary in the urban centres of the East.”<sup>23</sup> Eugene Hollon pointed out that the frontier was less violent than American society today. Frontier violence was largely urban and only a very small proportion of the population was involved.<sup>24</sup> Newspapers and dime novels, of course, grossly distorted the picture. To this argument that violence was largely an urban rather than a frontier phenomenon, he added that frontier violence was the result, not the cause, of America’s violent society.<sup>25</sup> However, these comments say more about the high rate of crime in the East in the nineteenth century and the even higher rate throughout America in the twentieth century than they do about a low rate of crime in the American West. Also, McGrath argued that the three authors’ views were based only on actual gun killings and didn’t take into account all the woundings or the situations that almost led to violence and killing. There were also a large number of shootouts in which there were no injuries, because the shootists were too drunk to shoot straight.<sup>26</sup>

On the other side of the ledger, McGrath lists himself, Joe B. Franz, Harry Sinclair Drago, Joseph Rosa, Philip Jordan, Richard Slotkin, and Richard Maxwell Brown. McGrath argues that Richard Maxwell Brown’s collected studies of violence and vigilantism are the best general studies on the subject.<sup>27</sup> To this list could be added the work of Richard Hofstadter and Michael Wallace on violence.<sup>28</sup> Franz made the important point that the frontier West attracted the rootless and those avoiding responsibility and deference toward an established society, so it is only logical that violence would flourish.<sup>29</sup> Harry Sinclair Drago, in his litany on the range wars, linked cattle rustling to the violence, claiming that it had reached “epidemic proportions.”<sup>30</sup> Jordan made the connection between the rise in violence in the 1830s and the advent of Jacksonian democracy, which resulted in

the demise of deference in American society.<sup>31</sup> Rosa claimed that an “extraordinary amount of killing” occurred on the western frontier.<sup>32</sup>

Perhaps Richard Maxwell Brown should have the last word. All of the above views are focused solely on the American western frontier. Brown adds a comparative view:

Comparative studies of the Canadian and American West show that miners prone to violence and vigilantism under the loose, permissive rule of the American federal system became peaceable and law-abiding when they migrated to Canada.<sup>33</sup>

Brown concludes by pointing out that the legacy of America’s violent frontier is the “unenviable distinction as the most violent nation among its peer group of the technologically advanced democracies.”<sup>34</sup> Brown also stresses that America’s history of ethnic, racial, religious, industrial, agrarian, and political violence have contributed greatly to the current general state of violence in America.<sup>35</sup> But, of all these, only frontier violence is filled with the romance of the six-gun and the horse. It is the romantic violence of the frontier and its link with the western code of vigilantism that today sanctions both modern vigilantism and staggering levels of gun violence in the United States.

But western American frontier violence had a more sordid and greed-ridden aspect. Brown sees the staggering level of western violence in the context of what he calls the western “wars of incorporation.” Brown coined this term to encompass the elevated levels of western violence in the post-Civil War era, an era of a robber baron mentality in the West unrestricted by conscience or law. Brown’s wars of incorporation pitted the conservative forces of commerce, industry, and the railroads against labour and farmers. In the West, these wars matched the army against the Hispanic settlers, the Texans against the Mexicans, Apaches, and Comanches, the big ranchers against the settlers and modest ranchers. Many of the battles were fought out in courtrooms, but many involved vigilante groups on either side of the equation. And into this charged atmosphere stepped the professional gunfighters of popular myth, upward of three hundred of them who were *well-known*, plus many hundreds more of mere local reputation. Many of the local “grassroots” gunmen yearned for national fame so that they, too, could end up as celebrities in the dime novel industry. Gunmen like Wyatt Earp and Bill Hickok were hired by the conservative forces of wealth and power. Billy the Kid represented the other side. Many of these gunmen represented the law, such as it was, and many “social outlaws” like

Butch Cassidy and Sundance Kid claimed to represent the little people. In the absence of effective law, vigilantism blossomed.<sup>36</sup>

## VIGILANTISM AND MODERN AMERICA

Vigilantism is a major theme in *The Virginian*. Wister's justification for western vigilantism represented the thinking of a great many of his class (see chapter 5). Certainly Theodore Roosevelt shared his beliefs on the issue. And, according to Johnson, it was a significant part of his life – both the reason he lost the real schoolteacher he was wooing and the reason he left Wyoming for Alberta. Vigilantism bears examination in some detail because not only was it a major force on the western American frontier, but the vigilante ethic of the West continues to have an extraordinarily powerful influence in modern America.

The uniquely American institution of vigilantism emerged first in North Carolina during the Revolution, and then gained considerable strength with the Civil War. Although forms of vigilantism can be traced back many centuries and have been found recently in places like northern Ireland, only in the United States has vigilantism taken on a national character and, in its western frontier form, a decided mystique.<sup>37</sup> Vigilantism arose as a response to a particularly American problem – the absence of effective law, especially in frontier regions.<sup>38</sup> At its height, it became sanctified by both the highest in the land and the lowest sort of lynch mob, from presidents, senators, congressmen, state governors, and judges to illiterate rabble.<sup>39</sup>

Vigilantism and lynchings saw a sharp increase during the Jacksonian period, as did levels of violence. This increase resulted from the shift in this period from a more deferential society to one in which there was a greater emphasis on democracy and self-determination, especially in frontier communities. After the Civil War, in the era of the northern carpetbagger and the Thirteenth, Fourteenth, and Fifteenth amendments to the Constitution, which ended slavery, extended civil rights and equal protection under the law, and gave the right to vote to the newly freed slaves, Southern white society, from top to bottom, embraced vigilantism and lynching as the most effective means of keeping the Black population in line. Certainly, by the end of the nineteenth century, the motives for vigilantism and lynching in the South and West were very different, but they shared one common root. Vigilantism and lynching in the West, except in the California gold fields, had little to do with race, but, in both the old South and the raw West, the fundamental reason for their widespread popularity was a glaring

deficiency in, and often a contempt for, the law. And, in both regions, this extra-legal enforcement was condoned from top to bottom of society. The fact that political leaders, from President Roosevelt to the governor and senators of Wyoming, should enthusiastically embrace western vigilantism clearly indicated that western law did not protect the rich. Yet vigilantism was equally embraced at the bottom by the lynch mobs that regularly liberated men from jail, to depart life at the end of a rope. There are complex motives here that warrant deeper study. Vigilantism has often been explained, and excused, by western historians, who point out that it was a temporary expedient on a raw frontier. But this argument falls totally flat when one looks both at the extraordinary breadth of vigilantism in America and its equally remarkable longevity.

The majority of the almost 5,000 lynchings in America since 1892, when Ida Wells-Barnett, a Black woman brave enough to write about the institution and systematically collecting data on it, have occurred in areas that were not remotely a frontier.<sup>40</sup> J. H. Chadbourn's study in 1933 claimed that, between 1889 and 1932, there were 3,753 lynchings in the United States. Obviously there were far more; they only started keeping score in 1889.<sup>41</sup> And, until very recently, the institution had considerable respectability, even in high places. Despite the nearly 200 anti-lynching bills introduced to Congress in the twentieth century, it was not until June 2005 that the American Senate finally passed a bill banning lynching in the United States!<sup>42</sup>

The frontier justification for vigilante law is nowhere better expressed than in Wister's novel, in the passage where Judge Henry explains to Molly that the Revolution has given the people the democratic right – and duty – to take back the law if it is seen to be in limp hands (see chapter 5). “We the People” means that the people gave the functioning of the law to certain officials, and if these officials are found to be wanting, then the people have the right to take back the law and make it function properly. The Judge implies that it will be “the better people” who will then be meting out justice. However, the Judge cannot explain how the people are to have the wisdom to make a complex legal system function properly by mob rule. Wister's adulation for vigilantism was essentially upper-class America's justification for the institution; it had strong overtones of the arguments of Theodore Roosevelt and other prominent Americans.

The only problem with the Judge's argument for vigilantism filling a temporary void on the frontier is that it is nonsense. As much as some historians of the American West would like to divorce the lynching of cattle thieves from the hundreds of other more sordid vigilante movements, it is clear from the perspective of the twenty-first century that they were all

related. As will be seen later, vigilantism continued and even grew as the frontier period faded. Wyoming, for instance, was already a state when the famous vigilante war, the Johnson County War, broke out. The vigilantism of the various Ku Klux Klan movements flourished in developed communities, as did later urban vigilante movements aimed, for instance, at Catholics, immigrants, or the cleansing of Mormons from eastern communities. As Richard Maxwell Brown has pointed out, from 1767, when vigilantism began, to 1900 when it faded, there may have been as many as five hundred American vigilante movements, accounting for as many as 5,000 killings. A great many of these movements were in the settled East. Only the New England states lack a vigilante tradition.<sup>43</sup>

The glorification of vigilantism still thrives in literature, film, and TV; the adulation for the individual who takes the law into his own hands, in a never-ending morality play, is still a major theme. As Dick Harrison has pointed out in *Unnamed Country: The Struggle for a Canadian Prairie Fiction*, the hero of American fiction is very often a man who embraces individual vigilante law to resolve a situation. John G. Cawelti, in his *Six Gun Mystique*, adds that an important part of the cowboy hero's literary power is the necessity to take the law into his own hands; the authorities are always incompetent. The cowboy hero exudes an aura of good violence, pure like the knights of old.<sup>44</sup> Richard Slotkin, in *Gunfighter Nation*, notes that much of the Virginian's mystique would evaporate if he didn't have a gun at his hip – the enforcer of his Code of Honour – and didn't clearly demonstrate that he would use it. This same theme seems to be played out endlessly in American film and TV. Now the western enforcer has faded, to be replaced by the ultimate vigilante figures, Superman, Batman, and Spiderman. The simplistic message stays the same. They are there to battle evil because the law is inept.

The parallel Canadian literature says much about a difference in outlook between Canadians and Americans. In place of the highly individualistic American hero embracing vigilante virtues, his Canadian counterpart was the very Anglo-Saxon Mountie standing for a somewhat different set of values: devotion to duty, toughness, honesty, perseverance, understatement, a quiet steely authority, and a pronounced chivalry toward women. Above all, this hero must distance himself from an over-civilized effeminacy. For Wister's cowboy, the open range of Wyoming was the testing ground; for the Mountie, it was the wilderness of the Canadian Northwest.

In Harwood Steele's *Spirit-of-Iron*, the heroine, commenting on her Mountie's virtues, says that he was brave, strong, and chivalrous – like a knight of the Round Table.<sup>45</sup> And his red coat “goes to my head like

champagne.<sup>46</sup> The women in these Mountie tales were there, very much like the Virginian's Molly, to fall in love with a symbol of Anglo-Saxon manliness. Like the cowboy novelists who followed Wister, the Mountie novelists were also onto a winning theme. Ralph Connor (Charles W. Gordon, a Presbyterian minister) sold over five million copies.<sup>47</sup> There were also over 250 Mountie movies, mostly Hollywood productions, which almost always accentuated the Mountie's Anglo-Saxon virtues by casting him beside a French-Canadian or Métis villain.<sup>48</sup>

In the twenty-first century, there is, perhaps, no stronger evidence of the strong link between western frontier vigilantism and modern American law than Florida's Stand Your Ground law, an almost exact replica of the western frontier's No Duty To Retreat doctrine. In 2012, a Black teenager, Trayvon Martin, was shot and killed by a neighborhood watch volunteer, George Zimmerman, who thought him "real suspicious" because he was wearing a hoodie. Martin was unarmed and merely walking to a convenience store to stock up before a game on TV. He became upset that Zimmerman was following him, so he accosted him and hit him. Thereupon, Zimmerman shot and killed him.

The police questioned Zimmerman and immediately released him because, under Florida's Stand Your Ground law, he had every right to shoot someone he considered a threat. In a situation where it is expected that someone like Martin could be carrying a concealed weapon, there is no requirement under Florida law to prove either imminent danger or a need to use deadly force. It didn't matter that Martin was an unarmed teenager. And, as it was on the frontier, the Florida police can decide whether it was a justifiable case of self-defence.

Florida's Stand Your Ground law is similar to those in twenty other states. Collectively, these laws are a clear indication that vigilante law is still thriving in modern America. Critics call these laws a licence to kill and, since this law was introduced in Florida in 2005, the state's rate of "justifiable homicide" has tripled.<sup>49</sup>

Although public outrage turned this killing into an international incident, Zimmerman was found not guilty. The verdict polarized the nation between those who argued that Trayvon Martin had been lynched and gun activists who said that Zimmerman was merely exercising his Second Amendment rights. But, as the judge's instructions to the jury stated, Zimmerman had "no duty to retreat," and had the right to meet force with force.<sup>50</sup> Subsequently, George Zimmerman has been arrested and charged with several counts of domestic assault and road rage.

The United States is unique in the developed world in having a vivid history of gun violence, an adulation for a western vigilante past, and ludicrously easy means of acquiring guns capable of mass murder. A comparison with some other developed countries shows just how isolated the United States continues to be in its attitudes and policies toward guns, and how fascination and reverence for firearms have set that country very distinctly apart. For a start, the United States leads the world in the rate of civilian gun ownership.<sup>51</sup> The *Economist*, a very sober and careful journal, estimated in 2007 that Americans owned about 240 million guns, one third of which – 80 million – were handguns.<sup>52</sup> Now, only five years later, it is estimated that Americans privately own almost 300 million firearms.<sup>53</sup> Texans alone have over 50 million guns (for a population of 25.5 million!). The United States has three times the per capita gun ownership that Canada has, and fifteen times that of Great Britain.<sup>54</sup> The American fascination for firearms shows no sign of abating. At the Oscars in 2015, the film *American Sniper*, based on the life of military sniper Chris Kyle, who claimed the most enemy kills in military history, had made more money at the box office than all the other seven nominated films put together. The film was essentially a eulogy of American gun culture. Kyle stated in his other book, *American Gun*, “Perhaps more than any other nation in the world, the history of the United States has been shaped by the gun.”<sup>55</sup>

On a per capita comparison, the US handgun murder rate is roughly ten times that of Canada, a country with very strict handgun regulations, and one hundred times that of Britain and Japan!<sup>56</sup> In an average year, roughly one hundred thousand Americans are killed or wounded by guns.<sup>57</sup> Since 1965, more than one million Americans have been killed by guns – more than the number of Americans killed in all foreign wars combined during the twentieth century.<sup>58</sup> And it has been estimated that the annual cost of gun violence is in the range of \$100 billion!<sup>59</sup> The surprising thing is that, despite the above statistics on American gun ownership, only about a third of Americans actually own guns.<sup>60</sup> A survey like this makes it all the more puzzling that the American gun lobby has such power in politics.

Canada has had a very different history of gun ownership and violent use of guns. A Statistics Canada survey of Canadian homicides for a nine-year period between 1974 and 1982 showed clearly that there was an average of 654 homicides a year and, of those, an average of slightly fewer than seventy a year were committed with handguns.<sup>61</sup> Seventy a year for the whole country! Ten percent of total homicides. In 1979, there were sixty homicides with handguns for all of Canada; in that year, there were 900 handgun homicides

in New York alone, and over 10,000 handgun homicides for all of the United States – twenty times the Canadian rate per capita.<sup>62</sup>

Canadians possess lots of rifles; they share with Americans a vibrant hunting culture. But handguns are a completely different matter. The combination of tight handgun control and very fierce penalties for armed robbery results in Canadians generally feeling no necessity to arm themselves for self-defence.<sup>63</sup> Handgun control began with the Mounties on the Canadian frontier in 1885 and then was made national seven years later.<sup>64</sup>

Surely, Americans must someday wake up to the fact that they have produced a very violent society, and one that seems to be continuing on that path, largely because, as Hofstadter and Wallace have so clearly argued, Americans have spawned a gun culture without parallel in the world:<sup>65</sup> “Our entertainment and our serious literature are suffused with violence to a notorious degree; it is endemic in our history.”<sup>66</sup> And they add that the further America gets from its frontier roots, the stronger its gun culture becomes.<sup>67</sup> There is certainly a direct link to the frontier and to the Revolution and the Civil War. Hofstadter and Wallace rightly point out the paradox of a stable American political system co-existing with a level of crime on a par with the most volatile areas of the world, a fact perhaps best explained by the weakness of the central government in areas of crime prevention and by the diffusion of authority.<sup>68</sup> They also point out the terrible harm that inexact wording can produce. In their view, the Second Amendment, allegedly giving private Americans the right to bear arms, is absolutely not what the framers of the Constitution had in mind. The right was *only* in the context of a “well-regulated militia.”<sup>69</sup> On this point, one expert argues that the loose interpretation of the Second Amendment (giving private individuals the unlimited right to possess firearms) “is widely rejected by most legal experts.”<sup>70</sup> As Gary Wills observed, the Second Amendment is not commonly understood to apply to hunters. “One does not bear arms against a rabbit.”<sup>71</sup>

The vital issue here is the ablative absolute! The framers of the Constitution, who drafted the Second Amendment, were all classically educated and, thus, well-acquainted with Latin. The ablative absolute in Latin is the opening phrase or clause of a sentence, which gives meaning and context to the rest of the sentence. The architects of the Constitution clearly meant the clause “A well-regulated Militia, being necessary to the security of a free State...” to give context and direction to the rest of the amendment. They had just emerged not only from a Revolutionary war but also two centuries of intermittent warfare with New France and her Native allies, during which the colonial militias had been vital to the survival of the American colonies. Here, surely, was the context for the amendment. And, at that

time, it was the duty, not the right, of citizens to keep arms for the purpose of protecting their homes, and their colony, from attack. In the notes from the Constitutional Convention of 1787, there is not a single word about individual gun ownership, and over the next two hundred years, when the interpretation of the amendment came to the Supreme Court, the court ruled on four occasions that the Second Amendment did not uphold individual gun ownership. Certainly, two of the foremost historians of the Revolutionary period, Gordon Wood and Bernard Bailyn, argued forcefully that, in the period of the Constitution, it was the duty, not the right, to bear arms.<sup>72</sup> But in 2008, the Supreme Court in *Heller vs District of Columbia* reversed two centuries of precedent in a close decision (5 to 4), the majority arguing that the issue of the militia was irrelevant. In other words, the first clause of the amendment could just be ignored! The *Heller* decision extended the right of individuals to bear arms for self-defence.<sup>73</sup>

The political guardian of the Second Amendment's widest interpretation is the National Rifle Association. The NRA began in 1871, but didn't pick up steam until after the assassination of the Kennedys and Martin Luther King Jr., when a serious debate on gun control threatened unrestricted gun ownership. Since then, the NRA has become the principal defender of the right to own all forms of firearms.<sup>74</sup> The NRA spends millions of dollars annually to lobby against any form of gun control. In 1994, under President Clinton, Congress enacted the Federal Assault Rifle Ban, which was to be in effect for ten years. The act prohibited, for civilian use, the manufacture of certain semi-automatic firearms. It expired in 2004.<sup>75</sup> Attempts to renew the act have come to nothing. Although President Obama, before his first election, stated that he wanted to reinstate the assault rifle ban, in his first administration, he did nothing. Although an advocate of gun control, he did not dare confront the NRA; in fact, he signed legislation expanding gun rights. He knew that gun control legislation was an issue that could lose him the presidency.<sup>76</sup> In 1994, the NRA bragged that it had targeted twenty-four politicians in the mid-term elections who had voted for Clinton's gun control measures. Nineteen of them lost their seats.<sup>77</sup> It is thought that the NRA was responsible for Democrats losing fifty seats in the 1994 mid-term elections.<sup>78</sup>

It is perhaps unfair to blame the NRA entirely for America's gun mania, but it is certainly the NRA attitude that is responsible for the seeming complete inability to change American gun laws so that the endless string of gun "massacres" might abate. For a start, US gun legislation, unlike Canada's, is under both state and federal control.

Over the past twenty years, gun rights advocates have won almost every battle and states have passed over one hundred new laws loosening gun restrictions since Obama became president. In 2009, for instance, the Montana legislature passed the Firearms Freedom Act, which made new firearms manufactured in Montana exempt from federal regulation. Seven other states have followed Montana's lead.<sup>79</sup> Even if, by some miracle, the federal government were able to pass new gun control measures, they could still be thwarted at the state level.

There is also the fact, of course, that the American fascination with guns, especially handguns, has made untold millions for Hollywood. First came the Colt .45 of hundreds, if not thousands, of westerns, followed by the Smith & Wesson .44 Magnum of Eastwood's Dirty Harry Callahan character in the 1970s, and then the movie debut in *Die Hard 2* of the Glock, now America's handgun of choice, each handgun in its time eliminating badness in the name of vigilante justice. It is not hard to understand the allure of these celluloid avengers.

Clearly, then, the US media has had an overpowering influence on the public mind, an unsettling fact when linked to vigilantism. How many unstable people, endlessly bombarded with the vigilante theme, have harboured fevered visions of changing the world through their actions? Surely, a perversion of the vigilante attitude lies behind the problem, unique to America in the developed world, that so many presidents and politicians have become targets for vigilante-style assassination. The combination of the vigilante ethic and the saturation of America with easily acquired firearms of mass murder has led to a long succession of such killings or attempted killings by those of paranoid and unstable mind.<sup>80</sup> And who knows how many other attempts may have been thwarted?

This combination has also resulted in an escalating incidence of mass Rambo-style killings throughout the United States. Increasingly, Americans of dubious mental stability are bombarded by an ever-intensifying American media preoccupation with violence and simple-minded vigilante solutions to the ills of society, real or perceived. This vigilantism was originally cloaked in the romantic and democratic trappings of the frontier West. The process by which this ethic spread to the entire nation in the twentieth century would make a fascinating study in media manipulation.

Taking a fifty-year period in America, beginning in the 1960s, it is alarming to realize that these twisted vigilante "massacres" are escalating each decade, with no solution in sight. The first decade of the twenty-first century witnessed more of this madness, unquestionably made worse by the vehemence of the NRA in placing its very considerable influence and

money behind its argument that no gun, however absurdly lethal, should be restricted. The *Economist* commented that in the worst peacetime shooting in American history to that date (the Virginia Tech killings in 2007), a 9mm Glock pistol was used, a handgun available only to the police in virtually any other developed country but easily acquired over the counter at thousands of US gun shops.<sup>81</sup> The decade would end with the Fort Hood killings, thirteen killed and twenty-nine wounded.<sup>82</sup>

The second decade of the twenty-first century gives every indication of living up to and exceeding every other. In just the first year and a bit, there were five “massacres.”<sup>83</sup> Then, on July 12, 2012, in Aurora, a suburb of Denver, James Eagan Holmes, killed twelve and wounded seventy in a packed movie theatre. The setting for this shooting was the initial midnight screening of the latest Batman movie, *The Dark Knight Rises*.

The most bizarre aspect of this killing spree was that the killer, a twenty-four-year-old medical graduate student at the University of Colorado, had dyed his hair orange, dressed in black combat gear, and called himself the “Joker.” His shooting began in a very violent segment of the film, so that many patrons, at first, thought he was part of a publicity stunt. As with so many of these massacres, he carried perfectly legal firearms – a Remington 12-gauge Express Tactical shotgun, a .40-calibre Glock pistol, and a Smith & Wesson M&P 15 (Military and Police) version of the AR-15 semi-automatic assault rifle with a 100-round drum magazine. (Another Glock pistol was found in his car.) The M&P 15 is classified as a hunting rifle!<sup>84</sup> According to some of his classmates, Holmes had been threatening to kill people for some time, but he still had no difficulty acquiring his arsenal. An effective background check might well have stopped this awful killing.

Batman is the ultimate vigilante figure, together with Superman and Spiderman. Collectively, they are unique American creations and say much about America’s vigilante obsession. Batman films depict the ultimate in mass violence. Surely, there must be a connection between the crazed world of the Joker and the equally crazed little world of the man who left his booby-trapped apartment to go and shoot up the opening night of a movie. Hollywood has a lot to account for, though it did show an unexpected sensitivity in cancelling a movie trailer that was to accompany the Batman film. The movie *Gangster Squad* depicted a scene in which the main characters shoot up a movie theatre with machine guns. Also, it delayed the release of *Batman Incorporated*, in which a female agent, disguised as a teacher, brandishes a handgun in a classroom full of children. There is a lot on the heads of these Hollywood producers who are making fortunes by churning out films of ever-increasing violence, most of them with the simplistic theme of

vigilante justice triumphing in the end. Recently, it has been found that the violence in PG (parental guidance) movies has increased alarmingly. The furor over the Batman killings had hardly subsided when one of the worst killings yet hit the cozy little community of Newtown, Connecticut. On December 14, 2012, Adam Lanza, armed with the usual arsenal of deadly weapons, killed twenty children and six staff members of the Sandy Hook Elementary School, after first killing his mother. He then killed himself. Once again, it was a case of an unhinged man having easy access to weapons of mass destruction, in this case his mother's dozen guns. She was a rather extreme gun enthusiast who had taught her son how to shoot her Bushmaster XM 15 semi-automatic rifle, with which he eliminated twenty-seven lives before taking his own.

The murder of so many small children shocked a nation hardened to such killings. As the *Economist* commented, "If America is ever to confront its obsession with guns, that time is now.... If even the slaughter of 20 small children cannot end America's infatuation with guns, nothing will." Well, nothing did. President Obama was very moved by this mass slaughter and vowed that he would make gun control one of his top priorities. He was spectacularly unsuccessful. Despite a poll indicating that 85 percent of Americans favoured background checks on gun purchases and 55 percent supported a ban on assault weapons and high-capacity clips, his efforts were defeated.<sup>85</sup> Once again, the NRA went into high gear to counter the president's attempt to limit semi-automatic rifles with large clips and to initiate meaningful background checks on firearms purchasers. The NRA argued that these checks could lead to a national gun registry, the prelude to confiscation. Obama failed, despite clear evidence that a large majority of Americans backed his proposals.<sup>86</sup> But this outcome was to be expected. According to one newspaper, the Sandy Hook shooting was the sixty-seventh mass school shooting since 1974. The *Globe and Mail's* editorial "Gun Sickness" argued that this sort of issue could not be resolved by legislation; America's gun culture was too thoroughly entrenched.<sup>87</sup> In the wake of Sandy Hook, American gun manufacturers had record sales, as Americans rushed to stock up before possible gun legislation could come into effect. Gun shows did a booming business, especially in the sale of assault rifles.

After allowing the anger over Sandy Hook to subside, the NRA announced its solution to the Sandy Hook killings – more guns! If the teachers had been armed, it argued, the killings would not have happened. The NRA's executive director, Wayne LaPierre, proposed that principals be armed and tutored in the art of killing the bad guys. As well, a special police officer should be placed in every school, the officer's salary to be paid

for by cuts to foreign aid.<sup>88</sup> Texas Republican Congressman Louie Gohmert weighed into the debate with the helpful suggestion that, if the elementary school principal at Sandy Hook had been armed with a high-powered rifle, she could have taken the “killer’s head off.” Gohmert also urged the carrying of concealed weapons in daycares and churches.

Perhaps this is the moment to reflect on what might have been if the president’s legislation had passed. The vital question hangs there: Could gun control, at this point in America’s history, have any hope of success? To help answer this question, some comparisons are instructive. In 1996 a mass killing similar to that in Sandy Hook happened in Dunblane, Scotland. Thomas Hamilton killed sixteen children and a teacher and then committed suicide. This slaughter led to the Conservative government of John Major bringing in strict gun laws, which were later further tightened by Tony Blair’s Labour government. There was a clear political consensus that guns should be restricted. After Dunblane, Britain’s murder rate dropped significantly, so that Britain now has one of the lowest murder rates by firearms in the developed world.<sup>89</sup>

In the same year as the Dunblane killings, a killing spree at Port Arthur in Tasmania resulted in thirty-five deaths, the worst firearms killing in Australian history. Within weeks, the Australian government, like Britain, imposed strict gun laws, including a ban on all automatic and semi-automatic rifles and a mandatory buy-back of these illegal weapons. In the eighteen years before the new law, there had been thirteen mass killings in Australia; in the fourteen years since 1996 (to 2010), there has not been a single mass shooting. Also, the murder rate from 1996 to 2006 has dropped by almost 60 percent.<sup>90</sup>

Much the same story applies to South Africa, which had a gun culture very similar to America’s. Much stricter gun legislation was imposed in 2004. Between 2004 and 2013, gun-related crimes have dropped 21 percent, while general crime has remained the same.<sup>91</sup> And then there is Japan, where the general population have no guns. There are virtually no gun killings in Japan.

When Canada is added to the debate, it would seem to be very hard to argue against the simple conclusion that stricter gun laws result in significantly lower murder rates. And Canada’s murder rate from firearms killings would be much lower if her border were not so porous. In Toronto alone in 2012, the police confiscated 2,000 illegal guns, most of which had been smuggled across the American border.<sup>92</sup> It is estimated that 70 percent of the illegal firearms currently in Canada came from the United States.<sup>93</sup> Gwynne Dyer, an international journalist, has argued that the gun murder rate in

the United States is twenty times the average rate in twenty-two of the top industrial countries.<sup>94</sup> Even if Dyer is only approximately accurate, half his estimate would still be a very shocking figure. Dyer concluded that there were two main reasons for this extraordinary murder rate: easy access to guns, an obvious reason, and instant celebrity, which points to a twisted vigilantism and the media's obsession with violence.

There can be no better evidence of the power of western vigilantism on current American society than Sarah Palin's message at a recent NRA convention that violent crime is down and gun ownership is at an all-time high. "So go figure." She is urging all Americans to be their own gun-totin' vigilantes, to go get a gun and stand their ground. Perhaps she hasn't actually read Walter Prescott Webb's *The Great Plains*, but his influence on modern vigilantism of this type is unmistakable.

Webb, the famous historian of the Great Plains frontier, is rightly renowned for his groundbreaking book, which, in 1931, argued that the one-hundredth meridian was the dividing line in America, an institutional fault line that divided East and West. Beyond this line, eastern institutions no longer worked; new institutions were required in a new landscape. Certainly, he was absolutely right in arguing that the 160-acre homestead in arid Wyoming was absurd and did great harm. But Webb also argued that criminal law had to change at the hundredth meridian. It is important to follow his argument in some detail because it, and others like it, have had, in popular form, a large influence on modern America. Webb wrote:

The West was lawless for two reasons: first, because of the social conditions that obtained there during [the frontier period]; secondly, because the law that was applied there was not made for the conditions that existed and was unsuitable for those conditions. It did not fit the needs of the country, and could not be obeyed.

[Because of the sparse population and lack of established law] Each man had to make his own law because there was no other to make it. He had to defend himself and protect his rights by the force of his personality, courage and skill at arms. All men went armed and moved over vast areas among other armed men. The six-shooter was the final arbiter, a court of last resort, and an executioner. How could a man live in such a milieu and abide by the laws that obtained in the thickly settled portions where the police gave protection and the courts justice. [Thus the reversal of English common law. On the frontier, a real man had no duty to retreat]. Could the plainsman go unarmed in a country where danger was

ever present? Could a man refuse to use those arms where his own life was at stake? Such men ... could not be cowboys or Indian fighters or peace officers or outstanding good citizens.

In the absence of law and in the social conditions that obtained, men worked out an extra-legal code or custom by which they guided their actions. The custom is often called the code of the West. The code demands what [Theodore] Roosevelt called a square deal; it demanded fair play. According to it one must not shoot his adversary in the back, and he must not shoot an unarmed man. In actual practice he must give notice of his intention, albeit the action followed the notice as a lightning stroke.... Thus was justice carried out in a crude but efficient manner, and warning given that in general the code must prevail.

Under the social conditions the taking of human life did not entail the stigma that in more thickly settled regions is associated with it. Men were all equal. Each was his own defender. His survival imposed upon him certain obligations which, if he were a man, he would accept.... Murder was too harsh a word to apply to his performance, a mere incident as it were. But how could an Easterner, surrounded and protected by the conventions, understand such distinctions....

Other forms of lawlessness arose because the law was wholly inapplicable and unsuited to the West.... Land laws were persistently broken in the West, because they were not made for the West and were wholly unsuited to any arid region.<sup>95</sup>

Webb's words are clearly not a lament; he had an extreme admiration for the ways of the West. His famous and powerful arguments are surely right on one count. Land law for the arid West was absurd and caused enormous friction. But, whatever can be argued about Webb's contentions about criminal law, he made it very clear that his argument pertained only to the arid western frontier, west of his fault line. The civilized East was entirely different. What has happened in America is that Webb's arguments for a western frontier code have been dragged east across his line, to be celebrated by Sarah Palin and millions more who think as she does.

Palin's invocation to the NRA convention urged Americans in the twenty-first century to take up the frontier code. She, like Webb, argued that Americans must arm themselves and take the law into their own hands because the law isn't functioning as it ought to. Webb made a strong distinction between law for settled regions and law for a raw frontier. But the power

of the Code of the West has transformed America into the only armed industrial nation on the globe. Palin's message to the NRA leads to the logical conclusion of Webb's frontier mantra. "Each man had to make his own law ... by the force of his personality, courage and skill at arms ... the six-shooter was the final arbiter, a court of last resort, and an executioner.... All went armed ... among other armed men.... Men were all equal. Each was his own defender." And finally, and most unsettling, "murder was too harsh a word ... a mere incident as it were.... the taking of human life *did not entail the stigma*" of a settled region. What would he be thinking now about Florida? Would he be appalled or delighted by the western frontier's hold on the country's system of justice?

Canada's western frontier experience makes nonsense of Webb's words. He was not describing a frontier in the abstract. His was a very specific frontier, made lawless for very specific reasons. It is the great tragedy of American society that the western myths were so powerful that a great many Americans of the twenty-first century continue to believe that Webb's frontier virtues can still – or ever did – form a workable blueprint for society. The Canadian frontier experience clearly illustrates that a frontier need not be violent and lawless. Webb was describing not so much a frontier as a general American state of the law in the nineteenth century, which profoundly influenced the development of their frontier. And their frontier law, in turn, had a direct and powerful influence on America's later legal development.

The Canadian western frontier, as well, was strongly influenced in its development by eastern Canadian society, and, in its turn, the Canadian western frontier had a powerful influence on later Canadian legal development. What other country has a police force, born and nurtured in the West, as one of its most important national symbols?

The Canadian West, for a start, has no vigilante tradition. Although Great Britain has had much violence in its past, a vigilante tradition never emerged, and an abhorrence for taking the law into one's own hands spread to her Canadian colonies. The legal institutions and traditions that reached the western Canadian ranching frontier were, in many ways, the opposite of those on the American frontier. For a start, the Canadian British North America (BNA) Act of 1867, which came into effect at Canadian Confederation, very deliberately reversed the legal philosophy of the American Constitution, which gave much of the control over criminal law to the individual states. In Canada, exclusive jurisdiction over criminal law remained with the federal government. Canada's prime minister at the time, Sir John A. Macdonald, stated, "We shall have one body of criminal law.... It is one of the defects of the United States system that each state has or may have

a criminal code of its own.” Macdonald was referring to the fact that in the United States there were “widely varying standards” between the states, and criminal law policy was divided between Congress and the individual states.<sup>96</sup> In Canada, even though the BNA Act gave the administration of justice to the provinces, all provincial laws relating to crime can be disallowed by the federal minister of justice. Ultimate power over the interpretation of criminal law was vested in the Supreme Court of Canada.

The critical issue for the western Canadian frontier was handgun policy. The first national handgun legislation came in 1892, which mandated that anyone carrying a handgun outside the home or business was obliged to have a certificate from a justice of the peace. But even before that, a special law for the Canadian West was enacted in 1885, in an attempt to keep the Canadian West from copying the lawlessness of the American West. It became necessary to have a permit from the Lieutenant Governor of the Northwest Territories to be in possession of a handgun or a rifle (shotguns were allowed without a permit). Ignoring the law could result in six months in jail.<sup>97</sup> The 1892 legislation also required all gun dealers to keep records of all handguns sold.<sup>98</sup> Even before that, the federal government had reacted swiftly to American gun culture by beginning to introduce a series of legislative controls on firearms.<sup>99</sup> The 1892 national legislation was tightened in 1913 and again in 1933, raising the penalty for carrying a handgun without a permit to a minimum of five years in jail.<sup>100</sup>

Between the two world wars, there was a rising concern in Canada that American pulp fiction and movies portrayed guns in a way that would encourage Canadian youth to copy a violent gun culture. And a majority of Canadians believed that it was the duty of the federal government to control the rise of violence in the atmosphere of the Great Depression.<sup>101</sup> Thus the Bennett government enacted two laws relating to handguns: in 1933, a jail sentence of up to five years for carrying a concealed weapon and, in 1934, a law requiring the registration of all handguns. The Mounted Police, now a national force, was able to develop a national handgun registry.<sup>102</sup> This registry was followed, in 1940, by a comprehensive firearms registry.

Handgun legislation was further tightened in 1969 after the killing of President Kennedy, his brother, and Martin Luther King, and again in 1979, adding a minimum of a year in jail for using a handgun in an offence.<sup>103</sup> In response to the political violence in the United States in the 1960s, the Trudeau government enacted laws banning a number of dangerous weapons and restricting access to firearms by the mentally ill. In 1979, a federal order in council placed the AR-15, America’s most popular gun, on the prohibited list.<sup>104</sup>

In the 1970s, the federal Ministry of the Solicitor General asked Martin Friedland, the dean of the University of Toronto law school, to prepare a study on gun control in Canada.<sup>105</sup> Friedland found that, for 1979, the per capita ownership of handguns in the US was ten times that in Canada, but the handgun murder rate in the US was twenty times that of Canada. In that year, there were 10,000 handgun murders in the US and fewer than sixty in Canada. New York, alone, had 900 handgun murders, Detroit, 300, and Boston, seventy-five. That year there were four handgun murders in Toronto. Roughly 50 percent of American murders were carried out with handguns. Friedland concluded that, because of strict handgun legislation in Canada, most Canadians felt no need to have a handgun for protection. But the US was so saturated with handguns that citizens were justified in feeling the need of one for self-defence.<sup>106</sup>

In 1991, the federal legislation put about two hundred types of guns on the restricted and prohibited list and placed limits on the size of magazines. The minimum age to acquire a firearm was raised to eighteen and a month-long waiting period for a gun permit was imposed before an FAC (firearms acquisition certificate) was granted. As well, the applicant had to supply two references.<sup>107</sup> One can just imagine the howls of outrage from the NRA if this sort of legislation had been attempted in the US. But, in Canada, a few years later, a Gallup poll found that 83 percent of Canadians favoured the regulation of all firearms.<sup>108</sup> There were, of course, opponents to this federal regulation because property and civil rights came under provincial jurisdiction. But the Supreme Court ruled unanimously for the federal government. The court dismissed the argument that gun ownership was a right. Instead, it was ruled to be a privilege, and the federal government trumped all with the POGG power argument – peace, order, and good government!

In 1995, the federal government, despite much resistance, passed Bill C-68, making Canada's gun control the toughest in the world. The bill required all firearms to be registered. Failure to comply was a criminal offence. The bill mandated a minimum four years in jail for some offences involving firearms. At first, 70 percent of Canadians supported the bill, but support weakened as it became clear that the management of the gun registry was deeply flawed. Very recently, the Conservative government has rescinded the bill.<sup>109</sup> But, until then, one of the most restrictive legislative regimes of universal gun registration in the world faced across the border a country with the highest level of gun-related violence in the world. Although Bill C-68 has been rescinded, the fact remains that these fierce federal statutes could be made law in the first place with relative ease because, unlike in the US, there was no dispute between political jurisdictions. The federal cabinet

system makes it far easier to pass controversial laws, such as this recent gun registry.<sup>110</sup>

There are also no powerful lobby groups such as the NRA, with its nine-storey headquarters in Washington, or a large gun manufacturing industry to exert significant pressure on federal firearms policy. As well, there is far less enthusiasm in Canada for unrestricted firearms and the carrying of handguns. For instance, a national Gallup Poll in 1975 found that 83 percent of Canadians favoured registration of all firearms, while only 67 percent of Americans did so. But the real difference is in an attitude toward handguns. The same poll found that 81 percent of Canadians wanted handguns prohibited, while only 41 percent of Americans favoured a ban on handguns. Actually, the astonishing fact that emerges from the above poll is that, in 1975 at least, two-thirds of Americans wanted firearms to be registered, yet the power of the NRA was able to block any meaningful policy.<sup>111</sup>

An important purpose of this study is to show that frontier law has had a significant influence on the development of the nation today. In the United States, the frontier gun mystique has persisted and blossomed. The frontier vigilante ethic has become a national ethic of an armed citizenry with an almost unlimited individual right to carry guns. In Canada, the Mounted Police, a police force that was created on the plains frontier, evolved into a national police force and, in the process, became one of Canada's foremost national symbols. The policies that the Mounted Police developed on the Canadian plains in the nineteenth century became national policies when the Mounted Police became a national police force in the twentieth century. Today, Canada's legal principles related to crime could not differ more from those of America's gun culture and vigilante ethic. Most Canadians believe that gun control is a core value in society, which differentiates Canadians from Americans. The two nations, in these vital areas, could not be farther apart.

Everett Johnson's life on the ranching frontiers of both Wyoming and Alberta puts in sharp focus the importance of both criminal and land law in the shaping of these two frontiers. Johnson witnessed the development and decline of the ranching frontier in Wyoming during most of the 1880s. He moved to Alberta in the late 1880s to escape the atmosphere of lawlessness on the Wyoming range. Although he had participated in the lynchings of cattle rustlers in Wyoming and had used his gun to deadly effect on a number of occasions, he hated what was becoming of Wyoming and decided to leave this atmosphere of violence for the more docile ranching frontier of Alberta, a frontier made relatively orderly and placid by very different principles of criminal and land law under Mounted Police jurisdiction. These

differing legal principles, as will be seen through Johnson's eyes, had a profound influence on the aura of the Alberta range. Johnson's life illuminates the critical importance of law in shaping the development and character of the two ranching frontiers at the height of their existence.

