



A FISTFUL OF PROPERTY RIGHTS (BOOK  
REVIEW)

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Terry L. Anderson & Peter J. Hill, *The Not So Wild, Wild West: Property Rights on the Frontier* Stanford University Press, 2004. Pp. 256.

Terry Anderson and P.J. Hill have written and taught about the role of property rights in the West for more than thirty years, together and separately.<sup>1</sup> Both played key roles in elaborating the crucial role of property rights in the history of the American West.<sup>2</sup> In this volume they draw on those thirty-plus years of study and teaching, as well as their personal histories as Montanans and descendants of pioneers, to give an account of the role of property rights on the frontier. Just as Sergio Leone remade the western beginning with the groundbreaking *A Fistful of Dollars*<sup>3</sup> to the film that summarized the themes of his prior work, *Once Upon a Time in the West*,<sup>4</sup> so Anderson and Hill have remade the history of the American West with their work, from their first article to this book. Their work shares three central features of Leone's: a realist's view of the West, recognition of nuance, and close-up

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<sup>1</sup> Their first joint article on the topic appeared in 1975. See Terry L. Anderson and Peter J. Hill, *The Evolution of Property Rights: A Study of the American West*, 18 J. L. & ECON. 163 (1975).

<sup>2</sup> Hernando de Soto has written eloquently of the importance of this. See HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* 46-62 (2000).

<sup>3</sup> *A FISTFUL OF DOLLARS* (United Artists 1964).

<sup>4</sup> *ONCE UPON A TIME IN THE WEST* (Paramount Pictures 1968).

views of the people and institutions of the West. Like Leone, they have remade our understanding of the West.

Most importantly, the authors offer a text accessible to most readers. Although they offer sophisticated economic insights, their writing is clear and their explanations are thorough enough that readers do not need graduate training to understand the analysis. The only concept likely to give non-economists trouble is that of economic rents, and the problem here is the unfortunate use of the word rent by the economics profession in a manner that confuses non-economists. An economic rent "is simply the value of a unique asset that cannot be reproduced."<sup>5</sup> For example, a box canyon into which animals can be herded produces economic rents.

As Anderson and Hill note, rents can be easily dissipated.<sup>6</sup> Rent dissipation plays a crucial role in the authors' analysis at several points, explaining, for example, the costs of the Homestead Acts.<sup>7</sup> The prospect of "free" land induced settlers to move west before settlement was economically feasible.<sup>8</sup> As a result, the homesteaders dissipated the rents that their homesteads generated through their suffering during the claim period.<sup>9</sup> Aside from confusion the terminology of rents may induce among non-economists, the book is a readable account of sophisticated concepts.

### I. Influences

Just as students of Leone's films catalog the influences on his career of Italian puppet-theater and comedy,<sup>10</sup> understanding the influences on Anderson and Hill is important to understanding their approach to the West. Anderson was a student of Nobel Laureate Douglass North and later introduced Hill to North's work. Their approach to economics builds on his crucial insights into the importance of institutions.<sup>11</sup> Unlike much of modern economic theory, Anderson and Hill's analysis takes seriously the problem of accurately capturing the details of the institutions involved rather than using incomplete descriptions as the basis for flashy techniques done for sizzle rather than substance. A fine example of this is their analysis of the changes in Native American institutions resulting from the introduction of horses and firearms after contact with Europeans.

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<sup>5</sup> TERRY L. ANDERSON & PETER J. HILL, *THE NOT SO WILD, WILD WEST: PROPERTY RIGHTS ON THE FRONTIER* 12 (2004).

<sup>6</sup> *Id.* at 13.

<sup>7</sup> *Id.* at 170-76.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See, e.g., CHRISTOPHER FRAYLING, *SERGIO LEONE: SOMETHING TO DO WITH DEATH* 9-10 (2000).

<sup>11</sup> Leone cared about institutions as well, perhaps because his aborted law studies gave him an appreciation for them. See *More Than A Fistful of Interview: Christopher Frayling on Sergio Leone*, <http://www.fistful-of-leone.com/articles/prof.html> (last visited June 11, 2005).

Anderson and Hill draw upon a wide body of research to show that contrary to the popular image of Native Americans as primitive communists, tribal property institutions generally included a mix of common and private property.<sup>12</sup> What fell into each category depended on particular circumstances.<sup>13</sup> Private rights dominated where the properties "were unique or . . . required long-term investment and care," such as piñon tree groves in the Great Basin; communal rights trumped where the properties required investment beyond the capacity of individuals, as with irrigation canals among the Pueblo.<sup>14</sup>

The arrival of Europeans and the introduction of horses and firearms changed how tribes held property for several reasons.<sup>15</sup> First, European demand for hides and furs changed prices.<sup>16</sup> Controlling hunting territories became worth more when they could yield valuable resources.<sup>17</sup> The production process changed radically. "The Indians' response to the revolutionary impact of the horse was to devise new, efficient institutions and property rights because the evolutionary process took place in small groups in which people had a stake in the outcome."<sup>18</sup> On the Great Plains, horses reduced scale economies by allowing smaller groups to hunt more efficiently.<sup>19</sup> The animals killed were used less intensively, the average size of tepees increased, and tribes ranged over larger territories.<sup>20</sup> The introduction of the horse also led to more frequent contact and conflict over rights to buffalo herds.<sup>21</sup> Those conflicts gave tribes the military institutions that enabled them to resist white incursions into the plains.<sup>22</sup>

Anderson and Hill's account of the impact of the horse demonstrates the virtues of close attention to institutional detail. A second important feature of their analysis demonstrates the importance of another influence: Coasian analysis. Nobel laureate Ronald Coase remade economic theory when he published *The Problem of Social Cost*<sup>23</sup> and *The Nature of the Firm*.<sup>24</sup> Coase stressed the importance of transaction costs in understanding why some transactions occur in the market and others occur in firms or government. Anderson and Hill employ transaction cost analysis to explain western water law institutions. Water rights in the West differed dramatically from water rights east of the Mississippi River.<sup>25</sup> In the East, water law grew out of English common law and emphasized shared rights to relatively plenti-

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<sup>12</sup> ANDERSON, *supra* note 5, at 38-43.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 39.

<sup>15</sup> *See id.* at 44.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *See id.* at 49.

<sup>20</sup> *Id.* at 48-49.

<sup>21</sup> *Id.* at 50.

<sup>22</sup> *Id.* at 52.

<sup>23</sup> Ronald Coase, *The Problem of Social Cost*, 3 J. L. & ECON. 1 (1960).

<sup>24</sup> Ronald Coase, *The Nature of the Firm*, 4 ECONOMICA 386 (1937).

<sup>25</sup> ANDERSON, *supra* note 5, at 178-80.

ful water.<sup>26</sup> In the West, where water was scarce, a doctrine of prior appropriation developed that gave individuals rights to exclusive use of water with priority based on the time of first appropriation.<sup>27</sup> Moreover, different areas of the West developed remarkably different institutions to manage water rights: public irrigation districts in some areas and private irrigation companies in others.<sup>28</sup>

Why did some institutions appear in some places and not others? For example, throughout the West, states created procedures under which landowners could organize irrigation districts, government entities which could issue bonds.<sup>29</sup> Where land ownership was fragmented, these districts lowered transaction costs of constructing irrigation projects that would benefit multiple landowners and solved externality problems caused by the interconnectedness of water resources.<sup>30</sup> Despite these advantages, irrigation districts did not take hold until state governments took additional steps.<sup>31</sup> California's creation of a Bond Certifications Committee in 1911, for example, "lowered the costs of obtaining capital by providing information about the reliability of bonds of different irrigation districts."<sup>32</sup> Similarly, the different regulations applied to private and public irrigation districts in California provided an incentive to use the public rather than the private entities.<sup>33</sup>

A final crucial influence is public choice theory. Pioneered by Nobel laureate James Buchanan and Gordon Tullock in their seminal *The Calculus of Consent*,<sup>34</sup> public choice applies economic theory to politics. Anderson and Hill use public choice theory to explain the shift from trade to conflict in relations between whites and Native Americans over the course of the nineteenth century.

After American independence, the United States relied primarily upon local militia units.<sup>35</sup> "This meant that the costs of fighting rather than negotiating redounded closer to home, where individuals had to consider the prospect of losing their own or their family's lives."<sup>36</sup> Not surprisingly, relations with Native American tribes were relatively peaceful as a result. Once a standing army appeared after the Mexican War, however, the cost of fighting "shifted...to others and predictably increased the number of battles."<sup>37</sup> After both the Mexican and Civil Wars, "the 'Indian problem' provided a way for military special interests to slow" demobiliza-

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 182-89.

<sup>29</sup> *Id.* at 186-87.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 187-88.

<sup>33</sup> *Id.* at 188.

<sup>34</sup> JAMES M. BUCHANAN & GORDON TULLOCK, *THE CALCULUS OF CONSENT: LOGICAL FOUNDATIONS OF CONSTITUTIONAL DEMOCRACY* (1962).

<sup>35</sup> ANDERSON, *supra* note 5, at 63.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

tion.<sup>38</sup> Individual officers maintained brevet ranks and pay while fighting Indians, soldiers generally benefited from faster promotions, communities near forts benefited from military spending, and frontier communities benefited by using the military to seize land from tribes.<sup>39</sup> "In short, the Indian wars stemmed in large part from a strong coalition of professional soldiers, politicians, suppliers, and citizens."<sup>40</sup>

## II. Setting the Scene

Leone's westerns were innovative because they reconceptualized the western genre by taking a fresh look at familiar themes. For example, Clint Eastwood's "Man with No Name" character in *A Fistful of Dollars*<sup>41</sup>, *For a Few Dollars More*<sup>42</sup>, and *The Good, The Bad, and The Ugly*<sup>43</sup> presented the lone gunfighter as a more morally complex character than Alan Ladd's gunfighter in *Shane*.<sup>44</sup> Anderson and Hill utilize economic analysis to shed light on the familiar story of the settlement of the western frontier. In particular, they ask some key questions: "What motivated people to change the rules? Why did they choose one set of rules over another? Who got the new property rights that were being formed? How did the new rules affect whether people engaged in peaceful, productive trade or in violent takings?"<sup>45</sup> Framing their analysis around these questions, the authors enable us to see the West in a new light.

The first step is to define the frontier; Anderson and Hill define it as the place where "the margin between the time or place where resources have no value and the time or place where they have positive value."<sup>46</sup> Crucially, "what counts as the frontier for one individual or group might not do so for another because it depends on values rather than on geographic features."<sup>47</sup> The usefulness of this definition is readily apparent: it transforms the historical account of the nineteenth century American West into a means of understanding other, similar margins in our society. They do this in their concluding chapter, "New Frontiers," which applies the lessons of the West to environmental issues, new technologies, and developing countries.<sup>48</sup>

The second step is to "predict the past" — to offer testable hypotheses about the West. Anderson and Hill derive seven hypotheses from their theory: (1) as resource values rise, institutional entrepreneurs will invest more in creating, rear-

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 64.

<sup>40</sup> *Id.*

<sup>41</sup> *A FISTFUL OF DOLLARS*, *supra* note 3.

<sup>42</sup> *FOR A FEW DOLLARS MORE* (United Artists 1965).

<sup>43</sup> *THE GOOD, THE BAD, AND THE UGLY* (United Artists 1967).

<sup>44</sup> *SHANE* (Paramount Pictures 1953).

<sup>45</sup> *ANDERSON*, *supra* note 5, at 10.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 10-11.

<sup>48</sup> *Id.* at 201-12.

ranging, and redistributing property rights; (2) if technical change lowers the costs of defining and enforcing property rights, more effort goes into those activities; (3) technological change in production will produce new contractual arrangements; (4) if resources are mobile over large areas, production requires large areas, or there are scale economies in the use of force, size of the collective unit will be larger; (5) smaller units are likely to reduce transactions costs by giving members a greater stake in residual rents; (6) larger units are more likely to create differential advantages in the use of force and are so more likely to be used for redistribution; and (7) because agency costs increase with the size of the unit, with the difficulty of exit, and with heterogeneity of members, larger units are more likely to engage in redistribution.<sup>49</sup>

An example of the power of their approach is their account of the impact of federal land distribution policies. The authors survey the Homestead Acts, the changing federal policies toward the Cherokee Strip, and the role of cattlemen's associations in managing the public domain on the Great Plains. They show why the frontier moved west when it did and how the various land disposal laws affected behavior. Using the hypotheses listed above, Anderson and Hill are able to give a comprehensive account of the behavior of homesteaders, cattlemen and government land bureaucracies that explains the emergence of tragedies of the commons and wasteful races for property rights.<sup>50</sup>

### III. A Realist's View of the West

One critical innovation introduced by Leone's westerns was the realistic view of the West. "The element that differentiates *A Fistful of Dollars* from the majority of its predecessors is its gritty, un-romanticized view of the Old West. Although there are some grandly impressive landscape shots, Leone is more concerned with emphasizing the dirt and grit of this setting than its scenic beauty."<sup>51</sup> Leone's attention to detail included importing dirt from the American West to his sets in Spain to ensure that the color was right.<sup>52</sup> Like Leone, Anderson and Hill present a realist's view of western institutions and people.

In their chapter "Cowboys and Contracts," they draw on a wide range of sources to explain the changing cattle industry.<sup>53</sup> The vast herds that grazed in the Great Plains after the Civil War result from a number of important changes from outside the region: railroads reaching west created a cheap means of selling to eastern markets, the seizure of Indian lands by the army opened the range, and the growth of untended herds in Texas during the Civil War supplied cattle.<sup>54</sup> Without

<sup>49</sup> *Id.* at 33.

<sup>50</sup> *Id.* at 175-76.

<sup>51</sup> James Berardinelli, *Review: A Fistful of Dollars*, (1999) <http://movie-reviews.colossus.net/movies/f/fistful.html>.

<sup>52</sup> This is discussed in the documentaries accompanying *Once Upon a Time in the West*, *supra* note 4.

<sup>53</sup> ANDERSON, *supra* note 5, at 138-58.

<sup>54</sup> *Id.* at 138-39.

the activities of institutional entrepreneurs, who created the contracts and other institutions that made moving millions of cattle north from Texas possible, the range cattle industry would never have grown.<sup>55</sup>

Cattle owners had to find ways of insuring that the drovers exercised proper care in a risky world. They had to contract with skilled cowboys to prevent the cowboys from opportunistically threatening to leave the drive unless they received higher pay. In order to drive the large herds across private land, cattle owners had to contract with landowners to compensate them for the damage the herds might cause. Once the cattle were settled in the new territories, questions arose regarding who owned the cattle, how the owner's rights would be enforced, and how cattle companies would be organized. Again, the West became a crucible for institutional change.<sup>56</sup>

Resolving these complicated incentive problems required westerners to develop new institutions and adapt to technological change. The men and women who created successful institutions that solved problems played the role of institutional entrepreneurs. They "recognize[d] [the] potential gains from establishing property rights and act[ed] to establish rules that will allow the gains to be realized . . ."<sup>57</sup> Institutional entrepreneurs benefited from three kinds of activities: "(1) reorganizing existing property rights, (2) defining new property rights where they do not exist, and (3) redistributing existing property rights."<sup>58</sup> A crucial difference between these behaviors is that the latter reduces overall welfare while the former two increase it.<sup>59</sup> At its heart, *The Not So Wild, Wild West* is an account of how these institutional entrepreneurs created the institutions that shaped the West.

Realism in film is often associated with graphic violence and Leone's films are famously violent. However, the cinematic portrayal of the West as a violent series of shootouts and raids by criminal gangs is inaccurate, and the account Anderson and Hill present is a far less violent West than a Leone film. This is not to deny the importance of the *threat* of violence; as Anderson and Hill note, "the six-gun was the technology that gave equal power to nearly everyone . . ."<sup>60</sup>

Why was the real West not as violent as movie westerns? Violence is a negative sum game—one in which the total welfare is decreased (people are killed and wounded, property is damaged) to redistribute wealth from the robbed to the thief. Trade, on the other hand, is a positive sum game, one where the total wealth

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<sup>55</sup> *Id.* at 138.

<sup>56</sup> *Id.* at 139.

<sup>57</sup> *Id.* at 18.

<sup>58</sup> *Id.* at 19.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 29.

of the participants is greater at the end than at the start.<sup>61</sup> It is easy to see why the latter is preferable to the former, since changing from violence to trade renders everyone better off.

Nonetheless, the West was not an entirely peaceful place. When violence did occur in the West "it usually took one of two forms. First, violence, or more precisely coercive power, was used by private persons and institutions to defend property rights against intruders .... Second, violence manifested itself through the exercise of government power to take assets from others."<sup>62</sup> The authors' realistic portrayal of the role of violence in the West will help undermine the myth of the Western.

#### IV. Recognition of Nuance

Before Sergio Leone, many westerns tended toward characters that lacked moral nuance.<sup>63</sup> Leone's films took a different approach:

His characters are not clean-cut good guys and black-to-the-core bad guys, either. [Clint Eastwood's character in *A Fistful of Dollars*] is out for himself, and, on those rare occasions when he experiences pangs of conscience, he's almost ashamed of them. Most traditional Westerns have clearly defined lines separating heroes from villains; only in Spaghetti Westerns do both sides begin to stray into the gray areas in between.<sup>64</sup>

Like Leone, Anderson and Hill present a nuanced view of the motivations. Westerners are neither the white hat wearing heroes of many early accounts nor the black hat wearing villains of more recent accounts of the west as a tale of villainous European conquest.

A fine example of the authors' recognition of nuance is their account of wagon train governments. Three hundred thousand people crossed the continent in wagon trains between 1840 and 1860, trips that averaged more than five months.<sup>65</sup> Crossing in groups lessened the risks and increased the chances of success. Overall, "[c]ooperative behavior characterized the trip West because individuals gained from it."<sup>66</sup> But coordinating the crossing also created agency problems within the group. Wagon trains adopted different forms of organization and, Anderson and Hill find, the governance structures chosen varied systematically with the goals of

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<sup>61</sup> See *id.* at 4.

<sup>62</sup> *Id.* at 5.

<sup>63</sup> There were exceptions, of course, such as the masterful films of John Ford.

<sup>64</sup> Berardinelli, *supra* note 51.

<sup>65</sup> ANDERSON, *supra* note 5, at 120.

<sup>66</sup> *Id.* at 129.



the groups.<sup>67</sup> Farmers heading for Oregon chose different governance than did those seeking their fortunes in the California gold fields.<sup>68</sup> The insights they derive from their analysis of wagon trains would not be possible without a careful attention to detail.

Moreover, one of the most common complaints about economic analysis by non-economists is that economics reduces everything to economics. One of the virtues of the careful institutional analysis in this book is that it does not do so, leaving an important role for culture and morality. Yet while they go well beyond a standard neoclassical economic approach, Anderson and Hill do not dilute the power of the economic model by postulating a host of additional considerations which eliminate all predictive power. Thus, for example, they conclude that "moral constraints reduce transaction costs by inducing people to abide by their contractual obligations and to refrain from taking other people's property."<sup>69</sup> This keeps the focus on the critical factor of transactions costs; the insights offered broaden the scope for economic analysis while not neglecting the extraordinary explanatory power of economics.

#### V. Close-ups

The third important parallel between Leone's films and Anderson and Hill's book is the focus on the close-up.

Leone also makes frequent use of the close-up, and oftentimes his characters are shown to be sweating and bleeding. Traditional Westerns tend to present violence as relatively clean and bloodless; Leone makes it messy. This approach adds a little more tension to the gunfights. There's not such a sense of surety that the protagonist will (or, in some cases, should) win.<sup>70</sup>

Anderson and Hill bring us close to western institutions, showing them "sweating and bleeding" and so presenting them in a realistic light.

Throughout the book the authors are careful to balance their higher level analysis with carefully selected primary source accounts and factual details that make the institutions discussed concrete. Rather than simply offering anecdotes, however, Anderson and Hill use the accounts of participants to illustrate the insights that their economic analysis provides. Not only does this make reading the book more interesting, but it ties the economics to the experiences of the men and women who lived through the time, lifting the account from post-hoc rationalization to a means of making sense of the lives of real people.

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<sup>67</sup> *Id.* at 127.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 15.

<sup>70</sup> Berardinelli, *supra* note 51.

## VI. Production Credits

Finally, there are some basic elements of a book review for which the reader has undoubtedly been waiting. Most importantly, is this a book that is enjoyable to read? Yes. The prose is sparse and elegant, much like the images in a Leone western and unlike much academic writing. Not all the credit for this goes to the authors—they tell some great stories and the West itself is responsible for some of the pleasure in reading this book. It is no accident that the genre of the western has produced so many classic films and novels. But there are certainly many academics that could have sucked the life from even such gripping material, and Anderson and Hill deserve much credit for evoking the atmosphere of the west as well as the institutions. Put another way, how many academic books begin with a sentence as interesting as “On a cold April morning in 1892, Peter Jensen walked to a Denver livery stable, saddled the horse he had just bought, tied on all his earthly belongings, and set off to seek his fortune in Montana”<sup>71</sup> It is a shame that more do not.

The possible academic uses of the book are varied. The book is obviously suitable for use in a course on property rights, as the economic analysis is readily accessible even to non-specialists. (There is only one graph and thirteen tables; these are almost perfectly off-set for the math-phobic by the five maps and nine paintings and photographs.) Advanced undergraduates and graduate and professional students can all make ready use of the material. Moreover, because of the prominence of Western narratives in American culture, the historical examples will have a ready resonance with the reader. And, because many of those well-known narratives in movies and novels present a misleading account of the actual history of the west, discovering the real history and reexamining the myths through the book is likely to teach valuable critical thinking skills.

In short, this book is a tremendous addition to the Western history, economic history and property rights literatures. Anyone who is concerned with those subjects should read *The Not So Wild, Wild West*. Its relevance goes beyond these subjects as well. It is no accident that Anderson and Hill’s work on western institutions led them to become leading figures in the “new resource economics,” a field that grew up in the late 1970s to reassess the way economists thought about the role of institutions. Anderson coauthored *Free Market Environmentalism*,<sup>72</sup> the definitive statement of the implications of this school of thought for environmental law and policy, in 1991 and both have produced extensive scholarship on a variety of environmental and natural resource questions. There is a direct line between understanding how institutions created today’s world and thinking about how institutions today will produce tomorrow’s world.

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<sup>71</sup> ANDERSON, *supra* note 5, at 1.

<sup>72</sup> TERRY L. ANDERSON & DONALD R. LEAL, *FREE MARKET ENVIRONMENTALISM* (1991).