

I

Introduction

THE DUAL FACE OF AMERICAN VIOLENCE

On the evening of October 6, 1866, just outside the southern Indiana town of Seymour, several armed and disguised men made their way onto the eastward-bound mail car on the Ohio and Mississippi line. Brandishing pistols, they demanded that the messenger for the Adams Express Company – one of the most important shipping firms in the nation – open the company’s safes. The messenger, E. B. Miller, handed over the keys, and the armed men rifled through a small safe in the car, procuring somewhere between \$12,000 and \$15,000 worth of valuables and money. Miller lacked the keys to the other, larger “through” safe, so the men, noting the box was attached to wheels, rolled it to the edge of the car and pushed it over the side. After binding and gagging the employee, the men pulled the bell signal for the brakes, waited for the train to slow, and jumped off the car into the night. The world’s first moving train robbery had – so far – been a success.¹

After the train stopped and a route agent for the Adams Express Company discovered the bound Miller, he too exited the train and made his way the half mile or so back to Seymour. There, presumably contacting the town constable, he raised a *posse*, which, though finding the unharmed safe near the tracks, was unable to locate the bandits themselves.

The route agent’s response was the normal way of handling such an event in the mid-nineteenth century. A victim of a robbery would issue a complaint with the nearest law officer (usually a sheriff or constable), who would then procure a warrant and arrest the suspect. In the event a larger force was needed, the officer would raise a *posse comitatus* of local citizens, who would be granted temporary police powers of arrest. If the suspect was fleeing or posed

¹ *Louisville Daily Journal*, October 8, 1866; October 16, 1866.

an immediate risk, in turn, the victim could raise a “hue and cry,” through which an officer of the peace and surrounding citizens would be responsible for arresting and detaining the suspect. The failure of the *posse* to find the bandits was unfortunate, but given the amateur participatory nature of law enforcement, perhaps unsurprising.

The story, however, did not end there. The Adams Express Company offered a reward of \$5,000 for the capture of the thieves and also enlisted the aid of several private detectives, John Egan (from St. Louis) and Larry Hazen (from Cincinnati), who made their way to Seymour. Once there, they (somewhat surprisingly) were easily able to identify prints from the train leading to the house of Wilkinson Reno, the patriarch of a notorious local family. Though they were able to secure warrants on October 10, the detectives had a strangely difficult time getting local officers to help them with the search of the Reno property.²

The detectives undoubtedly knew that Seymour – where the O & M railroad intersected the Jefferson, Madison, and Indianapolis line – had developed a reputation as a den of “cut-throats and highwaymen,” largely due to the activities of what became known as the “Reno Gang.”³ The gang – composed of Wilkinson’s sons, as well as a number of other affiliates – had already been connected to a counterfeiting and horse thievery ring, as well as a number of bank and safe robberies in the areas surrounding Seymour since the end of the Civil War. The detectives’ suspicions immediately centered on three men: Wilkinson’s sons John and Simeon, and their associate Frank Sparks. Undeterred by the lack of help among local residents, the detectives arrested the three themselves, taking them to nearby Brownstown for safekeeping.⁴

Despite the arrests, the robbery of October 1866 was only the first foray in a renewed crime spree that would rock the lower Ohio River valley over the next two years. The Reno brothers and Sparks were able to post bail and joined their compatriots in a series of robberies and thefts, including ransacking numerous county treasuries and attempting to rob at least two more trains. In all, the Reno Gang made out with tens of thousands of dollars in banknotes and other valuables, almost none of which was recovered.

The scope of the crimes became a major problem for both the Adams Express Company and local residents. The railroad made it possible not only for the Reno Gang to rob wealth concentrated within specific points of transit but also to escape quickly, thereby outstripping the capacity of local sheriffs and *posses* to mount an effective response. And Seymour, like many areas in the

² Rachel Dickinson, *The Notorious Reno Gang: The Wild Story of the West’s First Brotherhood of Thieves, Assassins, and Train Robbers* (Guilford, CT: Lyons Press, 2017), 95–96; *Louisville Daily Journal*, October 16, 1866.

³ *Seymour Times*, August 3, 1865.

⁴ Robert Frederick Volland, “The Reno Gang of Seymour” (master’s thesis, Indiana University, 1948), 114.

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border areas separating north from south after the Civil War, was coping with a number of other challenges. Discharged soldiers and transient laborers frequently made their way through town (becoming prime targets for con artists and thieves), political tensions were running extremely high, and – just as in the South, where the Ku Klux Klan initiated a campaign of terror in Tennessee, Kentucky, and Arkansas, as well as several other states in the run-up to the 1868 elections – Indiana was experiencing a wave of private violence and general disorder.⁵

By mid-1868, both the Adams Express Company and some residents of Jackson County (home of Seymour) began to organize a more robust response to the Gang's activities. In addition to Hazen and Egan, the Adams Express Company enlisted the aid of the famed Chicago-based private security firm, Allan Pinkerton's National Detective Agency, which coordinated a regional hunt for the gang members. Working closely with local sheriffs and police departments, Pinkerton agents arrested several members of the gang in the aftermath of a repeated attempt to rob the O & M line in July 1868, as well as John Reno following a raid on a county treasurer's office in Gallatin, Missouri, in late 1867. (Gallatin was also the site of Jesse James's first robbery the following year.)⁶ Perhaps most famously, the agency tracked down several of the gang members (including Frank Reno) to Windsor, Ontario, in 1868, where they worked with the US state department to secure their extradition and transport back to Indiana for trial.⁷

This private detective industry was part of a transformation in policing in the mid-nineteenth century characterized by the growth of new bureaucratic, municipal police departments (replacing the traditional town night watch) and a battery of private detective and security firms emerging in cities throughout the nation.⁸ These forces, composed of full-time experts rather than ordinary citizens, patrolled public space, mobilized to suppress ethnic, racial, or labor "disorder", investigated crimes stemming from migration and the growth of the market, and generally oriented themselves to managing the growing cities. Crucially, there were important links between the municipal departments and the private detective agencies; Larry Hazen, for instance, had been a police chief in Cincinnati during the Civil War, while Egan was a longtime St. Louis

⁵ Emma Lou Thornbrough, *Indiana in the Civil War Era, 1850–1880* (Indianapolis: Indiana Historical Society, 1965), 203–205, 270–272; Allen W. Trelease, *White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction* (New York: Harper & Row, 1971), 28–185.

⁶ Volland, "The Reno Gang of Seymour," 151–168; Cleveland Moffett, "The Destruction of the Reno Gang: Stories from the Archives of the Pinkerton Detective Agency," *McClure's Magazine* 4, no. 6 (May 1895): 549–554.

⁷ Volland, "The Reno Gang of Seymour," 225–253.

⁸ Eric H. Monkkonen, *Police in Urban America, 1860–1920* (Cambridge: Cambridge University Press, 1981), 49–64; David R. Johnson, *Policing the Urban Underworld: The Impact of Crime on the Development of the American Police, 1800–1887* (Philadelphia: Temple University Press, 1979), 59–64.

municipal detective with experience hunting forgers and thieves across the Midwest.⁹ While the Adams Express Company depended on these agents who could easily cross jurisdictions and centralize intelligence, the private detectives, in turn, coordinated their efforts with expert police officers nested in cities like Indianapolis.¹⁰

Residents of Seymour, on the other hand – apparently deciding that they could not rely on a small force of private detectives – turned to another solution: private vigilantism. Led by a number of eminent citizens (likely including the town’s mayor), a group organized the Jackson County Vigilance Committee in the middle of the summer of 1868 to address the crime problem more locally.¹¹ Despite the efforts of the Pinkerton agents and law officers throughout the Midwest (which had, indeed, yielded a number of important arrests), the committee contended that the “laws of our State are so defective that ... they all favor criminals going unwhipt of justice.”¹² Ten days after the gang’s train robbery on July 10, 1868, the vigilantes decided to take action: over two hundred hooded figures stopped a train holding three members of the Reno Gang on their way to arraignment in nearby Brownstown, and – while threatening the Pinkerton guards keeping an eye on the men – hung the gang members on a nearby farm.¹³ Five days later, three other members of the gang, caught in Illinois and held in Brownstown temporarily until facilities in Seymour could be secured for their arrival, were also killed, again by the Vigilance Committee.¹⁴ Most spectacularly, following the arrest and extradition of Frank Reno and Charlie Anderson from Canada in December later that year (and their reunion with William and Simeon Reno, who had been captured in Indianapolis earlier that summer), the committee attacked the jail in New Albany, Indiana, where the men were being held and lynched them summarily.¹⁵

The story of the Reno Gang points to a key transformative moment in the history of organized violence in the United States. Indiana in 1868 – situated at both the geographical juxtaposition of the south, west, and north, and at a moment of great social and political upheaval – represents a microcosm of the ways in which the older, republican notion that ordinary citizens were responsible for collective security were decomposing into separate (but relatively equal) public and private forms of violence. On the one hand, both local and state governments throughout the nation were revolutionizing their approaches to organizing coercion; in addition to municipal police forces in

⁹ *Cleveland Morning-Leader*, February 10, 1862; *Leading Manufacturers and Merchants of Cincinnati and Environs* (New York: International Publishing Company, 1886), 134.

¹⁰ Volland, “The Reno Gang of Seymour,” 114.

¹¹ *The Wabash Daily Express*, July 13, 1868; *ibid.*, 126–150. Volland contends that the group had been active as early as 1865.

¹² *ibid.*, plate xxv. ¹³ *ibid.*, 197–200. ¹⁴ *Terre Haute, Weekly Express*, July 29, 1868.

¹⁵ *New Albany Daily Ledger*, December 12, 1868; Volland, “The Reno Gang of Seymour,” 254–278.

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cities like Indianapolis and Chicago, states were adopting new forms of militia (such as the National Guard, which rose out of the labor and racial struggles of the 1870s). On the other hand, vigilantism – which would crest in the early 1870s before making a comeback in the terrible racial lynching campaigns of the 1880s and 1890s – and the private security industry indicated a shift toward, rather than away from, the notion that private interest should be at the forefront of how violence should be used in society. Private forms of administering punishment, such as citizens' vigilance groups, anti-horse thief associations branches, citizen policing initiatives, and private prosecution societies, would become even more prevalent through the turn of the century and beyond.

Moreover these two nineteenth-century developments – a large-scale increase in public, bureaucratic coercion with an equally large-scale expansion in private forms of violence – set in motion an institutionalized system of coercion that continues to characterize the organization of violence and criminal justice in the United States. The evidence of these two public and private forces working together can be seen everywhere. Private prisons in places like California, for instance, make a profit providing “solutions” to problems they themselves have a vested interest in seeing turned into matters of public criminal law. It is, according to geographer and activist Ruth Wilson Gilmore, impossible to make sense of the “carceral” state without taking into account these private actors.¹⁶ Or consider the fact that a larger-than-ever proportion of those buying guns do so for reasons of personal protection, even as public expenditures on corrections explode and crime rates decline.¹⁷ Even neo-vigilante movements like the Minutemen in Arizona – who “aid” Customs Agents by identifying and apprehending “illegal” migrants from Mexico and Central America – invoke an early American tradition of citizenship in which private actors self-consciously supported the state in law enforcement activities.¹⁸ They build on a rich tradition of tacit cooperation between private

¹⁶ Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007). Also see Kelly Lytle Hernández, *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771–1965* (Chapel Hill: University of North Carolina Press, 2017), 7–15.

¹⁷ Over 60% of those owning a gun do so for reasons of personal protection (a proportion that has increased considerably over the past thirty years). As of 2017, at least 40% of Americans live in a household with at least one firearm. Moreover, expenditures for corrections in American states *also* increased over 141% during that same period (from about 1986 and 2013), outstripping spending on other services like education. www.pewresearch.org/fact-tank/2017/06/22/key-takeaways-on-americans-views-of-guns-and-gun-ownership/, accessed November 29, 2017; Michael Mitchell and Michael Leachman, *Changing Priorities: State Criminal Justice Reforms and Investments in Education*, Center on Budget and Policy Priorities, October 2014, 7.

¹⁸ Harel Shapira, *Waiting for Jose: The Minutemen's Pursuit of America* (Princeton, NJ: Princeton University Press, 2013).

movements organized to use force to ensure moral or legal compliance and state police power.¹⁹

At the same time, these developments also create a theoretical puzzle for our conceptions of states and the protection they offer. Although it takes many forms and has many gradations, a monopoly over the legitimate capacity to define the organization of violence is for most political theorists the key defining attribute of the state.²⁰ Violence itself, of course, is a complex concept: some have limited their conception to the physical destruction committed by people intending to harm one another, while others believe violence can also be more indirect – a property, for instance, of inequality or racism (this book generally adopts the former conception).²¹ What many political theorists mean when they talk about violence is physical coercion: that is, the state should preserve within its own organizational apparatus (e.g., its own police or military forces) the power to use physical harm to defend against threats and to protect its subjects, and that those same powers should generally be denied to citizens themselves. Hence, even though most states preserve some legal right to, say, self-defense in emergencies (when agents of the state cannot reach a party in danger in time) or the right to physically discipline children, those rights are generally closely circumscribed by the law; in other words, the state is ultimately supposed to have the power to define which groups or individuals can and cannot use physical harm against one another.

This capacity to define the right to use force, however, becomes much more complex in a situation in which *both* the state and nonstate actors effectively coordinate violence independently but in concert with one another. In the United States, private actors like the Seymour vigilance committee used force that was not officially sanctioned by the law, yet did so in order to “enforce” the law. Similarly, though private detective agencies were technically “legal,” this was not the result of an explicit authorization on the part of a governing authority – indeed, since many detectives were also deputized by the state, even the supposedly “private” nature of the agencies was somewhat unclear until well into the nineteenth century (as Chapter 4 will show). Moreover, they often operated in a gray area in terms of the actual practices they used; detectives Egan and Hazen, for instance, used citizen’s arrest powers to try to detain the Reno brothers and Frank Sparks, but limits of this power were hard to define and were rarely explicitly authorized or challenged by state actors. Instead, they relied on an older, republican conception of state power in which private citizens *themselves* could determine how to use force for protection.

¹⁹ Iris Marion Young, “The Logic of Masculinist Protection: Reflections on the Current Security State,” *Signs: Journal of Women in Culture and Society* 29, no. 1 (2003): 1–25.

²⁰ For important interpretations, see Anthony Giddens, *The Nation-State and Violence* (Berkeley: University of California Press, 1985), 7–31; Gianfranco Poggi, *The State: Its Nature, Development, and Prospects* (Stanford, CA: Stanford University Press, 1990), 5–25.

²¹ For a good overview of the debates, see Randall Collins, *Violence: A Micro-Sociological Theory* (Princeton, NJ: Princeton University Press, 2009), 19–25.

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The growth of these private forms of violence alongside the bureaucratic development of state police and military agencies had important implications for institutional development in the United States. Private violence experts did not *compete* with the state in offering protection, but rather, even as the state increased its bureaucratic capacity to manage force, they collaborated with public officers, sharing personnel and resources.²² A dual system emerged in which a key duty of state capacity – the responsibility to protect – became distributed to a wide variety of public *and* private actors, legal and “illegal” alike.

Where and how did this dual public and private system arise? The core argument of this book is that this institutional transformation was largely the result of a process I call “jurisdictional decoupling.” Jurisdictions are both a set of rules determining the legal distribution of rights, duties, obligations, and responsibilities in particular contexts, as well as the name for geographical units of governance, such as counties, towns, and so forth. Jurisdictional decoupling, in turn, means that the rules helping to define the social order in a given jurisdictional context – the legal expectation, for instance, that members of a town or county ought to be willing to participate in chasing down criminals – are no longer sustained by the actual day-to-day relationships allowing actors (individuals, firms, associations, etc.) to practice social control against others. This process occurred at different times and across different jurisdictions, but it usually led to the same result: older forms of private participation in public security no longer worked the way they once had, splitting public security from private effort, but displacing neither.

Jurisdictions like Jackson County were built on what I am calling a “republican” model – “ordinary” white male citizens were expected to participate in defending their political communities against domestic and foreign threats, and did so at each jurisdictional level. The theory of the republican model is that duty, virtue, and freedom were all intimately linked to the larger concerns of a community, and that the risks and expense of a “permanent” policing apparatus to the economic and political freedom of citizens were too high.

Underlying these rules for social order was a system of control embedded in everyday social relations. White men, for instance, took over the responsibility of protecting their communities, but were able to do so because they were also largely powerful in other aspects of day-to-day social life. To provide enforcement, jurisdictions linked or “coupled” everyday forms of power, based on personal wealth, status, or other ways in which people related to each other,

²² The term “violence experts” covers those with a commitment to cultivating and using skills in violence (broadly construed) as a primary vocation. It does not necessarily mean “professionalization” in the contemporary sense, although in Chapter 6 I trace the emergence of a class of such experts who developed a careerist and professional identity. See Jonathan Obert, “The Six-Shooter Marketplace: 19th-Century Gunfighting as Violence Expertise,” *Studies in American Political Development* 28, no. 1 (2014): 49–79.

to more abstract rules of social order, in which the “duties” and “rights” of citizens were laid out and articulated. Together rules for social order and social relations of social control helped make coercive enforcement appear as though there really was no distinction between public security and private effort.

This ambiguous distinction between private effort and public security was the essence of republican security institutions. County militia, the town watch, and old law enforcement roles like the sheriff, constable, and so forth were the domain of amateurs rather than professionals. In southern and western jurisdictions, private participation in violence was particularly important. Maintaining slavery in the south, for instance, depended on ordinary white citizens being willing to use violence to police and reinforce bondage, and many were required to participate in formally organized slave patrols.²³ Additionally, the continual warfare with native groups in the expanding West and Southwest was largely the domain of local militia units, since the early colonial period had provided the main form of mobilization to seize land and remove tribes.²⁴ The nation had only a very small standing army at the beginning of the nineteenth century and, before the 1830s, almost no bureaucratic police or violence experts. As such, whether or not residents held republican ideological beliefs, the institutions on which they depended to maintain law and order were characterized by the expectation that, ultimately, citizens were responsible for public security.

The problem was that the link between the rules of social order on which institutions were premised and the relations among actors allowing them to control one another in day-to-day social interactions could fail to work as intended. In Seymour, for instance, the Reno family had a powerful constituency of allies, making it difficult for members of the local community to help officers arrest the Reno brothers. As early Jackson County pioneers, the family had been quite successful putting down roots in the community by becoming active members of the local Methodist church, for example.²⁵ Moreover, a number of family members speculated in the local real estate market, building close business ties with some of the area’s most prominent settlers, while others had a sort of “Robin Hood” reputation, distributing some of the proceeds of their crimes to friends and neighbors in need.²⁶

At the same time, it was also clear the Reno family had many powerful enemies both in Seymour and elsewhere. The family had been suspected of using arson to drive the values down on properties they wished to obtain and seem to

²³ Sally E. Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas* (Cambridge, MA: Harvard University Press, 2001).

²⁴ Peter Rhoads Silver, *Our Savage Neighbors: How Indian War Transformed Early America* (New York: W. W. Norton, 2008).

²⁵ Volland, “The Reno Gang of Seymour,” 13–16.

²⁶ Volland, “The Reno Gang of Seymour,” 60–80; Robert William Shields, *Seymour, Indiana, and the Famous Story of the Reno Gang* (Seymour, IN: R. W. Shields, 1939), 29.

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have engaged in financial chicanery involving mortgage manipulation.²⁷ These activities created much local animosity – Seymour was a booming frontier railroad center, and many new settlers became quite concerned about the bad reputation that the town was developing. In a system that depended on private participation for punishment and arrest, the family's alliances were enough to shield them from any serious attempts at prosecution, but there were many who would have liked to see them punished nonetheless. In this, they agreed with the Adams Express Company, which found it frustrating to have to rely on local citizens to punish criminals they felt acted more like organized criminal syndicates. Traditional rules concerning law enforcement had decoupled from the relations undergirding control over local social life.

The inability of the local system to “work” – the decoupling between the rules to which residents were subject in terms of organizing law enforcement and the social control relations among residents on the ground – had important effects. In Seymour, those opposed to the gang took the law into their own hands; that is, they mobilized themselves as a *posse* without seeking the imprimatur of the law. They claimed that they were forced to do so because the power of the Reno Gang over many in the area undermined the operation of the county's legitimate legal apparatus. Which, of course, depended on private mobilization.

The Adams Express Company, too, relied on a traditional mechanism – the capacity for individuals to secure special deputization to arrest suspects. The difference was that they hired experts with experience in the new police departments, who served as private investigators for fees. These experts were able to travel across jurisdictions and investigate the Reno Gang's activities throughout the region. Unlike the vigilantes, their adaptation was built on professionalism and expertise rather than popular sentiment.

What caused decoupling? I argue that, in Seymour and elsewhere, two important social developments of the nineteenth century – the Market Revolution and the Civil War – generated new forms of rule instability, physical mobility, and social ambiguity. These phenomena, in turn, upended the link between the ways in which social order was supposed to be enforced and the capacity for powerful actors to practice actual social control through their everyday social relationships with others. The Market Revolution – that cluster of shifts in industrial production, new kinds of wage labor, and transportation building that characterized the Jacksonian and late antebellum period – created new ways for people to relate to each other. As people moved from place to place and previously marginalized communities gained new rights and took advantage of various opportunities, it was increasingly difficult for traditional political officials in towns like Seymour to control residents. Policing had depended on the personal knowledge of neighbors and acquaintances rather

²⁷ Volland, “The Reno Gang of Seymour,” 60–81.

than expert, full-time investigators and officers, but the presence of strangers made this knowledge hard to come by.

The Civil War, on the other hand, produced important shifts in the rules for how society was ordered. In the Reconstruction South, for instance, new constitutional guarantees considerably expanded the political rights of African Americans. However, these rights were not accompanied by shifts in access to day-to-day forms of relational power. Those who did have the resources to control the economic well-being of their communities – usually white people – sought techniques outside the law to enforce their status. Thus, even where people *did* know each other, changes in political rights challenged traditional ways through which they tried to exert their control.

Similarly, the conclusion of the Civil War also led to an explosion in the forming of new territories in the trans-Mississippi West; the problem was that territorial institutions depended on divide-and-rule and the outsourcing of law enforcement to local communities, while the new settlers themselves were increasingly tied to one another through chains of trade, communication, and transportation. As in Indiana, railroads and shipping companies simply could not rely on local sheriffs to protect their highly mobile property. In these kinds of settings, the rules characterizing the order of republican society – based on a principle of private participation in civic protection – were no longer sustained by the kinds of intimate day-to-day social relations that originally allowed such private effort to flourish.

Like residents of Seymour, however, Americans continued to rely on the institutional practices they knew best – the *posse comitatus*, the militia, special deputization, etc. – even in the midst of these transformations. Because the underlying link between rules and relations that originally allowed those practices to work had changed, they began to have new effects. Entrepreneurs like Allan Pinkerton transformed special deputization into an opportunity to develop for-profit policing services; community factions, unable to work within a law enforcement system based on strong local ties of hierarchy, deference, and control, instead used the *posse* outside the law.

Crucially, *public* officials too continued to rely on traditional techniques, leading ironically to institutional change. In the midst of cities in which residents were increasingly anonymous and mobile, deputization continued to provide a mechanism for officials to put police forces on a permanent, professionalized footing. In southern states during Reconstruction, fundamental changes in the professionalism and militarism of domestic policing – induced largely by Republican governors attempting to expand and consolidate their power – paved the way for the collapse of the traditional local militia company and the growth of new kinds of professionalized state police. Whites who regained control of these states in the mid-1870s in hopes of “redeeming” their states did not abandon these institutions, but instead used them to complement the violent private forms of racial control accompanying Jim Crow. These changes in state coercion complemented the growth of quasi-professional and