



2023

Constructing the "Lawless Other" in Scotland and the Southern United States

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Recommended Citation

Abbott, Caroline K. (2023) "Constructing the "Lawless Other" in Scotland and the Southern United States," *Notre Dame Journal of International & Comparative Law*. Vol. 13: Iss. 1, Article 7.
Available at: <https://scholarship.law.nd.edu/ndjicl/vol13/iss1/7>

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Cover Page Footnote

Juris Doctor Candidate, Notre Dame Law School, 2023; Master of Business Administration Candidate and Forté Foundation Fellow, University of Notre Dame Mendoza College of Business; Bachelor of Arts in Politics, Centre College, 2018. I would like to thank the members of the Notre Dame Journal of International and Comparative Law for their thorough and attentive editing.

CONSTRUCTING THE “LAWLESS OTHER” IN SCOTLAND AND THE SOUTHERN UNITED STATES

CAROLINE K. ABBOTT*

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INTRODUCTION

The image of the “other,” especially the concept of the “lawless other,” is remarkably durable across historical epochs and geography. Indeed, the concept of “lawlessness” has been consistently weaponized to cultivate and justify a sense of superiority, colonization, and political, economic, and social control where the backward periphery exist as satellites to the core and are subject to cultural bias.¹ Despite the modern romanticization of Scottish culture and military prowess now that their “martial spirit” has been directed to the defense of the British Empire, sixteenth, seventeenth, and eighteenth century Scotland told a different story, a story of the construction and weaponization of lawlessness as a justification for the “taming” and “civilizing” of Highland Scots and Borderers and their respective

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¹ See T.C. Smout, *Scotland and England: Is Dependency a Symptom or a Cause of Underdevelopment?*, 3 REV. (Fernand Braudel Ctr.) 601, 603 (1980) (describing seventeenth century Scotland’s economically dependent and satellite position, but which eventually, and with profound growing pains, resulted in mutual benefit and economic growth in Scotland).

societies.² Interestingly, this supposed reputation for violence, lawlessness, and backwardness followed them to their new home in the Southern United States, where a contemporary body of research called the “Southern Sub-Culture of Violence” has received prominent attention and highlighted purported parallels between Highland Scotland, the Anglo-Scottish Borderland, Ulster, and the South.

I. TAMING THE “LAWLESS” HIGHLANDS

Since arguably the fourteenth century, the Scottish Highlands (*Ghàidhealtachd*: the place of the Gaels), a remote, mountainous region characterized by a unique socio-political system—the clan system (*clann*: children), were regarded as “lawless,” despite not being markedly more violent than the Lowlands.³ Established around 1100, Scottish clans were organized around the idea of kinship—blood or not—and accompanying duties and obligations to the clan chief, who acted as commander, protector, lawmaker, and judge. Admittedly, the clan system produced periodic violence, notably raids by members of the clans’ warrior class to secure and retain land, property, and power as well as resulting clan feuds.⁴ Yet, the clan system simultaneously provided stability. Clan chiefs, allying with other clans as a means of defense, provided protection in exchange for loyalty and military service. However, ignoring the positive elements of this socio-political and economic system and deliberately casting the Highlanders and their society as endemically “lawless” was a convenient “assertion of power” that justified, even demanded, forcefully taming the Highlands.⁵ If the Highlanders were “backward,

² John R. Gold & Margaret M. Gold, ‘*The Graves of the Gallant Highlanders*’: *Memory, Interpretation and Narratives of Culloden*, 19 *HIST. & MEMORY* 5, 15 (2007).

³ Alison Cathcart, *The Statutes of Iona: The Archipelagic Context*, 49 *J. OF BRIT. STUD.* 4, 7 n.11 (2010) (“What the crown, and most of Lowland society, failed to appreciate was the economic situation which produced high levels of petty tit-for-tat raiding in the region. Combined with ever-increasing competition over land this unrest confirmed the view of the Highlands as a ‘lawless’ region. By the time James VI succeeded to the Scottish throne, these assumptions were accepted without question.”); DANIELLE MCCORMACK, *Highland Lawlessness and the Cromwellian Regime, in SCOTLAND IN THE AGE OF TWO REVOLUTIONS* 115, 116 (Sharon Adams & Julian Goodare, eds., 2014) (stating that the Highlands were not more violent than the Lowlands, though they were perceived as such).

⁴ MCCORMACK, *supra* note 3, at 117-21. Motivations varied. For instance, the clansmen of William Mackintosh of Torcastle regularly raided due to heavy debt. Lochaber, home of Clan Cameron, the MacDonalDs of Keppoch, and the MacDonalDs of Glencoe, experienced more raids largely due to their geography. Other clans, like the MacMartins of Letterfinlay, retained their lands by providing a buffer for other clans (such as a Clan Cameron vis-à-vis Clan Mackintosh) and hence engaged in inter-clan feuds.

⁵ *Id.* at 116, 118 (As Allan I. Macinnes notes, “the denigration of the Highlands as an area of endemic

lawless, violent savages,” then superior English “civilization” and legal and economic “improvement” by any means was necessary, even noble and humanitarian.

Force, incentive-alliances, law, and economics were deployed in combination in the centuries-long effort to tame the Highlands. This effort commenced more formally and aggressively when King James VI, who like other English and Scottish elite considered the Highland clan system a challenge to his authority, secured personal rule of Scotland in the mid-1580s. Almost immediately, King James VI passed the 1587 Acts of Parliament “For the quieting and keeping in obedience of the disorderit subjectis inhabitantis of the bordouris hielandis and ilis,” which ushered in a “civilizing policy” to reform his most “barbarous” subjects and bring “the ylliss . . . in goode ruell.”⁶ After constructing an incentive scheme affording royal favor to Highlanders willing to cooperate and forfeiting land of those who refused, James soon discovered this quid pro quo produced only tenuous allegiance.⁷ Consequently, while not completely abandoning clan alliances,⁸ James launched “a more systematic, far-reaching policy . . . aimed at ‘reducing . . . the rebellious inhabitants thairroff to obedience[,] . . . establishing . . . peace, justice and quietness,’ transforming the barbarous nature of the Highlanders, stimulating commercial development, increasing crown revenue, and, thereby, integrating the region fully into Scottish society.”⁹ One scheme, proposed in James’s *Basilicon Doron* and successfully employed in Ulster and unsuccessfully in Lewis, was to establish plantation settlements of Lowlanders from confiscated clan lands to “reforme and ciuilize the best inclined among them; root[] out or transport[] the barbarous and stubborne sort, and plant[] ciuilitie in their rooms.”¹⁰ Moreover, James VI executed the Statutes of Iona (1609), which were the result of negotiations with captured Highland chiefs and which provided policies, cloaked in

lawlessness amounted to the deliberate creation of a climate of disorder by venal, grasping and crude politicians to justify not only their resort to the military option but their retention of power in Scotland.”)

⁶ Cathcart, *supra* note 3, at 4, 5-7, n.3, n.10.

⁷ *Id.* at 5-7, n.10.

⁸ *Id.* at 11, n.31. For instance, James relied on the Campbells of Argyll in the South Isles and the Catholic Gordons of Huntly in the North Isles to extirpate the Clan Donald and settle their lands, though this failed due to the kirk’s ecclesiastical proceedings resulting in Huntly’s confinement to the Burgh of Aberdeen.

⁹ *Id.* at 7.

¹⁰ *Id.* at 7, 8. The plantation of Lewis was carved out of lands confiscated from Lewis and Ronalewis, the Shiant Islands, and Troutternish in Skye to make way for the settlement of Lowlanders. However, due to local armed resistance the mission was abandoned in 1601, only to be revived in 1604 following James’s ascension to the English throne and later abandoned yet again in 1610.

“improvement,” “assimilation,” and “civilization” language (economic or cultural), targeting Gaelic culture and its “lawless,” backward nature.¹¹ The Acts required Highland clan chiefs and landed elite to educate their eldest sons in English-speaking schools in the Lowlands, enforce prohibitions on the importation and sale of wine and whiskey (because a main cause of the “povertie . . . and grite crueltie and inhumane barbaritie” of the Islanders was “thair extraordinair drinking of strong wynis and acquavitie”), apprehend “idle vagabonds” and others, and restrict use of firearms as a means to constrain the Highlanders’ capacity for defense.¹² Indeed, James gave the military class an ultimatum: “tak thame selffis to industrie” or “face transportation and banishment.”¹³ Around the same time, chiefs were also required to journey to the Lowlands to appear annually before the council and account for their clan’s activities, which encouraged, due to absenteeism, the severing of bonds between clan chiefs and their clansmen.¹⁴

Following the Scots’ loss to the English at the Battle of Worcester in September 1650, lawlessness was again used to justify the Cromwellian occupation of the Scottish Highlands. Heavy military presence dominated the Highlands, as garrisons were established and castles occupied in strategic locations like Inverness, Cromwellian spies closely monitored the clans and their activities, and free movement was restricted.¹⁵ In fact, one could not travel five miles from home without an official pass and a license was required to travel to Ireland, where the English feared collusion between Irish and Scottish dissidents.¹⁶ Further, the regime routinely and systematically wasted land and burnt Highland homes, especially in rebel regions, in order, as John Baynes noted, for Highlanders who were “all . . . either in arms or in remote places with their cattle [to] return . . . hav[ing] new houses to build and corn to seek.”¹⁷ Following the Glencairn Rising against the occupation in 1653, the Cromwellian regime required bonds of security and surrender of ammunition in an effort to quash the Highlanders’ military capacity and capture and direct chiefs’ power for the Crown.¹⁸ The privilege to bear arms and other favor was reserved for those chiefs who agreed to suppress former clan warriors and arrest and betray former allies (e.g., Lochiel, chief of Clan

¹¹ *Id.* at 22.

¹² *Id.* at 5, 22; Martin D. MacGregor, *The Statutes of Iona: Text and Context*, 57 THE INNES REV. 111, 175 (2006).

¹³ Cathcart, *supra* note 3, at 22.

¹⁴ *Id.* at 27.

¹⁵ McCormack, *supra* note 3, at 128-29.

¹⁶ *Id.* at 129.

¹⁷ *Id.* at 128.

¹⁸ *Id.* at 130.

Cameron and Sir James MacDonald of Sleat), which eroded chief-clansmen relationships in an effort, again, to direct that loyalty to the Crown.¹⁹

A more aggressive effort to harness law and economics in the “civilizing” of the “lawless” Highlands began following the Jacobite defeat at Culloden in 1746, the last formal battle on British soil and which sought to restore the Stuarts to the thrones of Scotland, England, and Ireland. This required first defining the Highlands as endemically lawless followed by the deployment of the “civilizing” forces to sever the bonds between clan chiefs and clansmen. The battle itself was infamously brutal. Colonel George Stanhope said, “I never saw such dreadful slaughter as we had made, and our men gave no quarter.”²⁰ Cumberland’s army killed 1,500 rebels and murdered nearly 750 prisoners in cold blood.²¹ Private Alexander Taylor wrote, “I never saw a small field thicker of dead.”²² Indeed, “thousands of Highlanders were hunted down and butchered,”²³ and even “[a]fter torching seven thousand crofts, the English general Henry ‘Hangman’ Hawley reported ‘There’s still so many houses to burn, and I hope still more to be put to death.’”²⁴ Consequently, the Duke of Cumberland became known as “Butcher Cumberland” in Scotland. However, despite this scorched earth, heavy-handed policy, the Whig press turned to the reliable lawlessness narrative, “resurrecting memories of hangings and inquisition, while painting a picture of wild savage Highlanders led by a proud, foreign Pretender” juxtaposed against “the young, handsome and English-born-and-bred commander.”²⁵ Once defeated, Highland “lawlessness” would call for a new phase of intervention, this time buttressed by law.

In accordance with this scheme, the English strategically weaponized the law.²⁶ The Annexed Forfeited Estates Act (1752) confiscated thirteen Jacobite

¹⁹ *Id.* at 130-31, n.95.

²⁰ CHARLES CARLTON, *Conclusion: The Hand of War, in THIS SEAT OF MARS: WAR AND THE BRITISH ISLES, 1485-1746* 258, 258 (2011).

²¹ *Id.*

²² *Id.*

²³ *Id.* at 259.

²⁴ *Id.*

²⁵ Gold & Gold, *supra* note 2, at 13.

²⁶ See generally, Christian R. Burset, *Why Didn't the Common Law Follow the Flag?*, 105 Va. L. Rev. 483, 483, 485-86, 488, (2019). The 1740s were the height of England’s legal uniformity movement, where law was “an instrument of imperial exploitation,” cultural assimilation, and civilization. However, the planting of English law was not imposed uniformly; rather, the law was imposed strategically: “The extent to which each colony received English law depended on a deliberate effort to direct its political, economic, and cultural development.” A pluralist system preserved elements of local law as a means to divide and control, enforce extant hierarchies and

Highland chiefs' estates (one of whom was executed) and appointed a Crown Commission to administer the estates and direct profits to efforts to "civilize the Highlands."²⁷ The rationale therefore being, as the Duke of Newcastle said in 1752: "if the disaffected chief be turned out of the possession of his estate, and the estate vested in the crown, and leased out to those of the clan upon long terms and at an undervalue, every such lessee's self-interest will operate directly against his clannish spirit."²⁸ Further, the Acts of Proscription sought to extinguish the markers of Highland culture by "banning the teaching of Gaelic, the wearing of tartan, the holding of ceremonial Highland gatherings[,] and . . . the playing of the bagpipes[,] . . . abolish[ing] the feudal powers of Highland proprietors, confiscat[ing] the lands of rebel landowners, and generally merg[ing] the Highlands and Islands into the wider British economic and political realm."²⁹ They sought to abolish feudal courts and land tenures and impose English grand juries, circuit courts, and evidentiary rules.³⁰ They, led by Lord Harwicke, further designed a "Scotch Reformation" that, despite being expressly preserved in the Acts of Union in 1707, sought to abolish heritable jurisdictions—local courts run by clan chiefs which purportedly inhibited Scotland's economic development—an act understood by many as a direct attack on private property.³¹

Once the socio-political structure eroded as a result of this coordinated civilizing effort, legal structures were largely anglicized, and economic incentives were transformed, the relationships between Highland clan chiefs and their clansmen were uprooted and replaced with tenant-landlord relationships, and "land came to be viewed not as the patrimony of the clan but as an economic resource to be exploited."³² Consequently, clansmen became tenants who were required to pay rents and violent evictions—"clearances"—followed.³³ With sufficient pressure

obedience, avoid undesirable awareness of equalities, institute legal boundaries that discouraged immigration and investment necessary to develop independent commercial economies, and produce an extractive or underdeveloped economy that "enriched the empire but kept local subjects poor and politically disadvantaged" (e.g., Bengal, Quebec). A uniform, anglicized system produced an extractive, commercial economy modeled after the English (e.g., Wales, Senegal, Grenada, the West Indies, the Floridas).

²⁷ C. George Caffentzis, *Civilizing the Highlands: Hume, Money and the Annexing Act*, 31 HIST. REFLECTIONS 169, 170, 175 (2005) (citing a *Scots Magazine's* synopsis of the law).

²⁸ *Id.* at 169.

²⁹ Gold & Gold, *supra* note 2, at 12-13.

³⁰ Bursset, *supra* note 26, at 498.

³¹ Christian R. Bursset, *Forging a Common-Law Empire* 1, 27-30 (Mar. 3, 2022) (unpublished manuscript) (on file with manuscript author).

³² Cathcart, *supra* note 3, at 27.

³³ *Id.*

and transformation of incentives, Scotland would soon be the example of economic progress, political enlightenment, and civilization England envisioned, and soon the Highlanders' martial spirit would do the "dirty work" of the British Empire.³⁴

II. PACIFYING THE "LAWLESS" BORDERLANDS

Since at least the ninth century, "Scotland" (or *Alba* in Gaelic) was understood as the territory north of the Forth; but, by the 12th century "Scotland" was understood (as evidenced by the phraseology of Scottish legal charters) as all the territory under the authority of the King of Scots.³⁵ Accordingly, prior to the outbreak of the Wars of Independence in 1296, the Borders (which by 1237 were primarily confined to the English and Scottish shires and counties along the Solway-Tweed Line) were largely one community.³⁶ Indeed, the border bifurcated the erstwhile Kingdom of Northumbria. But, with the wars, the centuries-long border society was summarily dismantled.³⁷ Edward I confiscated the land and property of John de Balliol and "any other of the realm of Scotland who . . . stay in that realm," which, in turn, catalyzed a series of in-kind confiscations.³⁸ Consequently, by 1323, cross-border landholding was almost completely eliminated and the community was largely divided along English and Scottish lines.³⁹ As a result of these interventions, the Borders—as the front line of defense in this Anglo-Scottish power struggle—remained a flashpoint between Scotland and England until at least James I's union in 1603.

As a result of scorched-earth policies, starvation, and resource deprivation,⁴⁰ and being "ravaged and laid waste repeatedly by advancing and

³⁴ Carlton, *supra* note 20, at 260, 263. Indeed, joining the British Armed forces provided promising job opportunities. In the four periods of conflict from Bosworth Field to the Nine Years War and the War of Spanish Succession the proportion of English to non-English dead was 487,036 to 727,051, which shows that the burden of war was borne disproportionately by the Scots and Irish, who with 34.5% of the population comprised 60% of the dead.

³⁵ DAUVIT BROUN, *Kingdom and Identity: A Scottish Perspective*, in *NORTHERN ENGLAND AND SOUTHERN SCOTLAND IN THE CENTRAL MIDDLE AGES* 31, 39, 71 (Keith J. Stringer & Angus J.L. Winchester eds., 2017) (offers a detailed chronology of the development of Scottish identity and the notion of a single Scottish kingdom, identity, and state. The core "Scottish" kingdom at times was understood to extend south of the Forth to the Tweed).

³⁶ ANDY KING, *Best of Enemies: Were the Fourteenth-Century Anglo-Scottish Marches a 'Frontier Society'?*, in *ENGLAND AND SCOTLAND IN THE FOURTEENTH CENTURY: NEW PERSPECTIVES* 116, 117 (Andy King & Michael A. Penman eds., 2007).

³⁷ *Id.* at 134.

³⁸ *Id.* at 118.

³⁹ *Id.* at 118, 135.

⁴⁰ JOHN GRAY, *Iconic Images: Landscape and History in the Local Poetry of the Scottish Borders*, in *LANDSCAPE, MEMORY AND HISTORY: ANTHROPOLOGICAL PERSPECTIVES* 16, 23 (Pamela J.

retreating armies,” the Borders developed a unique social order marked by kinship security—a system that was admittedly characterized by a degree of violence (what one commentator called mafia-like, predatorial, and “lawless”),⁴¹ as it was marked, in part, by Scottish and English lairds deploying organized parties of twelve to fifty kin and feudal dependents to engage in raids (or “guerilla warfare” as one commentator described),⁴² which included robbery, arson, kidnapping, blackmail, and occasionally murder.⁴³ Some surnames could organize much larger parties. For instance, the Armstrongs, at their zenith in the sixteenth century could deploy, with 48-hours’ notice, 3,000 men and many more if they joined forces with their comrades, the Elliots, Nixons, and Croziers.⁴⁴ Yet, despite purportedly wishing to quell this activity, the governments in London and Edinburgh leveraged the animosities in the Borders to advance their own interests in times of peace *and* war.⁴⁵ Indeed, “each government strategically directed their Wardens to spy, incite feuds between reiver families or ignore raids on enemies, thereby exacerbating the disputes they were supposed to stop.”⁴⁶ As Warden Dacre wrote: “I have caused to be burnt six times more townys and howsys within the west and middill marshes of Scotland in the same season that is done to us.”⁴⁷ Hence, both governments weaponized and exacerbated the violence in the Borders to the point that “guerrilla living [not merely guerilla warfare became the norm and] . . . to ordinary people, war and peace were not very different . . . There was no future for the Borderer trying to lead a settled existence.”⁴⁸

However, Borderers also created unique systems of law and order—systems that were not merely marked by violence but that were also marked by instances of cooperation and peaceful contact.⁴⁹ One semi-collaborative development in the Borders included dividing, with the help of the Scottish and English governments, the Borders into six Marches (a West, Middle, and East on each side of the Border) under the authority of a royally-designated Warden permitted to collaborate with

Stewart & Andrew Strathern eds., 2003).

⁴¹ Robert Bell, ‘*Sheep Stealers from the North of England*’: *The Riding Clans in Ulster*, 2 HIST. IR. 25, 26 (1994).

⁴² *Id.*

⁴³ GRAY, *supra* note 40, at 22.

⁴⁴ Bell, *supra* note 41, at 26.

⁴⁵ GRAY, *supra* note 40, at 23.

⁴⁶ *Id.* at 24 (Examples include Lord Dacre, an English Warden, and Scott of Beccleuch, a Scottish Keeper).

⁴⁷ *Id.*

⁴⁸ JOHN N. GRAY, *Reivers of the Marches: The Borders as Frontier*, in AT HOME IN THE HILLS: SENSE OF PLACE IN THE SCOTTISH BORDERS 22, 24-25 (2011).

⁴⁹ KING, *supra* note 36, at 119-20.

his counterpart across the Border in the capture of fugitives (though the Wardens often were clan leaders themselves and were thus given extraordinary power to police their opponents and were, therefore, not immune from corruption).⁵⁰ One responsibility of these Wardens was the administration of justice via Warden Courts at least “half-yearly,” monthly truce days, and prosecution of March treason, a part of a collection of laws that developed out of the 1248 conference of English and Scottish knights who agreed to the Law of the Marches (*Leges Marchiarum*).⁵¹

The Law of the Marches recognized the Borders “as a single, separate and coherent space with its own character despite the fact it lay within two kingdoms and societies.”⁵² Border law was exceedingly complex, as was the definition of March treason, which included such offenses as Borderers from opposite sides of the Border meeting without license from the Warden and intermarriage without leave of the Wardens of each jurisdiction (which was notoriously difficult).⁵³ Without such approval, the bride, groom, and priest were killed.⁵⁴ The Warden was also tasked with preventing blackmail (a word with origins in the Borders), where “[a] man was . . . forced by a stronger neighbour from the opposite side to pay him rent for his farm, as well as paying it to his real landlord, in order to protect himself from persecution.”⁵⁵ However, there was also a system of legal governance outside of the Warden system. One such legal norm was called “hot trod,” by which, within a certain specified leniency period after theft of livestock or other property and in compliance with formalities—or “following a lawful trod, with hue and cry, with hord and hound,” victims could, without interference, cross the Border and recover their property.⁵⁶ A delayed recapture was called a “cold trod”⁵⁷ and boasted its own formalities.

Despite being pawns in the Anglo-Scottish geopolitical game, the Borderers—as a people—became synonymous with lawlessness and violence and were frequently used as a means of “contrast or exclusion.”⁵⁸ They became known as the “sheep stealers from the north of England,” “the Border Reivers,” “the

⁵⁰ Marjorie C. Barnard, *A Border Family of the Sixteenth Century*, 4 HIST. 116, 117, 118-19 (1915).

⁵¹ *Id.* at 119.

⁵² GRAY, *supra* note 40, at 23.

⁵³ Barnard, *supra* note 50, at 120.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 122.

⁵⁷ *Id.*

⁵⁸ CYNTHIA J. NEVILLE, *The Legal and Social Contexts of Anglo-Scottish Border Law in the Later Middle Ages*, in VIOLENCE, CUSTOM AND LAW: THE ANGLO-SCOTTISH BORDER LANDS IN THE LATER MIDDLE AGES 184, 185 (1998).

Raiders,” the “Steel Bonnets,” and the “Riding Surnames.”⁵⁹ They were described as “bold and lawless.”⁶⁰ They were cast as “brutal,” “boorish,”⁶¹ “godless,”⁶² and “wild,”⁶³ and the landscape from which they came “desolate, foreboding, and—like the people who lived there—untamed.”⁶⁴ English and Scottish travelers visiting as soldiers, merchants, or missionaries described the Borderers as “barbarous, crafty, vengeful, crooked, quarrelsome[,] . . . wild and ill to tame.”⁶⁵ They purportedly “accept[ed] mutual violence not as an exceptional occurrence but as a way of life.”⁶⁶ Invoking the socio-economic perspectives of the “civilized” in Scotland and England, Bishop Lesley wrote, the “lawless Border reivers not only ignore the social distinctions of citizenship but also of ownership, ‘for they have the persuasion that all property is common by law.’”⁶⁷

As John N. Gray notes, this characterization, however, served the needs of the respective governments, for “[t]he wild, uncivilized image contributed to the apparent moral and political distance of the Borders from London and Edinburgh”⁶⁸ and

precisely *because* the Borders was lawless and populated by unruly, crooked, and wild people who raided rather than reaped (an *effect* of their policies and strategies in the War of Independence), it was an expendable space where England and Scotland could carry out their warfare by laying waste to the region without plundering the more central regions and population of each kingdom.⁶⁹

In essence, the governments’ violent activities of subjugation in the region reproduced the very conditions, the marginalization, they purportedly sought to repel.⁷⁰ Moreover, as H. Tyler Blethen notes, it seems this reputation for violence

⁵⁹ Bell, *supra* note 41, at 25.

⁶⁰ Barnard, *supra* note 50, at 116.

⁶¹ D. Hay, *England, Scotland and Europe: The Problem of the Frontier*, 25 TRANSACTIONS OF THE ROYAL HIST. SOC’Y 77, 84 (1975).

⁶² Bell, *supra* note 41, at 27.

⁶³ YSANNE HOLT, *Borderlands: Visual and Material Culture in the Interwar Anglo-Scottish Borders*, in RURAL MODERNITY IN BRITAIN: A CRITICAL INTERVENTION 167, 167 (Kristin Bluemel & Michael McCluskey eds., 2018).

⁶⁴ GRAY, *supra* note 48, at 31-32.

⁶⁵ GRAY, *supra* note 40, at 25.

⁶⁶ Hay, *supra* note 61, at 82.

⁶⁷ GRAY, *supra* note 40, at 25.

⁶⁸ GRAY, *supra* note 48, at 31-32.

⁶⁹ *Id.* at 36.

⁷⁰ GRAY, *supra* note 40, at 25.

may have been exaggerated or reflective of bias and prejudice, as “English elites constantly lamented the absence of social discipline wherever dispersed settlement patterns and high mobility were the norm.”⁷¹ For instance, in 1809, an English governmental report noted, “nothing more favours irregular and lawless habits of life among the inferior class . . . than scattered and sequestered habitations” rather than living in a nuclear village—the “bulwark against lower class violence and disorder.”⁷² Hence, as Blethen highlights, reports of Scottish and Scots-Irish violence “may reflect the observers’ class-based fears of all dispersed and mobile people, rather than reliable evidence about the reality of violence.”⁷³ Indeed, some Scottish historians argue “the traditional portrait of the Borders as ‘wretched, barbaric, anarchic, [and] blood-soaked,’ . . . was grossly exaggerated by earlier historians with cultural and/or political agenda to advance.”⁷⁴ Consequently, as Gray writes,

This marginality enabled governments . . . to construct a discourse of ‘otherness’ and primitivism [both its romantic and menacing incarnations] that legitimated subordination and violent subjugation as well as their reflexive imagining of the self through the marginalized other.⁷⁵

With James’ ascension to both thrones of Scotland and England, he needed safe passage between the territories and, hence, needed to “tame” and “civilize” the Borders and subdue the Highlands and Northern Ireland. Thus, he immediately sought the pacification of the Borders, for “the verie hart of the cuntrey sall not be left in ane uncertaintie.”⁷⁶ As Bell writes, that “pacification destroyed the clan system and the entire social and economic infrastructure of the region.”⁷⁷ In the first year, 200 clan leaders were “dealt with,” thirty-two were hanged, fifteen were exiled, 140 outlawed, and 2,000 went to fight the Dutch in Spain.⁷⁸ The Grahams “were hunted down, executed and transported in their hundreds;” their lands, which were some of the most fertile in the Marches, were confiscated; and “[t]hey were tried and hanged for . . . activities . . . the [Border] Commission searched far back

⁷¹ H. Tyler Blethen, *The Transmission of Scottish Culture to the Southern Backcountry*, 6 J. OF THE APPALACHIAN STUD. ASS’N 59, 65 (1994).

⁷² *Id.* at 65.

⁷³ *Id.*

⁷⁴ *Id.* at 64.

⁷⁵ GRAY, *supra* note 48, at 30.

⁷⁶ Bell, *supra* note 41, at 27.

⁷⁷ *Id.* at 29.

⁷⁸ *Id.* at 27.

in the records” to unearth.⁷⁹ Soon, many of these Borderers found themselves in Ulster (whose residents were understandably displeased and resistant), where James “planted” Ulster with Scots, as a means to exploit the regions, quell collusion between the periphery of his kingdom in Ireland and the Highlands, and pacify the Borders.⁸⁰ Those that were not expressly forced to Ulster were pressured there under economic duress, for

the vast majority of the Borderers did not come to Ulster as Undertakers or landlords, but as poor tenants . . . who came to plantation Ulster [drawn by] the attraction of plentiful land at cheap prices or no, or low, rents [and pushed by] dissatisfaction with their conditions in Scotland or England.⁸¹

By 1640, some 100,000 Scots and 20,000 English Borderers populated the Ulster plantation in Northern Ireland.⁸² That sense of refuge in Ulster would continue for decades thereafter.⁸³ As with the Highlanders, once this “lawless horde” had been tamed,⁸⁴ the Borderers supposed violent nature would be used, as evidenced by the Ulster plantation project, in the advancement of the British Empire, as “James . . . wished to have in Ulster the aid of a people, living within the law, yet tenacious and warlike as the Irish themselves.”⁸⁵

III. SOUTHERN IMMIGRATION

The Scottish were comparatively late to colonization, but those few who did immigrate early were largely affluent, skilled, and educated Scots (physicians, merchants, clergy).⁸⁶ Between 1629 and 1632, a few hundred Scots went to America while tens of thousands went to Ireland, Scandinavia, and Poland.⁸⁷ Between 1680 and 1690, another thousand Scots went to East Jersey and Carolina.⁸⁸ The 1690s famine still only forced many Scots to Ireland not to the Americas.⁸⁹

⁷⁹ *Id.* at 27.

⁸⁰ Blethen, *supra* note 72, at 61.

⁸¹ Bell, *supra* note 41, at 25.

⁸² Blethen, *supra* note 72, at 61.

⁸³ Smout, *supra* note 1, at 607.

⁸⁴ Gray, *supra* note 48, at 30.

⁸⁵ Blanche Bentley, *Tennessee Scotch Irish Ancestry*, 5 TENN. HIST. MAG. 201, 203 (1920).

⁸⁶ Ned C. Landsman, *Nation, Migration, and the Province in the First British Empire: Scotland and the Americas, 1600-1800*, 104 AM. HIS. REV. 463, 465, 469, 474 (1999).

⁸⁷ *Id.* at 469.

⁸⁸ *Id.*

⁸⁹ *Id.*

However, with the taming and pacifying of the Highlands, Borderlands, and Northern Ireland in the eighteenth century came the resulting economic disruptions and distress in Scotland and Ulster, which drove many Highland, Borderland, and Ulster Scots (Scots-Irish) to the United States, largely to the South.⁹⁰

By no means was the South exclusively Celtic. There were Native Americans, African slaves of many nationalities, English, German, Welsh, Scottish, and Irish. However, the Scottish Highlands, Borderlands, and Ulster migrants distinctly shaped the Southern United States. Across four waves of Scots-Irish immigration between 1717 and 1775, 250,000 to 400,000 Scots-Irish settled in the South, primarily from central and western Pennsylvania to Georgia, especially in the Appalachian and Allegheny mountains.⁹¹ Between 1717 and 1718, many were driven from Ulster due to rising rents.⁹² The waves in 1727-1728 and 1740-1741 were famine periods.⁹³ And, the 1771-73 wave was catalyzed by troubles in the agricultural and linen industries.⁹⁴ Soon, nearly 500,000 Scots-Irish lived in Pennsylvania, Virginia, West Virginia, Kentucky, Tennessee, North Carolina, and South Carolina, and established themselves as a “dominant influence in the south.”⁹⁵

As Celts, these people were distinguishable from the English Puritans, Quakers, Cavaliers, and others of English ancestry (like most of the well-known Founders), the Germans, and others settling in the North.⁹⁶ However, just as the nuclear villages of England and the farm towns of Scotland were transplanted to the colonies, it seems the prejudices of the Old World followed the Scots and Borderers to the New. Harkening back to the wariness of the dispersed peoples and

⁹⁰ Matthew R. Lee & Edward S. Shihadeh, *The Spatial Concentration of Southern Whites and Argument-Based Lethal Violence*, 87 Soc. Forces 1671, 1672 (2009); Matthew R. Lee, et al., *Southern Culture and Homicide: Examining the Cracker Culture/Black Rednecks Thesis*, 31 DEVIANT BEHAV. 60, 63, 64 (2010). See also, see generally DAVID HACKETT FISCHER, *ALBION'S SEED: FOUR BRITISH FOLKWAYS IN AMERICA* (1989); GRADY MCWHINEY, *CRACKER CULTURE: CELTIC WAYS IN THE OLD SOUTH* (1988); RICHARD E. NISBETT & DOV COHEN, *CULTURE OF HONOR: THE PSYCHOLOGY OF VIOLENCE IN THE SOUTH* (1996); JAMES WEBB, *BORN FIGHTING: HOW THE SCOTS-IRISH SHAPED AMERICA* (2004).

⁹¹ Lee, et al., *supra* note 90, at 63, 64.

⁹² T.W. Moody, *Irish and Scotch-Irish in Eighteenth-Century America*, 35 Stud.: An Irish Q. Rev. 85, 86 (1946).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Lee, et al., *supra* note 90, at 64.

⁹⁶ *Id.* at 63; Richard D. Brown, *The Founding Fathers of 1776 and 1787: A Collective View*, 33 THE WM. & MARY Q. 465 (1976) (detailing a statistical analysis of the Founders and their ancestries, among other characteristics).

the English-Scottish and English-Irish antagonisms, Donegal, Pennsylvania, where many Scots-Irish settled, was routinely cast as drunken, violent, and feudal.⁹⁷ Isaac Norris noted, it was easier to “Preach righteousness, plead law or advance Reason on board a Pyrate, or to a nest of Banditi” than to police or restrain Donegal’s inhabitants.⁹⁸ Unlike the more “orderly” German immigrants, the Ulster migrants to Pennsylvania were said to “have little Honesty and little Sense,” in part because of the longstanding English suspicion of the Irish—Scots-Irish or otherwise, who were “anything but sober and industrious,” “comic and criminal.”⁹⁹ As evidence of this violence and lawlessness, *The American Weekly Mercury* wrote that an Irish-born field hand killed a man with a sickle for throwing “rotten eggs” at him.¹⁰⁰ Indeed, “Pennsylvanians believed the Irish ‘capable of the highest villainies.’”¹⁰¹ They were “beggardly,”¹⁰² clannish, and “the very scum of mankind.”¹⁰³

IV. THE SOUTHERN SUB-CULTURE OF VIOLENCE

Despite inconclusive, ambiguous evidence to support a Southern Sub-Culture of Violence, “[t]he notion that the South is an inherently violent milieu and that Southerners are culturally violent people persists.”¹⁰⁴ Following the publication of Wolfgang and Ferracuti’s seminal work on subcultures of violence in 1967, which leaves much unsubstantiated,¹⁰⁵ a deluge of interest in subcultures of violence, which according to Wolfgang and Ferracuti tend to arise in lower-class, racialized, and masculine populations (like inner city, Black neighborhoods in Philadelphia),¹⁰⁶ inundated academia.¹⁰⁷ In addition to notable attention to a

⁹⁷ PATRICK GRIFFIN, “*The Very Scum of Mankind*”: *Settlement and Adaptation in a New World*, in *THE PEOPLE WITH NO NAME: IRELAND’S ULSTER SCOTS, AMERICA’S SCOTS IRISH, AND THE CREATION OF A BRITISH ATLANTIC WORLD, 1689-1764* 99, 110-111 (2001).

⁹⁸ *Id.* at 111.

⁹⁹ *Id.* at 103.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 104.

¹⁰³ *Id.* at 103.

¹⁰⁴ F. Frederick Hawley & Steven F. Messner, *The Southern Violence Construct: A Review of Arguments, Evidence, and the Normative Context*, 6 *JUST. Q.* 481, 481 (1989).

¹⁰⁵ See Howard S. Erlanger, *The Empirical Status of the Subculture of Violence Thesis*, 22 *Soc. Probs.* 280 (1974).

¹⁰⁶ German Lopez, Confronting the Myth that “Black Culture” is Responsible for Violent Crime in America, *VOX* (Sep. 1, 2016 8:00 AM EDT), <https://www.vox.com/2016/9/1/11805346/violent-crime-america-barry-latzer-book-review>. (Illustrating the problems with this logic).

¹⁰⁷ See generally, MARVIN WOLFGANG & FRANCO FERRACUTI, *THE SUBCULTURE OF VIOLENCE* (1967).

supposed “Black Sub-Culture of Violence,”¹⁰⁸ a particular infatuation with a purported “Southern Sub-Culture of Violence” soon followed. Despite this ubiquity, a dearth of precision remained. Indeed, the theory lends itself to longstanding elitist notions about the South, reminiscent of those exercised vis-à-vis the Scottish Highlanders, Borderers, and Scots-Irish, and is characterized by pronounced ambiguity and imprecision on all three of its prongs: Southern, Sub-Culture, and Violence.

Just as the narratives sold to English and Scottish elites about Scotland and its lawlessness were rooted in a modicum of truth, but exaggerated and weaponized, there is, indeed, a well-documented history of violent incidents in the South. Admittedly, the slave system and Jim Crow created durable racial inequalities and images of public and private lynchings (which were grossly and disproportionately executed against Black people and in the South), bombings of churches, armed resistance to integration through the profoundly dehumanizing tactics of fire hoses and dogs, among other atrocities that terrorized Black Americans are burned into our collective memory. However, despite degrees of uniqueness, the South is not as exceptional and anomalistic as many would like to believe. Indeed, the South’s flaws are America’s flaws, but the obsession with the South as “other” (as “scapegoat”) has allowed many to dissociate and avoid interrogation of their own community’s and national problems, evade investigation of more nuanced reasons for why the South and the United States developed as it did, and circumvent acknowledgment of their roles in entrenching and perpetuating regional inequities.

A. OPERATIONALIZING “SOUTHERN”

At the most rudimentary level, in operationalizing studies of the “Southern Sub-Culture of Violence,” researchers struggle to define “the South” or “Southernness.” Some use the Census South, which includes some arguably non-Southern states like Delaware, Maryland, and parts of Oklahoma;¹⁰⁹ some try to

¹⁰⁸ See generally, Elijah Anderson, *THE CODE OF THE STREETS: DECENCY, VIOLENCE AND THE MORAL LIFE OF THE INNER CITY* (1999); Eric Stewart & Ronald Simons, *Structure and Culture in African American Adolescent Violence: A Partial Test of the ‘Code of the Street’ Thesis*, 23 *JUST. Q.* 1 (2006); Timothy Brezina et al., *A Quantitative Assessment of Elijah Anderson’s Subculture of Violence Thesis and Its Contributions to Youth Violence Research*, 2 *YOUTH, VIOLENCE & JUVENILE JUST.* 303 (2004).

¹⁰⁹ E.g., Marisa K. Crowder & Markus Kemmelmeier, *Untreated Depression Predicts Higher Suicide Rates in U.S. Honor Cultures*, 45 *J. of Cross-Cultural Psych.* 1145 (2014); Richard B. Felson & Paul-Phillipe Pare, *Gun Cultures or Honor Cultures? Explaining Regional and Race Differences in Weapon*

measure how much other states and regions demonstrate supposed hallmarks of Southern culture by contriving their own measures (sometimes using the very variables they are attempting to measure);¹¹⁰ some measure “Southernness” by determining where respondents were living at age 16 and where they live when taking part in a study;¹¹¹ some develop measures that include Southern-born, Evangelical Christian, and Scots-Irish ancestry variables;¹¹² and, strangely still, others use a measure of rates of support for Barry Goldwater in 1968.¹¹³

B. VIOLENCE

In addition to difficulties in defining “Southernness,” there is inconclusive evidence that the South is absolutely more violent, for much evidence has been correlational and anecdotal or arguably blurring lines between fact and fiction by pandering long-standing tropes to elites. For instance, in 1971, John Shelton Reed invoked images of lynchers, duels, feuds, moonshine, and murder when describing supposed “prodigious” white-on-white violence in the South.¹¹⁴ To explain the

Carrying, 88 Soc. Forces 1357 (2010); Keith Harries, *The Southern Violence Construct: Evidence from the Survey of Youths in Custody, 1987-1988*, 36 SE. GEOGRAPHER 128, 131 (1996).

¹¹⁰ E.g., Crowder & Kimmelmeier, *supra* note 109; Harries, *supra* note 109. Harries opines Oklahoma is characterized by “classic attributes of ‘Southernness’—high rates of violence, high percentage African American, low-income levels, high unemployment, and a poorly developed service sector.” Further, he notes, “[p]erhaps the least viable candidate for ‘Southernness’ among the sample state is Maryland. However, it tends to conform to the stereotype of the SVC insofar as it is not only south of the Mason-Dixon line but also has one of the highest homicide rates, ranking fifth among the states after Louisiana, Mississippi, New York, and California, in 1993. It also ranked sixth in overall violent crime (homicide, robbery, aggravated assault, rape), was second only to New York in robbery, was 10th in aggravated assault, and 18th in rape [primarily in Baltimore].” However, one cannot designate a state as “Southern” because it demonstrates the characteristic one is trying to measure.

¹¹¹ E.g., Marian J. Borg, *The Southern Subculture of Punitiveness?: Regional Variation in Support for Capital Punishment*, 34 J. OF RSCH. IN CRIME & DELINQ, 25 (1997); Christopher G. Ellison, *An Eye for an Eye? A Note on the Southern Subculture of Violence Thesis*, 69 SOC. FORCES 1223 (1991).

¹¹² E.g., Julia M. D’Antonio-Del Rio, Jessica M. Doucet, & Chantel D. Chauvin, *Violent and Vindictive Women: A Re-Analysis of the Southern Subculture of Violence*, 30 SOCIO. SPECTRUM 484 (2010); Lee, et al., *supra* note 90, at 67-69.

¹¹³ Craig A. Anderson & Kathryn B. Anderson, *Violent Crime Rate Studies in Philosophical Context: A Destructive Testing Approach to Heat and Southern Culture of Violence Effects*, 70 J. OF PERSONALITY & SOC. PSYCH. 740, 748 (1996).

¹¹⁴ John Shelton Reed, *To Live—and Die—in Dixie: A Contribution to the Study of Southern Violence*, 86 POL. SCI. Q. 429, 431 (1971).

South's purported affinity for violence, some argue the South is more violent, as evidenced by higher-than-average per capita homicide rates and gun ownership.¹¹⁵ Others claim the South is more violent because Southerners are arguably more likely to favor spanking (or "beat" as Reed could not resist sensationalizing),¹¹⁶ support capital punishment,¹¹⁷ carry guns for self-protection,¹¹⁸ respond more strongly cognitively and expressively to insults,¹¹⁹ enlist in the military (which some argue may be evidence of "a peculiarly Southern disposition to use force to settle personal, sectional, and national grievances," such as resorting to intervention following Pearl Harbor¹²⁰ and 9/11¹²¹, and not merely because it is a longstanding

¹¹⁵ E.g., Lin Huff-Corzine, Jay Corzine, & David C. Moore, *Southern Exposure: Deciphering the South's Influence on Homicide Rates*, 64 SOC. FORCES 906 (1986).

¹¹⁶ E.g., Reed, *supra* note 114, at 434; Ellison, *supra* note 111; Clifton P. Flynn, *Regional Differences in Attitudes Toward Corporal Punishment*, 56 J. OF MARRIAGE & THE FAMILY 314, 315 (1994); Frederic J. Medway & Julie M. Smircic, *Willingness to Use Corporal Punishment Among School Administrators in South Carolina*, 71 PSYCH. REPORTS 65 (1992).

¹¹⁷ E.g., Borg, *supra* note 111. Borg found little variation between Southerners and non-southerners in terms of support for the death penalty, though regional variations in racial prejudice, religious fundamentalism, and political conservatism did impact support for capital punishment; thus, indicating that *certain* Southerners demonstrate a propensity for punitiveness (citing Nat'l Ass'n for the Advancement of Colored People, *Death Row, U.S.A.*, NAACP Legal Defense & Educ. Fund (1995) (Between 1976 and 1995 the South sanctioned 263 executions compared to 500 in all other regions of the U.S.)).

¹¹⁸ E.g., Reed, *supra* note 114, at 432, 434; Felson & Pare, *supra* note 109, at 1359 (2010) (citing Leslie McAnney, *The Gallup Poll on Crime*, 339 *The Gallup Poll Monthly* 18 (1993); William B. Bankston et al., *The Influence of Fear of Crime, Gender, and Southern Culture on Carrying Firearms for Protection*, 31 SOCIO. Q. 287 (1990); Dov Cohen & Richard E. Nisbett, *Self-Protection and the Culture of Honor: Explaining Southern Violence*, 20 *Personality and Soc. Psych. Bull.* 551 (1994); Douglas A. Smith & Craig D. Uchida, *The Social Organization of Self-Help: A Study of Defensive Weapon Ownership*, 53 *AM. SOCIO. REV.* 94 (1988); D.S. Weil & D. Hemenway, *Loaded Guns in the Home: Analysis of a National Random Survey of Gun Owners*, 267 *J. of the Am. Med. Assoc.* 3033 (1992); Robert L. Young, *Gender, Region of Socialization, and Ownership of Protective Firearms*, 51 *RURAL SOCIO.* 169 (1986)).

¹¹⁹ E.g., Dov Cohen et al., *Insult, Aggression, and the Southern Culture of Honor: An Experimental Ethnography*, 70 *J. OF PERSONALITY & SOC. PSYCH.* 945 (1996).

¹²⁰ Reed, *supra* note 114, at 432 n.10.

¹²¹ Barnes, Brown, & Osterman, *supra* note 120, at 1027.

path to greater affluence),¹²² and commit homicide stemming from arguments.¹²³ Still, others argue Southern laws are more permissive of self-defense and defense of property¹²⁴ and make it easier to own and acquire guns, whether for legitimate purposes like hunting and sport or for more sinister purposes.¹²⁵ Some argue the South, as a result of its purported honor culture, boasts higher rates of both *interpersonal* and *intrapersonal* violence, the latter being primarily due to lower treatment utilization rates arising from a culture of honor where stigma and harm to personal and familial reputation is associated with such treatments.¹²⁶

However, there are as many notable critics of these claims as there are proponents. For instance, one study found that “Southernness” was associated with higher homicide rates, but not suicide rates, and not all modes of suicide were as frequent.¹²⁷ While the rate of suicide by gun was correlated with “Southernness,” the rate of suicide by hanging, strangulation, and so on varied negatively with “Southernness.”¹²⁸ Another study found the propensity for violence holds when other variables are controlled—the fact that Southerners are less educated, live in more rural areas, are less likely to be employed in white-collar or industrial jobs, demonstrate higher rates of gun ownership and hunting, and hold negative attitudes

¹²² Reed, *supra* note 114, at 430 n2, 432 n10 (“Southern-born notables in the *Dictionary of American Biography* were disproportionately likely to have been warriors. Nineteen per cent of those dead before 1866 were military men, compared to 13 per cent of Northeastern-born men of distinction. Of those born before 1860 and living after 1866, 15 per cent of the Southern entries were military men, compared to 6 per cent of the Northeasterners and 9 per cent of those born in the middle states.” Additionally, Southerners have slightly higher rates of “Regular Army Captain” and “Regular Army corporal” than do other Americans.). See also Collin D. Barnes, Ryan P. Brown, & Lindsey L. Osterman, *Don't Tread on Me: Masculine Honor Ideology in the U.S. and Militant Responses to Terrorism*, 38 PERSONALITY & SOC. PSYCH. BULL. 1018 (2012).

¹²³ E.g., Tom W. Rice & Carolyn R. Goldman, *Another Look at the Subculture of Violence Thesis: Who Murders Whom and Under What Circumstances*, 14 SOCIO. SPECTRUM 371 (1994).

¹²⁴ E.g., Dov Cohen, *Law, Social Policy, and Violence: The Impact of Regional Cultures*, 70 J. OF PERSONALITY & SOC. PSYCH. 961 (1996).

¹²⁵ E.g., Reed, *supra* note 114, at 433.

¹²⁶ E.g., Lindsey L. Osterman & Ryan P. Brown, *Culture of Honor and Violence Against the Self*, 37 PERSONALITY & SOC. PSYCH. BULL. 1611 (2011); Crowder & Kimmelmeier, *supra* note 109 (who largely corroborated their finding but note some notable shortcomings regarding causation and that the South does not demonstrate higher rates of depression but rather lower rates of treatment utilization in the form of anti-depressants.); Ryan P. Brown, Mikiko Imura, & Lara Mayeux, *Honor and the Stigma of Mental Healthcare*, 40 PERSONALITY & SOC. PSYCH. BULL. 1119 (2014). Contra Lin Huff-Corzine, Jay Corzine, & David C. Moore, *Deadly Connections: Culture, Poverty, and the Direction of Lethal Violence*, 69 SOC. FORCES 715, 725 (1991) (found that Southerners had lower rates of suicide though higher rates of homicide).

¹²⁷ David Lester, *Southern Subculture, Personal Violence (Suicide and Homicide), and Firearms*, 17 OMEGA 183 (1986).

¹²⁸ *Id.* at 183, 184.

toward gun control.¹²⁹ That same study also found that “[o]n almost every item . . . sex differences were smaller in the South than in the non-South.”¹³⁰ Such results, according to the authors, therefore mean that “[w]ith respect to violence, . . . Southern women are less ‘feminine,’ both absolutely and relative to their men, than are non-Southern women.”¹³¹

As several scholars have noted, if such a subculture exists, it is not generalized violence but rather particular situations, “violence for cause” as it were (e.g., primarily defensive or retaliatory violence) that is more acceptable among Southerners¹³²—only native-Southerners living in the South and even then the magnitude of the significance is moderate compared to social and demographic variables, like race, gender, peer socialization, television consumption, and religion.¹³³ By contrast, however, a study of youths in custody found no association between region and core violence (i.e., homicide, attempted homicide, and aggravated assault),¹³⁴ and for all violence—core and non-core (i.e., simple assault and rape), the South boasted negative values while the Northeast and West resulted in positive values.¹³⁵ Still further, firearms were not more frequently used in Southern homicides.¹³⁶ In fact, residuals were negative for the South and Midwest, but positive for the Northeast and West.¹³⁷ Felson and Pare, proponents of a Southern gun culture rather than a Southern honor culture, note:

Southerners do not have higher rates of violence than Northerners. While Southerners have higher rates of homicide and aggravated assault, they do not have higher rates of simple assault. Simple assaults are much more frequent than aggravated assault and homicide so the overall rates of violence are not higher in the South. [Indeed,] Southerners have *lower* rates of fist fighting in conflict situations than Northerners [and] Southern and Western whites are much more likely than Northern whites to be victims of gun assaults but they do not have

¹²⁹ Reed, *supra* note 114, at 438.

¹³⁰ *Id.* at 438 n.23.

¹³¹ *Id.*

¹³² E.g., Ellison, *supra* note 111; Rice & Goldman, *supra* note 123; Christopher G. Ellison, *Southern Culture and Firearms Ownership*, 72 Soc. Sci. Q. 267 (1991); Jo Dixon & Alan J. Lizotte, *Gun Ownership and the ‘Southern Subculture of Violence’* 93 AM. J. OF SOCIO. 383 (1987).

¹³³ Ellison, *supra* note 111, at 1229.

¹³⁴ Harries, *supra* note 109, at 135-36 (noting limitations regarding the sample population, including the probability that incarceration rates have their own geography or the congestion or capacity of criminal justice systems that may release lower-level offenders and thus skew results).

¹³⁵ *Id.* at 135.

¹³⁶ *Id.*

¹³⁷ *Id.*

higher rates of knife and unarmed assault victimization. Only 10 percent of assaults in the data set involved guns . . . Southern whites are more likely than Northern whites to engage in gun homicides, but there is not much of a regional difference in homicides without guns.

An honor culture should lead to all types of assault not just the atypical gun fight. It appears that research in this area is attempting to explain a non-existent pattern. The evidence . . . suggests that regional differences among whites may be due to the prevalence of guns rather than honor cultures.¹³⁸

C. SUB-CULTURE OF VIOLENCE

There are two primary schools of thought attempting to explain why the South is so violent, if indeed it is more violent: one emphasizes structural elements¹³⁹ (e.g., inequality, poverty,¹⁴⁰ religion,¹⁴¹ increased rates of “self-help” as opposed to relying on law enforcement,¹⁴² temperature and climate);¹⁴³ another

¹³⁸ Felson & Pare, *supra* note 109, at 1359, 1372. (though the preference for guns may reduce crimes by other means and other modes of self-protection).

¹³⁹ E.g., Huff-Corzine, Corzine, & Moore, *supra* note 115; Larry Baron & Murray A. Straus, *Cultural and Economic Sources of Homicide in the United States*, 29 *Socio. Q.* 371 (1988); William G. Doerner, *The Index of Southernness Revisited: The Influence of Wherefrom Upon Whodunit*, 16 *Criminology* 47 (1978); William G. Doerner, *Why Does Johnny Reb Die When Shot? The Impact of Medical Resources Upon Lethality*, 53 *Socio. Inquiry* 1 (1983); Kenneth C. Land, Patricia L. McCall, & Lawrence E. Cohen, *Structural Covariates of Homicide Rates: Are There Any Invariances Across Time and Social Space?*, 95 *Am. J. of Socio.* 922 (1990); Colin Loftin & Robert Hill, *Regional Subculture and Homicide: An Examination of the Gastil-Hackney Thesis*, 39 *AM. SOCIO. REV.* 714 (1974).

¹⁴⁰ E.g., Matthew R. Lee, Timothy C. Hayes, & Shaun A. Thomas, *Regional Variation in the Effect of Structural Factors on Homicide in Rural Areas*, 45 *THE SOC. SCI. J.* 76 (2008).

¹⁴¹ E.g., DONALD G. MATTHEWS, *RELIGION AND THE OLD SOUTH* (1977); William M. Newman & Peter L. Halvorson, *Religion and Regional Culture: Patterns of Concentration and Change Among American Religious Denominations*, 23 *J. FOR THE SCI. STUDY OF RELIGION* 304 (1984); Roger W. Stump, *Regional Divergence in Religious Affiliation in the United States*, 45 *SOCIO. ANALYSIS* 283 (1984); Mark A. Shibley, *The Southernization of American Religion: Testing a Hypothesis*, 52 *SOCIO. ANALYSIS* 159 (1991); Christopher G. Ellison, Jeffrey A. Burr, & Patricia L. McCall, *The Enduring Puzzle of Southern Homicide: Is Regional Religious Culture the Missing Piece?*, 7 *HOMICIDE STUD.* 326 (2003).

¹⁴² E.g., Reed, *supra* note 114; Cohen et al., *supra* note 119.

¹⁴³ See Anderson & Anderson, *supra* note 113. (When controlled for temperature and eleven sociodemographic variables, Southernness became insignificant and more crimes occurred in Northern states than Southern states). *Contra* Ellen G. Cohn et al., *Temperature, City Size, and the Southern Subculture of Violence: Support for Social Escape/Avoidance (SEA) Theory*, 34 *J. OF APPLIED SOC. PSYCH.* 1652 (2004) (citing other studies indicating the significance of temperature and seasonality).

emphasizes cultural elements.¹⁴⁴ However, most proponents of the cultural thesis struggle to define what about the South's culture produces violence. Indeed, because of difficulties in identifying, defining, and measuring region, culture, socialization processes, individual values, and behavior, anything not attributed to structural variables like poverty is attributed to "southern culture."¹⁴⁵ Consequently, the precise culture described is further in dispute. Some argue it is a culture of honor;¹⁴⁶ others argue it is a gun culture; still others argue it is religion.¹⁴⁷ Proponents of the gun culture thesis aim to discredit the culture of honor thesis because, according to them, Southerners do not have higher rates of violence than Northerners, notably on simple assaults and non-gun homicides, but Southern whites are more likely than Northern whites to engage in gun homicides.¹⁴⁸ They argue that a culture of honor should result in higher rates of violence across the board not merely a certain narrowly-defined subset of violence.

Even if one were convinced that the culture of honor thesis is persuasive, the historical origins of this cultural theory are unclear. For instance, proponents of the honor culture thesis argue the South's honor culture, which some, in turn, argue is the origin of the West's honor culture, is the product of Scots-Irish immigration to the South,¹⁴⁹ a herding culture where violence was necessary to protect

¹⁴⁴ E.g., Sheldon Hackney, *Southern Violence*, 74 *Am. Hist. Rev.* 906 (1969); Raymond D. Gastil, *Homicide and a Regional Culture of Violence*, 36 *Am. Socio. Rev.* 412 (1971); Jo Dixon & Alan J. Lizotte, *supra* note 132; Ellison, *supra* note 111; Huff-Corzine, Corzine, & Moore, *supra* note 126; Cohen & Nisbett, *supra* note 118; Dov Cohen et al., 'When You Call Me That, Smile!' *How Norms of Politeness, Interaction Styles, and Aggression Work Together in Southern Culture*, 62 *SOC. PSYCH. Q.* 257 (1999). *Contra* Heith Copes et al., *The Lost Cause? Examining the Southern Culture of Honor Through Defensive Gun Use*, 60 *CRIME & DELINQ.* 356 (2009) (failed to find relationship between Southern residence and defensive gun use).

¹⁴⁵ E.g., Ellison, *supra* note 111, at 1223-24.

¹⁴⁶ E.g., WILBUR J. CASH, *THE MIND OF THE SOUTH* (1941); JOHN HOPE FRANKLIN, *THE MILITANT SOUTH* (1956); Hackney, *supra* note 144.

¹⁴⁷ E.g., Ellison, *supra* note 111.

¹⁴⁸ Felson & Pare, *supra* note 109, at 1359, 1372.

¹⁴⁹ E.g., NISBETT & COHEN, *supra* note 90; Richard E. Nisbett, *Violence and U.S. Regional Culture*, 48 *AM. PSYCH.* 441 (1993); Jacqueline M. Moore, "Them's Fighting Words": *Violence, Masculinity, and the Texas Cowboy in the Late Nineteenth Century*, 13 *J. OF THE GILDED AGE & PROGRESSIVE ERA* 28, 31 (2014).

vulnerable herds,¹⁵⁰ frontier culture,¹⁵¹ the slave system,¹⁵² the Civil War itself,¹⁵³ post-Civil War political domination and economic exploitation by Northern forces,¹⁵⁴ and the emergence of the “Lost Cause” ideology following defeat in the Civil War.¹⁵⁵ However, aggregate data cannot prove that Southern-born, Scots-Irish, or evangelical whites are committing violent acts more frequently than their counterparts.¹⁵⁶

Further, if indeed the South does have both higher rates of select forms of violence and that is attributable to culture, then how that culture is inculcated into new generations becomes increasingly important. Some argue it is merely “cultural lag” (which begs the question: Lag relative to what? The Northeastern or coastal standard?).¹⁵⁷ Others argue institutions, such as employers, play a role.¹⁵⁸ Still others assume this socialization takes place in the home,¹⁵⁹ perhaps influenced by the South’s purported affinity for corporal punishment,¹⁶⁰ playground conflicts,¹⁶¹

¹⁵⁰ E.g., Moore, *supra* note 149, at 31; Chu et al., *Herding and Homicide: An Examination of the Nisbett-Reaves Hypothesis*, 78 SOC. FORCES 971 (2000); Emily R. Berthelot et al., *Scots-Irish Women and the Southern Culture of Violence: The Influence of Scots-Irish Females on High Rates of Southern Violence*, 23 S. RURAL SOCIO. 157, 159 (2008) (“[The Scots-Irish] were characterized as a culture of filthy and rowdy people... They were considered backwards.”).

¹⁵¹ E.g., Moore, *supra* note 149, at 31.

¹⁵² E.g., ANNE E. MARSHALL, *Wicked and Lawless Men: Violence and Confederate Identity, 1865—1885*, in CREATING A CONFEDERATE KENTUCKY: THE LOST CAUSE AND CIVIL WAR MEMORY IN A BORDER STATE 55, 79 (2013) (quoting Henty Field saying, “This quick resentment and this habit of violence, showing itself in fights and feuds, Corsican Vendetta and all, is the heir-loom of Slavery—one of the natural products of irresponsible power.”).

¹⁵³ E.g., Adam Fairclough, “Scalawags,” *Southern Honor, and the Lost Cause: Explaining the Fatal Encounter of James H. Cosgrove and Edward L. Pierson*, 77 J. OF S. HIST. 799, 801 (2011) (Using James H. Cosgrove and Edward L. Pierson as evidence, Adam Fairclough highlights “the propensity of southern white men to settle quarrels by means of knives and guns” as a manifestation of the South’s honor culture, a concept that purportedly arose following the Civil War.); Marshall, *supra* note 152, at 55, 57 (Kentucky’s violence “was not simply a postwar phenomenon but rather a natural outgrowth of the pervasive and intense guerilla activity that had plagued the state during the war.”).

¹⁵⁴ E.g., Hackney, *supra* note 144; Jo Dixon & Alan J. Lizotte, *supra* note 132, at 385.

¹⁵⁵ E.g., Fairclough, *supra* note 153.

¹⁵⁶ Shaun A. Thomas, Drew C. Medaris & Cody R. Tuttle, *Southern Culture and Aggravated Assault: Exploring the Generality of the Southern Culture of Violence*, 38 SOCIO. SPECTRUM 103, 113 (2018).

¹⁵⁷ Reed, *supra* note 114, at 436.

¹⁵⁸ Dov Cohen & Richard E. Nisbett, *Field Experiments Examining the Culture of Honor: The Role of Institutions in Perpetuating Norms of Violence*, 23 PERSONALITY & SOC. PSYCH. BULL. 1188, 1198 (1997).

¹⁵⁹ Gastil, *supra* note 144 at 414-15.

¹⁶⁰ Reed, *supra* note 114, at 432, 434, 436.

¹⁶¹ Ellison, *supra* note 111, at 1225 (citing JOHN S. REED, ONE SOUTH: AN ETHNIC APPROACH TO REGIONAL CULTURE (1982)).

or adult encounters.¹⁶² For example, McCullough¹⁶³ and Slocum¹⁶⁴ argue that President George W. Bush's ultimatum in his 2001 State of the Union Address—"Every nation in every region now has a decision to make. Either you are with us, or you are with the terrorists."—reflects his upbringing in the culture of honor that is Texas. However, the second President Bush is a Phillips Academy, Harvard, and Yale-educated man with a Manhattan-raised mother and a Milton, Massachusetts-born and Greenwich, Connecticut-raised father also educated at Phillips Academy and Yale who moved to Texas for opportunities in oil and vacationed at his family's Kennebunkport, Maine estate. And President George H.W. Bush in his own right was the son of Prescott Bush, a Columbus, Ohio-born, Rhode Island boarding school and Yale-educated Wall Street Investment Banker and Republican Senator from Connecticut. If the Southern Sub-Culture of Violence (or Honor) is passed on through the home, as some argue, the Bushes are perhaps the least likely to demonstrate such a propensity.

D. INDULGING SOUTHERN STEREOTYPES & TROPES

Despite this ambiguity, the Southern Sub-Culture of Violence has been a durable mainstay of Southern studies and popular media for decades. As Rowland Berthoff notes, "one plausible reason for the uncritical acceptance of the Southern violence construct by segments of the academic community and by the general public is its compatibility with prevalent stereotypes and ideological notions about the South."¹⁶⁵ With help from media and even scholars, unoriginal, exaggerated, and derisive stereotypes—perhaps rooted in a modicum of truth but that conflate (exaggerated) fact and fiction, historical and mythical—abound about the South. With very little effort one can recall images of Corsican-Vendetta-esque feuds, outlaws, rednecks, snake handlers, primitive simpletons, and so on. Books depict some version of an outsider's journey through the South noting all the quirks of Southern life (where even the "good" differences are rooted in a romanticized, simpler South), a grim portrait of the South's violent (often racial) history, or simply pander "poverty porn" to coastal and Southern elites, who "just cannot

¹⁶² Ellison, *supra* note 111, at 1225 (citing James P. Curry, *Status Groups and Attitudes Toward Interpersonal Violence*, 1979 (Paper presented at the annual meeting of the Midwest Sociological Society, Minneapolis; James DeFronzo, *In Search of the Behavioral and Attitudinal Consequences of Victimization*, 25 SOCIO. SYMPOSIUM 23 (1979)).

¹⁶³ Barnes, Brown & Osterman, *supra* note 120, at 1020, 1027 (citing M.E. MCCULLOUGH, *BEYOND REVENGE: THE EVOLUTION OF THE FORGIVENESS INSTINCT* (2008)).

¹⁶⁴ Barnes, Brown & Osterman, *supra* note 120, at 1020, 1027 (citing F. Slocum, *Militarism, Southern Culture, and the 9/11 Attacks: The Implications for Contemporary Southern Politics* (2007) (Paper presented at the annual meeting of the Southern Political Science Association, New Orleans, LA)).

¹⁶⁵ Hawley & Messner, *supra* note 104, at 482.

believe people live like that” (e.g., the self-congratulative *Hillbilly Elegy*, written by a Middletown, Ohio-born, Yale Law School-educated lawyer and venture capitalist who was only able escape his blighted Southern, “white trash,” Appalachian roots marked by violence, substance abuse, welfare dependency, and social and economic rot, by assimilating into the civilized, intellectual culture of New England—all of which coastal elites sapped up).¹⁶⁶ Comedians like Nebraskan “Larry the Cable Guy,” whose fake Southern accent and “redneck” comedy has become synonymous with the South, or the Georgian Jeff Foxworthy, noted for his signature “You might be a redneck” lines, pander minstrel show-esque skits to more affluent Southerners and coastal elites alike who desperately want to distance themselves from “those (redneck) Southern whites.” Popular films like *Deliverance*, *Talladega Nights*, *Lawless*, *Bonnie and Clyde*, *O Brother, Where Art Thou?*, and *The Paperboy* and television like *The Beverly Hillbillies*, *Hee Haw*, *The Dukes of Hazzard*, *Hatfields & McCoys*, and *True Blood* circulate stereotypical, prejudiced images of the South’s (endemic) violence, backwardness, ignorance, poverty, anti-intellectual religiosity, anti-modernism, and general uncivilization. Indeed, it is this inherent violent nature that supposedly explains the South’s proficiency at football and affinity for NASCAR.¹⁶⁷

This notion that the South is violent, lawless, primitive, and uncivilized has existed for centuries, especially in periods where political and economic stakes were high and identity and self-concepts were implicated. And, the mouthpiece has not only been Hollywood. Just as political philosophers and other elites and intellectuals reinforced and gave credence to claims about the lawless, uncivilized Scots, so too have intellectuals and economic elites buttressed stereotypes about the South in popular imagination and contributed to regional inequalities.¹⁶⁸ In 1748,

¹⁶⁶ See Orville Vernon Burton, *The South as ‘Other,’ the Southerner as ‘Stranger,’* 79 J. OF S. HIST. 7, 17-18 (2013) (describing how popular culture creates caricatures and villains of the South, sometimes damaging and sometimes descriptive); J.D. VANCE, *HILLBILLY ELEGY: A MEMOIR OF A FAMILY AND CULTURE IN CRISIS* (2016).

¹⁶⁷ Vernon Burton, *supra* note 166, at 19-21.

¹⁶⁸ Marshall, *supra* note 152, at 70 (As evidence of Kentucky’s lawlessness, Marshall notes: “Though illegal, Kentuckians engaged in *dozens* of duels prior to the Civil War.” Henry Clay even engaged in two. “Editorials about the violence time and again invoked the language of savagery and civilization”—and apocalypse. The *New York Times* wrote in 1878 that Kentucky violence “would not have been strange sixty or seventy years ago, for many of the early inhabitants were so rude and uneducated as to be half-civilized” and “barbarous.” As Marshall writes: “It is difficult to overestimate the extent to which lawlessness in Kentucky shaped the state’s reputation among outsiders. From the end of the Civil War through the 1880s, much of what journalists, authors, and travelers wrote about the state centered on violence, and the comments of widely read newspapers like the *Louisville Courier-Journal* and the *New York Times* helped define the way many Americans viewed Kentucky. As early as 1866, outsiders such as John Hawes made note of disorder and ‘barbarism’ among Lexington residents. In a letter to a Kentucky friend, he stated his dismay at the

Charles de Secondat Montesquieu noted, “You will find in the northern climates peoples who have few vices, enough virtues, and much sincerity and frankness. As you move toward the countries of the south, you will believe you have moved away from morality itself; the liveliest passions will increase crime.”¹⁶⁹ Thomas Jefferson, the Virginia-born son of English heritage, said Southerners were “more intolerant . . . and hot tempered” than Northerners.¹⁷⁰ When Henry Watterson, of the *Louisville Courier Journal*, called for unarmed Kentuckians to go to Washington, D.C. and exercise their right of petition, one contemporary condescendingly wrote, “visions of a hundred thousand Kentucky colonels, their white mustaches quivering with anger, advancing upon the national capital with horse-pistols and mint juleps” engulfed the national imagination, which prompted *Harper’s Weekly* to publish a cartoon with all the classic accoutrements of condescension and symbolism of a lawless, hot-headed Kentuckian.¹⁷¹ H.L. Mencken called the South “almost as sterile, artistically, intellectually, culturally, as the Sahara Desert.”¹⁷² Boston University Professor Howard Zinn described the South as “the most terrible place in America.”¹⁷³ John Shelton Reed even wrote: “Beneath the image of a gracious, hospitable, leisurely folk has lurked that of a hot-tempered, violent, even sadistic people.”¹⁷⁴

E. ENDURING CONSEQUENCES: PAST & PRESENT

As the English and other elites so keenly understood, stereotypes of lawlessness, backwardness, and uncivilization are economic, social, and political powerplays. Likewise, this persistent narrative of the “lawless South” and the litany of other stereotypes have tangible, enduring consequences, of which Southerners

‘degree of non-chalance with which they handle edge tools and firearms and stand neither in awe of the laws of man nor God.’ Casting this behavior as Civil War rebellion, he continued: ‘The opinion I would express if called upon, would be that the war ended at least two years too soon[—]that while were whipping this class of people we did not make our blows sufficiently heavy to create the impression that we were in earnest.’ Hawes’ opinions were, no doubt, influenced by newspaper accounts. Throughout the 1870s publications like the *New York Times* printed tales of lawlessness regularly, portraying the state as the home of ‘American Banditti’ and ‘midnight assassins,’ a place where violence reigned, and the law was ill respected.”).

¹⁶⁹ Anderson & Anderson, *supra* note 113, at 746.

¹⁷⁰ Christopher A. Cooper & H. Gibbs Knotts, *Love ‘Em or Hate ‘Em? Changing Racial and Regional Differences in Opinions Toward Southerners*, 1964-2008, 93 Soc. Sci. Q. 58, 59 (2012).

¹⁷¹ Marshall, *supra* note 152, at 72-74.

¹⁷² Cooper & Knotts, *supra* note 170, at 58-59.

¹⁷³ *Id.*

¹⁷⁴ Reed, *supra* note 114, at 429.

(and non-Southerners) have long been intimately aware. The racial and political moderate, Henry Watterson of the *Louisville Courier-Journal*,

feared the threat lawlessness [real and perceived] posed to the economic development of Kentucky. In 1873, he wrote that the deleterious effects of the violence . . . had driven away “good citizens,” deterred immigration into the state, depreciated property values, and “made [the] Commonwealth a by word and a reproach among our people.” If the lawlessness was not quelled, he warned, it would “plunge us into bankruptcy and ruin.”¹⁷⁵

The New York Times corroborated this fear writing: “troops of immigrants” avoided Kentucky, “repelled by the sorry tales which they have read of the turmoil and disorder in the interior.”¹⁷⁶ In 1878, the *New York Times* again reiterated:

Kentucky may not care for her reputation morally, but her material interests demand that she should use all her powers to compel respect for law and order within her bounds . . . but she never will get it, nor will she ever stand fair in the eyes of the world, until she suppresses effectively the spirit and practice of butchery with which her tarnished name is associated.¹⁷⁷

In 1965, Frank Parker, a voting rights attorney, leveraged prevailing Northern attitudes toward the South to push for the passage of the Voting Rights Act, *inclusive of the preclearance clause*.¹⁷⁸ Parker admits the Act was passed only because the South was portrayed as “other” saying, “We could always get a majority of Congress to beat up on the southern minority.”¹⁷⁹ Parker, who also fought against nationwide coverage amendments, was intimately aware that the Act would not pass if it applied equally to Northern states (i.e., without the preclearance clause).¹⁸⁰ Still, in 2013, Orville Vernon Burton conducted an analysis of Google search results, which simply makes predictions based on what others have searched, and found that some of the top generated words for the South or specific Southern states were *racist* and *backwards*.¹⁸¹ When he searched “Why are southerners so . . .?,” Google generated “fat, dumb, religious, conservative, mean, nice, patriotic,

¹⁷⁵ Marshall, *supra* note 152, at 71

¹⁷⁶ *Id.* at 72-74.

¹⁷⁷ *Id.* at 71.

¹⁷⁸ Burton, *supra* note 166, at 46-47.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 27.

slow, rude, proud.”¹⁸² As he notes, “[this] is not evidence that [these states] are the most racist [or dumb and so on] states, but it is evidence that, on a certain date, people who Googled the question thought they were.”¹⁸³ As an illustration of prevailing stereotypes, Burton further wrote:

Edward W. Said, in his treatise on Westerners’ efforts to grapple with the enigma of the Middle East (their “Orient”), has influenced scholars attempting to get at southern identity. These Western efforts (which he calls *Orientalism*) are hindered by “the sense of estrangement experienced by Orientalists as they dealt with . . . a culture so profoundly different from their own.” Such discourses, Said insisted, were “not ‘truth’ but representations,” “full of condescension and bad faith.” . . . In the following passage by Said, I have substituted the words *northern* . . . for Said’s *Orientalist, European, West*, and the like, and the words *South* or *southern* for *Orient, Arab, (Mid)East*, and so on; all the other words belong to Edward Said: “Every statement made by [*Northerners*] . . . conveyed a sense of irreducible distance separating *northern* from *southern* . . . [T]heir estrangement from *the South* simply intensified their feelings of superiority about *northern* culture . . . [The] central argument is the myth of the arrested development of the *South* . . . [and] theses of *southern* backwardness, degeneracy, and inequality with the *North*.”¹⁸⁴

Interestingly, the resiliency of these stereotypes is most potent in the white non-Southern population. In fact, between 1964 and 2008, the percent of Americans who “felt warm toward Southerners” increased, led primarily by non-Southern Black people.¹⁸⁵ However, during the last fifty years, non-Southern whites’ opinions of the South have remained largely constant (and markedly lower than opinions of white and Black Southerners and Black non-Southerners).¹⁸⁶ This suggests that white non-Southerners’ identity (likely those in geographies most influenced by English settlers or of English ancestry themselves) is very much influenced by their dissociation from the more inferior, narrow-minded, and

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 11-12.

¹⁸⁵ Cooper & Knotts, *supra* note 172, at 66-67.

¹⁸⁶ *Id.*

backward Southern whites (of primarily Scottish, Borderland, and Northern Irish stock), who if not merely a character are a menace.

Though the South has been an agent in its own historical trajectory (and certainly not only a victim of outside forces) and the legacy of race and slavery should not be understated, these stereotypes and a litany of others have resulted in tangible, lasting consequences for Southerners and the South. Indeed, while, as one commentator noted, the Southern economy remained in a colonial status to the North well into the twentieth century,¹⁸⁷ disparities persist in the twenty-first. One such disparity is the consolidation of capital and opportunity outside the South, notably in the Northeast (e.g., concentration of the financial services and other lucrative sectors), which, in turn, makes the South vulnerable to brain drain and the ongoing gentrification of the South, among other ills.¹⁸⁸

This is further exacerbated by education disparities. In a survey of the Harvard class of 2017, only 12% of students identified as hailing from the Southeast while 41% of students were from the Northeast (and boarding school students were counted toward their home state, and, thus, regional imbalances were probably even more dramatic).¹⁸⁹ 52% of domestic students in the Harvard Class of 2018 were from four states: New York, New Jersey, California, and Massachusetts, despite those states comprising 23% percent of the population in 2014.¹⁹⁰ Still further despite boasting only 6.7 million people (2% of the U.S. population), Massachusetts comprised 15% of freshmen in 2015.¹⁹¹ This phenomenon, which is likely not confined to Harvard alone, further entrenches capital and networks in the Northeast at the expense of other regions in the U.S. (regions that also boast large populations of minority residents) and further contributes to Southern neglect across a host of other dimensions. For instance, the South boasts the lowest educational attainment of any region in the country,¹⁹² the highest mortality rates

¹⁸⁷ RUPERT B. VANCE, HUMAN GEOGRAPHY OF THE SOUTH: A STUDY IN REGIONAL RESOURCES AND HUMAN ADEQUACY (1935).

¹⁸⁸ Stef W. Night, Chart: The Wealthiest Regions of the United States, AXIOS (May 10, 2019), <https://www.axios.com/wealth-regions-united-states-wage-gap-c09e58c4-6498-4c01-951a-8bd430c6768c.html>.

¹⁸⁹ C. Ramsey Fahs & Forrest K. Lewis, Beyond Boston: Regional Diversity at Harvard, THE CRIMSON (Mar. 26, 2015), <https://www.thecrimson.com/article/2015/3/26/regional-diversity-scrutiny/>.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *E.g.*, Colleen Campbell, Those Left Behind in College Attainment by Race and Geography, Center for American Progress, https://interactives.americanprogress.org/maps/2018/12/Adult+Attainment+Report/index.html?_g

in the nation (especially cardiovascular diseases and non-communicable diseases like cancer which are highly correlated with poverty),¹⁹³ lower life expectancy,¹⁹⁴ and higher food insecurity,¹⁹⁵ poverty,¹⁹⁶ unemployment,¹⁹⁷ and so on—and the “bootstraps argument” that fails for other minority groups is equally unconvincing for the South and Southerners. These metrics should not be used to buttress existing stereotypes about the South or Southerners, but rather should reveal how longstanding stereotypes, self-concepts and their boundaries, and subsequent regional socio-political and socio-economic interaction shaped the South, the non-South, and the U.S. as a whole as well as the role non-Southerners (who very much benefitted from the “not in my backyard” institution of slavery) have played in this history and persistent regional inequities.¹⁹⁸

a=2.103185801.885404258.1646081378-2011441928.1646081378 (last visited Mar. 14, 2022); Social Science Research, Measure of America, https://measureofamerica.org/maps/?county^less_than_hs^all_all^Education^education (last visited Mar. 14, 2022); Social Science Research Council, Measure of America, https://measureofamerica.org/maps/?county^bachelor^all_all^Education^education (last visited Mar. 14, 2022).

¹⁹³ Institute for Health Metrics & Valuation, <https://vizhub.healthdata.org/subnational/usa> (last visited Mar. 14, 2022).

¹⁹⁴ *Id.*

¹⁹⁵ Food Insecurity in the United States: Before COVID-19, FEEDING AMERICA, <https://map.feedingamerica.org>.

¹⁹⁶ Social Science Research, Measure of America, https://measureofamerica.org/maps/?county%5epoverty%5eall_all%5eWork-Wealth-Poverty%5ework-wealth-poverty (last visited Mar. 14, 2022); Poverty USA, <https://www.povertyusa.org/data> (last visited Mar. 14, 2022).

¹⁹⁷ Social Science Research Council, Measure of America, https://measureofamerica.org/maps/?county^unemployment^all_all^Work-Wealth-Poverty^work-wealth-poverty (last visited Mar. 14, 2022).

¹⁹⁸ While the formal institution of slavery ended in the Northeast years before it did in the South, the Southern economy was not isolationist. The fruits of slave labor that made urban life comfortable in the North, London, and elsewhere were consumed far outside the South, in the Northeast and abroad. The profits of the institution, such as those who controlled the supply chain, distribution, and so on, were similarly not confined to the South. Indeed, even during the Great Migration and other periods of migration to the North, minorities were not welcomed with open arms. The development of Harlem, the South Side of Chicago, and South-Central Los Angeles all evidence prejudice, sometimes through legal mechanisms like redlining, against these groups, who, in turn, resiliently developed their own communities. Incidents of police brutality and biased policing towards Black people exist throughout the contemporary U.S. Nonetheless, other people’s problems always seem easier to solve than one’s own, for *their* problems can be reduced to their ignorance, bigotry, and so on, but *ours* are nuanced and require complex thinking and problem-solving befitting of an enlightened, developed social order.

CONCLUSION

I by no means explain every driver of the modern South from thirteenth-century Scotland to the twenty-first century South. Rather, I seek to highlight the need for further examination of how self-concepts—cast in age-old and hackneyed stereotypes—and notions of law, “lawlessness,” and “civilization” color views of history and contemporary American life and prove politically, socially, and economically expedient. Without making a value judgment regarding millions of people and comprising over a quarter of the United States population, the South is different—*though not necessarily deviant*—in many ways. As James Cobb wrote, “I’ve always said that southern historians would simply be forced to go out of business if we were no longer allowed to use any form of the word ‘irony.’”¹⁹⁹ Hence, while race, politics, and so on work differently in different regions, “the idea that the South is an exceptional and racist ‘Other’ has functioned to allow white [non-Southerners] to deny their own racism,” their own deeply entrenched prejudice, as well as their role in the horrors of American history, the contemporary U.S. socio-political and economic climate, and the inequitable allocation of resources, power, and privilege across regions.²⁰⁰ This is not to argue that the South is superior, for neither uncritical pride in the South nor mere reproduction of derisive stereotypes produces the healing and reconciliation the South and the United States more broadly so desperately seek. The South is never as pure and never as stained as it is so often portrayed. Likewise, New England and the coasts are not simply enlightened islands of civilization in a nation of simpletons and savages. Nonetheless, rather than looking to the South as the source of America’s maladies, healing and reconciliation require Southerners *and* non-Southerners to acknowledge their roles in building the contemporary United States—warts and all.

¹⁹⁹ Burton, *supra* note 169, at 17.

²⁰⁰ *Id.* at 8.