

12 Embracing jurisdiction

John Ford's *The Man Who Shot Liberty Valance*

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The critic Georg Lukács wrote:

The genuine categories of literary forms are not simply literary in essence. They are forms of life especially adapted to the articulation of great alternatives in a practical and effective manner and to the exposition of the maximal inner potentialities of forces and counterforces.

(Lukács, 1970: 21)

Lukács, whose major work included a study of the historical novel (Lukács, 1962), might have had the cinema's major counterpart of historical fiction, the western film, in mind. Often dismissed, in the famous 'slanguage' of the film trade paper *Variety*, as 'oaters' – because of the omnipresence of oat-eating horses – the Western, in part because of its permanent witness to American life and its simple, persistent generic forms, was often a powerful vehicle for articulating the 'great alternatives' contemplated by Lukács.

On the other hand, the master director of Westerns, John Ford, insisted on the empiricism of his narrative approach. He claimed that he was driven only by what actually happened, telling one interviewer: 'I am not trying to make a legend live. I simply recall historic facts. Because it is based on American history, on people who existed, the Western moves me' (Mott, 2001: 95).

Ford was famously resistant to critical engagement with his films. 'I hate the cinema,' he once said, adding: 'But I like making Westerns' (Leguèbe, 2001: 73). One reason for making Westerns, he told the future director Bertrand Tavernier, was that they offered 'a chance to get away from Hollywood and the smog', which partly meant getting away somewhat from the pressures and interferences of the Hollywood studio system (Tavernier, 2001). Ford rejected not only critical readings of his own westerns but also theoretically driven forms of cinematic practice – for instance, telling the French critic Eric Leguèbe:

What I like in filming is the active life, the excitement of the humming of the cameras, and the passion of the actors in front of them, the landscapes on top of that, the work, work, work . . . It takes a huge effort to remain lucid and not fall in the traps of aestheticism and, above all, intellectualism. What counts

is what one does and not what one says. When I make a western, all I have to do is film a documentary on the West, just as it was: epic. And from the moment that one is epic, one can't go wrong. It's the reality, outside time, that one records on the negative.

(Leguèbe, 2001: 73)

However, Ford made a point of identifying himself with Western films, and the identification carried more than merely factual force. In an often-told story, he began an address to fellow directors attacking the Hollywood blacklist with the introduction: 'My name is John Ford. I am a director of Westerns' (McBride, 2001: 416). And yet, in one 20-year period of his career, between the silent hit *3 Bad Men* (1926) and *My Darling Clementine* in 1946, Ford directed just one Western – *Stagecoach* (1939) – out of some 44 feature-length films (Bogdanovich, 1978: 113–49). Ford's decision to return wholeheartedly to the Western – and, as the winner of six Academy awards for non-Western films (Libby, 2001: 53), to project himself as 'a director of Westerns' – was the product of deliberate reflection on what he sought to achieve as a film-maker following his experiences in the Second World War. As one biographer, Joseph McBride, puts it:

Ford consciously set out to keep the values of pioneer America alive in the minds of his fellow countrymen... The genre reflected a continued need among the American public for mythic parables of national identity in an age when America was grappling with the disturbing responsibilities of its new-found superpower status.

(McBride, 2001: 417–18)

In his later films, Ford used the Western genre to expose what he saw as America's ills in the postwar world. In *The Searchers* (1956), he probed racism and the taboos of miscegenation. More explicitly, in *Sergeant Rutledge* (1960), he depicted the affair of a black cavalry soldier falsely accused of raping a white woman. Ford had participated in the D-Day landings in Normandy on 6 June 1944 (McBride, 2001: 396–97), and claimed that the experience had changed his views on race in America. 'When I landed at Omaha Beach,' he told Samuel Lachise, the film critic for the French communist daily *L'Humanité*, in 1966, 'there were scores of black bodies lying in the sand. Then I realised that it was impossible not to consider [negroes] full-fledged American citizens' (Tavernier, 2001: 107). A similar revisionism informed his depiction of wronged Indians in another cavalry Western, *Cheyenne Autumn* (1964). As Ford told Peter Bogdanovich:

[I] wanted to show [the Indians'] point of view for a change. Let's face it, we've treated them very badly – it's a blot on our shield; we've cheated and robbed, killed, murdered and massacred and everything else, but they kill one white man and, God, out come the troops.

(Bogdanovich, 1978: 104)

Although Ford's meditations on postwar American were not limited to Westerns – his depiction of machine politics in *The Last Hurrah* (1958) and of the travails of women in *7 Women* (1966) lay outside the genre – he nonetheless persistently revisited the conventions of the Western to explore the national and social themes that stirred him in the later part of his career. In *The Man Who Shot Liberty Valance* (1962), Ford's treatment of his themes is possibly the most complex and nuanced of his late films, a meditation both of historical consciousness and contemporary ideologies, of foundation myths and modern legends and, above all, of the developing role of the law in a society reaching the end of its frontier state. This latter theme is, of course, a staple not only of the Western genre but also of American consciousness itself, and one which Ford had touched upon previously. In *Stagecoach* (1939), two protagonists of the story – a prostitute and a drunken doctor – are banished from their town by the emerging forces of law, religion and civilisation and cast out into the desert in the company of, among others, a louche gambler, a corrupt banker and an outlaw. The banishment theme is an echo of one of the earliest successful Western stories, Bret Harte's *The Outcasts of Poker Flat* (1869) (filmed by Ford in 1919 in a now-lost version), in which the eponymous frontier town experiences 'a spasm of virtuous reaction, quite as lawless and ungovernable as any of the acts that had provoked it' and duly casts out a gambler, a drunk and two prostitutes (1869: 12).

But the issues of law in *Liberty Valance* go far beyond these generic commonplaces; the film contains layers of searching and sophisticated meditation upon a number of areas of jurisdiction which are significant both as an exercise of historical memory and as a contemplation of the America of the early 1960s in which the film was made.

In *The Man Who Shot Liberty Valance*, Ransom Stoddard (James Stewart), a senator and former governor of an unnamed American state, returns by train to the small town of Shinbone with his wife Hallie for the funeral of Tom Doniphon (John Wayne), a forgotten man who has died a pauper, leaving only his black servant, Pompey, and the town's former marshal, Link Appleyard, to mourn him. Stoddard's trip piques the curiosity of the local newspaper editor, who demands to know why so distinguished a man would attend the funeral of so obscure a figure as Doniphon. In flashback, Stoddard relates his arrival by stagecoach in Shinbone many years earlier, as a young lawyer from the East who has determined to make his fortune on the frontier. Stoddard's stagecoach is held up by a group of desperadoes headed by Liberty Valance, a cruel and violent thug who beats Stoddard viciously and desecrates his law books. Stoddard is rescued by Doniphon and Pompey, and brought to Shinbone, where he is nursed by Hallie, whom Doniphon loves, and her Scandinavian immigrant parents, the Ericsons, who own a restaurant. Stoddard, faithful to the legal principles that have formed him, wants Link Appleyard to arrest Valance and his men for robbing the coach, but Appleyard, clearly afraid, claims that he has no jurisdiction over criminals outside the town's boundaries. Doniphon mocks the young lawyer's scruples, explaining that his vision of the law does not prevail on the frontier.

Stoddard takes a job washing dishes and serving in Hallie's parents' restaurant. He also opens a school for the town's children and adult illiterates, where the pupils include Hallie herself, who has become attracted to Stoddard, Pompey and Appleyard's children by his Mexican wife. The students not only learn to read but are also inculcated in the virtues of America's Declaration of Independence and Constitution. These values provide a link to a back story of the film, the efforts of the territory in which Shinbone is situated to become a state of the Union. Stoddard becomes involved in Shinbone's efforts to elect representatives to the territorial convention that will vote on statehood.

Liberty Valance, who turns out to be in the pay of wealthy ranching interests determined to block statehood, attempts unsuccessfully to intimidate the Shinbone townspeople into electing anti-state representatives to the convention and, having failed, determines to be rid of Stoddard for ever. Valance challenges Stoddard to a shootout. Stoddard, who has earlier been shown to be an incompetent gunman, appears for the challenge and during the gunfight Valance is killed. Stoddard becomes a hero, 'The Man Who Shot Liberty Valance', goes to the territorial convention and is swept on a wave of popularity into a lifetime of public office. He also wins Hallie, who becomes his wife. But Doniphon reveals to Stoddard that it is he, Doniphon, who killed Valance in order to save Stoddard's life, even though he knew that he would lose Hallie as a result.

Back in the present, Stoddard completes his confession that his entire political life was based on the lie that he shot Liberty Valance. The newspaper editor, however, decides to 'spike' the story. 'When the legend becomes fact', he comments, 'print the legend'. Stoddard and Hallie, clearly bereft at Doniphon's death, leave Shinbone – one surmises for ever.

This rather bald summary does not do justice to the richness of *The Man Who Shot Liberty Valance*. But it is sufficient to illustrate the three aspects of jurisdiction, as reflected in the film, which are discussed in this chapter. First, there is the willingness – or unwillingness – of the state to assert jurisdiction over the person, as reflected by the inability of the inhabitants of Shinbone, most notably the cowardly Marshal Appleyard, to bring Liberty Valance and his men to justice. Second, there is the back story of the territory's campaign for statehood – in effect, its desire to embrace the jurisdiction of the US Federal Government. And third, there is the way in which the film is a mirror of the period when it was made, the early 1960s, when the expansion of federal jurisdiction brought about a social revolution in the United States that is still, 40 years on, one of the essential fault lines in American life.

Criminal jurisdiction over the person

The fulcrum upon which the plot of *The Man Who Shot Liberty Valance* turns is the inability of the inhabitants of Shinbone to bring Valance and his violent gang to justice. The clear reason is fear. The ostensible reason, however, is that the authorities in Shinbone, such as they are, do not have jurisdiction over Valance for acts committed outside the town. Valance's very presence on his trips into Shinbone

terrorises the natives, but his acts fall short of arrestable offences. The territorial government, which apparently does have jurisdiction over Valance's crimes, is invisible in the film. Accordingly, Valance operates with impunity and, until the arrival of Stoddard, is unchallenged. In *Liberty Valance*, Marshal Link Appleyard is played by the reedy-voiced Andy Devine, a member of John Ford's extended repertory company of leading and character actors. Devine is always a comic figure in the director's films, 'Ford's broad-beamed Falstaff' (Sarris, 1975: 177), who was sometimes typed as a person who bridged the Anglo and Latino cultures of the West: he once claimed in an interview that every time he worked with him, Ford 'saw to it that I had a Mexican wife and nine kids' (Anderson, 1999: 217). In *Liberty Valance*, Appleyard is a comic coward, an inept, Dogberryish constable who would rather eat free food in the Ericsons' restaurant than pursue Liberty Valance and his men. Terrified of enforcing the law, he declares that, as far as Liberty Valance's crimes committed outside town are concerned, 'I ain't got no jurisdiction. What Liberty does out on the road ain't no business of mine.' (It later turns out – at least according to Stoddard's law books – that Appleyard *does* have jurisdiction to arrest Valance. This, naturally, makes no difference at all.)

The idea of jurisdictional limitations on police action recurs in the American western, Ford's included. The cavalry led by John Wayne in *Rio Grande* (1950), respects the river border between Texas and Mexico, even where the principles of hot pursuit might allow it to cross. In historical re-enactments reaching as late as the 1930s, fugitives are depicted racing for the state line to escape the police whose jurisdiction ends at the border – for instance, the glamorous criminals in Arthur Penn's quasi-western *Bonnie and Clyde* (1967). And, in a moment of homage to Liberty Valance, the sheriff in Lawrence Kasdan's *Silverado* (1985) abandons his pursuit of escaping presumed outlaws when a bullet comes too close. 'Today,' he announces while turning back, 'my jurisdiction ends here'.

But in *Liberty Valance*, the meditation on this familiar theme is more complex than simple boundary-drawing. Stoddard has been robbed of all of his money and severely beaten. In the power vacuum represented by Link Appleyard, the only choice offered to him by Tom Doniphon is to learn how to use a gun – a suggestion that repels Stoddard, persistent in his attachment to the rule of law. Of course, the law that Stoddard is attached to is the law of the East, the law of the books that have been brought to Shinbone and violated by Liberty Valance. Tom Doniphon follows a different law, in which each person sets his or her own jurisdiction, a concept of law set forth somewhat sentimentally in Walter Prescott Webb's classic study *The Great Plains*:

The West was lawless for two reasons: first, because of the social conditions that obtained there during the period under consideration; secondly, because the law that was applied there was not made for those conditions. It did not fit the needs of the country, and could not be obeyed... We know, for example, that in the early period the restraints of law could not make themselves felt in the rarefied population. Each man had to make his own law because there was no other to make it... In the absence of law and in the

social conditions that obtained, men worked out an extra-legal code or custom by which they guided their actions.

(Webb, 1981: 496–97)

This ‘code’ called for the rough and ready morality that Tom Doniphon represents, again in Webb’s words:

The code demanded what [Theodore] Roosevelt called a square deal; it demanded fair play. According to it one must not shoot his adversary in the back, and he must not shoot an unarmed man. In actual practice he must give notice of his intention, albeit the action followed by the notice as a lightning stroke. Failure to abide by the code did not necessarily bring formal punishment for the act already committed; it meant that the violator might be cut off without benefit of notice in the next act. Thus was justice carried out in a crude but effective manner, and warning given that in general the code must prevail.

(Webb, 1981: 497)

The rule of the gun was a reality in the West. For instance, it has been estimated that some 50 per cent of homicides in seven California counties between 1850 and 1900 were caused by handguns, which were also implicated in 68 per cent of the murder indictments in one Colorado mining community between 1880 and 1920 (McKanna, 1995). Gun rule gave rise to forms of gun-ruled institutions, such as the vigilante movements and committees that proliferated in the West. However, it has been argued that, like Tom Doniphon, these vigilantes were not themselves lawless; they were simply trying to provide an apt form of law where none otherwise existed. As Lawrence Friedman has said:

Social control, like nature, abhors a vacuum. The ‘respectable’ citizens – the majority, perhaps? – in Western towns were not really lawless. Quite to the contrary, people were accustomed to the rule of law and order... They were Americans; they were unwilling to tolerate too sharp a break in social continuity; they reacted against formal law which was too slow, or too corrupt, for their purposes, or which had fallen into the hands of the less respectable.

(Friedman, 1985: 369)

Moreover, it has been shown by John Phillip Reid (1980) that the pioneers who travelled West in the nineteenth century had substantial and sophisticated notions of law, taken from their sense of the legal systems that they had left behind, adapted to the new circumstances in which they found themselves, and applied as a form of customary law while they found themselves in places where no palpable apparatus of the law otherwise existed. Once settled, the West generated its own special forms of law, at least divergent from, if not contrary to, English precedents, to meet its own special conditions, whether topological, historical or both – governing, for instance, water rights (Bakken, 2000: 127–204), land tenure (Bakken, 2000: 311–55), mining practices (Bakken, 2000: 205–47) and marital

property (Friedman, 1985: 171). Why, then, did the criminal law, represented in *Liberty Valance* by the aspirations of Stoddard, not also develop its own particularities, forged by the special conditions of the West? One possible reason may be that, despite the thoughtful voice given to Tom Doniphon in *Liberty Valance* and more lurid accounts of frontier lawlessness portrayed elsewhere (Shirley, 1957, 1978), violent crime may have been less prevalent and justice may have functioned better in the West than has previously been acknowledged.

But, whatever the reality, the 'code of the West' is portrayed in *Liberty Valance* as having existed as historical fact, and it is embodied in John Ford's perennial hero, John Wayne, who provides easy opposition to James Stewart's stolid and somewhat priggish Ransom Stoddard. The transformation of the West from Doniphon's world to Stoddard's is not questioned: as famously described by Frederick Jackson Turner, by 1890 the West had its own existential sense of a frontier coming to an end (Turner, 1958). When Stoddard and Hallie return to Shinbone, transformed by the railway into a prosperous but dull small town, they are mourning not only the passing of a friend – and, in Hallie's case, a lover – but of a time when, it is suggested, moral people set their own moral compass. At the beginning of *Liberty Valance*, only Stoddard calls on Appleyard to assert the jurisdiction of the state in running down criminals. By the end of the flashback, even Doniphon hectors Appleyard to lock up the remnants of the Valance gang, now deprived of their leader. Paradoxically, and of course ironically, it is Doniphon who is the midwife of this institutional change, by making the last assertion of the code of the West, and murdering Liberty Valance. What is striking is the deep sense of melancholy surrounding this change. Just as the banishment of the incorrigible in *Stagecoach* seems to portend a loss of fibre in the civilisation that can cast out such people, so does the sacrifice of the floating jurisdiction of the old West in *Liberty Valance* suggest a moral loss. Formal institutions may be the inevitable outcrop of growing complexity in societies, but they suggest a system of values that has been externalised and removed from the sphere of action occupied by those who do not look to others to assert jurisdiction over matters and persons that need to be dealt with. It is Doniphon, the moral man who sets his own jurisdiction, who is the heroic centre of the film, while Stoddard – equally moral but defined by the jurisdictional institutions that he embraces rather than by his own character – is the one who takes the spoils and gets the girl.

Federal jurisdiction in historical memory

In *The Man Who Shot Liberty Valance*, we never know where Shinbone is. We are not told in the short story on which the film was based (Johnson, 1953), nor in the novelisation of the movie (Bellah, 1962). The only geographical reference in the film is to the 'Picketwire', or Purgatoire River (Sarris, 1975: 179), which flows in south-eastern Colorado, near the borders of Kansas, Oklahoma, Texas and New Mexico. It could, in other words, be anywhere in the flat plainslands where the five states meet (or elsewhere), and the back story involving the transformation of the territory in which Shinbone is located into a state is, despite

Ford's never-substantiated claim that *Liberty Valance* was 'based on historical fact' (Tavernier, 2001: 108), a work of historical imagination rather than historical reconstruction. The process of transforming the contiguous territories of North America under US rule to full statehood was a major preoccupation of American politics until well into the twentieth century. While some major states, such as California and Texas, became part of the United States following wars, major states of the West, such as Arizona (1912), Colorado (1876), Kansas (1861), Oklahoma (1907), New Mexico (1912) and Wyoming (1890), were territories that became late entrants to the union (*World Almanac*, 2004: 515).

The newly created United States of America took jurisdiction of American territory that had not achieved statehood as early as 1787, when Congress passed the Northwest Ordinance, the template for territorial government that covered the territories – including new territories added by purchase or conquest – for many more years (Eblen, 1968: 1–7). The territories thus created sent representatives to Congress in Washington, DC from 1797 to 1959, when Hawaii became the fiftieth and (so far) last state (Bloom, 1973: 65–75). The territories had appointed governors and often elected assemblies. Their powers to legislate were often subject to quite specific federal interference – for instance, prohibitions on the creation of unapproved banks (Eblen, 1968: 185).

In *The Man Who Shot Liberty Valance*, the benefits of statehood are seen to be twofold. First, the 'ordinary' population of Shinbone – and, by implication, the entire territory – is offered the chance to shake off the influence of powerful vested interests: the cattle ranchers who have hired Liberty Valance. Second, as manifested in the civics lesson that Stoddard gives to his school class, the federal government is presented as the locus and guarantee of fundamental rights. When Phil Ericson dresses in his Sunday best and carries his beribboned and sealed certificate of American citizenship to the saloon to cast his vote for the first time, his is the comic portrayal of a serious point: that the complete embrace of the jurisdiction of the federal government is the highest benefit a citizen can obtain in the American democracy. The reality, of course, is that the impulse to territorial statehood was not as simple as this. Unsurprisingly, the territorial conventions were dominated by special interests, and the concerns of territorial constitution-makers often extended to fundamental rights that were deemed to be less well delineated either in other states or under the federal system (Bakken, 1987). Moreover, some territorial constitutional conventions have been characterised as demonstrating 'a definite and concerted effort to restrict liberty rather than to expand it', particularly in areas such as female suffrage, race and religious freedom (Bakken, 1990). Furthermore, in *Liberty Valance*, the actual expansion of federal power in the years following the Civil War – for instance, improvements in the habeas corpus laws and the recalibration of the jurisdiction of the federal courts (Wiecek, 1988: 237) – is not portrayed as among the benefits of the acquisition of statehood in the film; instead, it appeals to demotic and fundamentally romantic notions of the benefits of American citizenship. In this sense, the film's historical consciousness of jurisdiction – fundamentally, a false or at least highly partial consciousness – can be viewed as an iteration of the 'print

the legend' dichotomy, which has been astutely perceived by Christian Delage 'not as a binary proposition between the truth and a lie, but instead as the space between an event and its narrative' (Keller, 2001: 32). The importance of the 'historical' jurisdictional account of statehood accordingly lies not in its depiction of historical fact – which, as we have seen (despite Ford's claims to the contrary) to be simplistic, if not fanciful – but in the telling of the tale, the force with which these essentially precatory elements of the benefits putatively conferred by federal jurisdiction are shown.

So, if the main thrust of the 'historical' *Liberty Valance* presents the benefits of federal jurisdiction merely simplistically, why is this theme of the film nonetheless interesting? The answer lies in the connection of the first theme of this chapter – the replacement of self-validating jurisdiction by the apparatus of the state – with the last, a discussion of how *Liberty Valance*'s historical reflections additionally had contemporary relevance for the audiences of 1960s America living on John F Kennedy's 'New Frontier' (McBride, 2001: 643). This connection is characterised by the sombre, regretful tone of the film's frame, the visit of the Stoddards to Shinbone for Tom Doniphon's funeral. Of this flashback device – itself a manipulation of historical consciousness – Robin Wood has written:

The Old West, seen in retrospect from beside Tom Doniphon's coffin, is invested with an exaggerated, stylised vitality; in the film's 'present' (still, of course, our past, but connected to our present, as it were, by the railroad that carries Senator Stoddard and Hallie away at the end) all real vitality has drained away, leaving only the shallow energy of the news-hounds, and a weary, elegiac feeling of loss.

(Wood, 2001: 25–26)

The contemporary sense of federal jurisdiction

The observation that Ford drifted politically to the right in his old age is a commonplace of Ford criticism and biography, but as a view of the director it also lacks clarity. It is true that Ford was an uncompromising supporter of American military power, including the Vietnam War, who ended up supporting the neo-conservative 1964 Republican presidential candidate Barry Goldwater and later President Richard Nixon (McBride, 2001: 6). It is also true that, during his lifetime, he described himself as 'a definite socialist democrat – always left' (2001: 271) and, as late as 1966 (to a communist interviewer) as 'a liberal' (Tavernier, 2001: 106). And, as we have seen, his later films included attempts to revise and reconfigure some of the classic figures both of Western film-making and of the American cinema in general. Such reconfigurations are among the most powerful elements of *The Man Who Shot Liberty Valance*.

The Shinbone of the film's pre-statehood flashback sequences is an emblem of an old America that would have been easily recognised in America of the 1960s. The town is segregated – Pompey may not drink in the saloon where Tom

Doniphon goes, and the Mexican community is confined to separate housing and meeting places. The women, of course, do not have a vote in the elections to the territorial convention, and a rather elderly-looking youth is ejected from the hustings for being under age. In the America of 1962, women had had the vote since the ratification of the Nineteenth Amendment to the Constitution in 1920, but were only beginning to give voice to the broader grievances of the women's movement. Eighteen-year-olds would not receive the vote until the passage of the Twenty-Sixth Amendment in 1971. And, of course, the burning domestic political issue then, as it is to a great extent now, was race.

Although the impulse for racial justice in America came from below – from the marchers, bus passengers, lunch counter squatters and others who took a stand against racial discrimination – the key to the dismantling of the formal system of the segregation system was its federalisation. In the nineteenth century, the federal Supreme Court had systematically used jurisdictional and standing arguments to deprive non-white groups of the protections of the law, thereby denying Indians recourse in property cases¹ and blacks in citizenship and equal protection cases,² and retreating from applying federal jurisdiction to certain categories of state action that caused the Constitution, in the dissenting words of Justice Harlan, to be 'sacrificed by a subtle and ingenious verbal criticism'.³ In Ransom Stoddard's manifestly anachronistic classroom, however, the races are mixed as they are taught the virtues of an inclusive constitutional order – one that would have been unrecognisable to the historical participants represented there, had they existed.

But *Liberty Valance* was made at a time when federal power has been in full expansion for a quarter of a century, beginning with Roosevelt's New Deal in the 1930s, continuing through the Second World War in the 1940s, the growth of the military-industrial complex in the 1950s and the ambitions of the New Frontier and, ultimately, the Great Society projects of the 1960s. Federal power had contributed to the end of the Great Depression, helped win a world war (in which Ford was a decorated officer), turned the country into an economic and military superpower and appeared to be ready to tackle the great stain on the country's conscience, the legacy of slavery. The landmark *Brown v Board of Education* case of 1954,⁴ outlawing racial segregation in state-run schools, finds its echo in the unsegregated Shinbone schoolroom imagined in 1962.

But, as always in this film, the apparent positive has its discontents. Critics have remarked on Stoddard's condescension to Pompey in the classroom, and there is some evidence that Ford, manipulative with his actors to the point of cruelty, deliberately played on James Stewart's personal discomfort in the

1 *Johnson and Graham's Lessee v M'Intosh* 21 US (8 Wheat) 543 (1823); *Cherokee Nation v Georgia* 30 US (5 Pet) 1, (1831); *Worcester v Georgia* 31 US (6 Pet) 515 (1832).

2 *Scott v Sandford* [Dred Scott] 60 US 393 (1856); *Slaughter-House Cases* 83 US 36 (1872); *Civil Rights Cases* 109 US 3 (1883).

3 *Civil Rights Cases* 109 US at 27.

4 *Brown v Board of Education of Topeka* 347 US 483 (1954).

presence of black people to foster a sense of ambivalence in Stoddard's teaching Pompey about the Declaration of Independence (McBride, 2001: 631). In the 'new' Shinbone, when the Stoddards return for Doniphon's funeral, Pompey – the old black retainer – and Appleyard – the film's indirect connection to Latino America – are melancholy and ineffably alone, in a sense segregated from the new order of feeling. The railway line – another manifestation of federal power (Meinig, 1999: 4–28) – points directly to Washington; the newspaper, produced in the old days by a soused idealist, is now in the hands of slick newshounds; and the undertaker steals the boots off Doniphon's feet before placing the body in the cheap pine coffin of a pauper's funeral. If the 'old' Shinbone is today, so is the 'new' Shinbone. It is not exactly the new Eden.

Conclusion

How many movies even use the term 'jurisdiction'? In *Liberty Valance*, Appleyard has to get Stoddard to remind him of the word and the lawyer, understanding all things, enlightens him. It is a comic moment but, as discussed previously, resonant of the crisis of living within and without jurisdiction. We need the law, and at times yearn for it, but we are not necessarily improved by it. Stoddard, who has had a glittering career among the institutions that he strove to build, leaves Shinbone determined to retire. And Hallie, the one person in the film who seems to have had a choice, and who chose the 'new' Shinbone, leaves with him, haunted by and heartbroken at Doniphon's death. We may need the new jurisdictions of the modern world, Ford seems to be saying – indeed, we must demand and embrace them. But with them comes a longing that is beyond mere nostalgia, an existential regret for what has – as it had to – passed.

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