The Not So Wild, Wild West
Guest: P.J. Hill
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P.J. Hill is a senior fellow at the Property and Environment Research Center in Bozeman, Montana, and a retired professor of economics at Wheaton College.

WOODS: Your book *The Not So Wild, Wild West: Property Rights on the Frontier*, published by Stanford, really changes the way everybody thinks about the Old West. The origins of this book are almost surely an article that you co-authored in the *Journal of Libertarian Studies* back in the late '70s; am I right?

HILL: Right. It took us a long time to write the book. After some thirty years, it does go back to that article. It might be interesting to note that we wrote that article partially because of our interaction with David Friedman, whom you recently had on, and at that point we called our work on the American West a case for anarcho-capitalism. I'm not sure if we can still use quite that argument, but it's really for a lot of decentralized control.

WOODS: Before we get into some of the details, it seems that there has also been a consensus among scholars of the Old West that our view of the amount of violence that existed at that time simply has to be scaled down. Is that your understanding of the literature?

HILL: It certainly is, because in novels and good movies, we really see the West as just a case of unending violence. I mean there's data from 1850 to 1890 and in all of the Western states, the best we could find is there were less than a dozen bank robberies. That's over forty years in a whole bunch of states where you think there must be one every couple of days if you look at the movies or TV shows.

WOODS: It's interesting. I mean, I understand how the dime novels get started. People want to sell books that are interesting and titillating for the public. How did Hollywood latch onto this? Of course, we expect Hollywood to be truthful and stick to the script, but how did that take off? How did we get this so wrong for so long?

HILL: Well, I think part of it was that the bad news sells, so violence also sells. The other thing is that I think people found it difficult to understand how in the absence of formal government people would organize themselves in a way that was relatively orderly, relatively peaceful. So we say, look, we've got 30 or 40 years of life on the frontier, the federal government has almost no presence, the states are just being organized and so what would you say? Well, surely this must be a case where violence prevails and as it turns out, it wasn't the case.

WOODS: These particular circumstances seem especially likely to foster violence. You have people, many of whom have no intention of setting down roots there, who plan to go and make their wealth and leave. So you don't have the community camaraderie. You have people of all different ethnic and national backgrounds. People coming from as far away as China to settle there. You would think this is going to be a nightmare. A lot of people would think without formal government any situation would be a nightmare, but certainly this one.

How did you first begin to ask yourself if maybe there was more to this story than we had been lead to believe? Why didn't you just go ahead and accept the standard view about the Old West?

HILL: Well, part of it is I grew up in the West and my mother was one of the first children born in eastern Montana and her stories—of course, that would have been just at the turn of the century—but her stories about life there was that it was a peaceful, cultured, civilized way of living and so that fascinated me. Then I started doing more reading of original resources and read the stories about the diaries that the cowboys kept as they trailed cattle up north. You look at records of what happened on wagon trains and look at what happened at mining camps. You're right in each one of these situations. There were valuable resources, people were armed. You would think they would be competing for those resources but they would probably shoot each other. It turns out that most of the time, that's not what they did.

WOODS: You have a chapter here which is a little bit different from the themes we're going to talk about for the most part, but this chapter on property rights, "Property Rights in Indian Country," is worth a brief look. The title alone would shock some people because we've been led to believe that the Indians, who are portrayed to us as one homogeneous blob, had no conception of property. It's your view to the contrary that not only did they have property, but they used that conception in ways that were conservationist and that were good for the environment in the long run.

HILL: Right. Basically, whenever resources were scarce—and there was competition for them—they decided it probably made sense to form property rights. Nomadic tribes that were moving around a lot didn't necessarily have well-defined property rights to land, and it is from looking at that that the myth that the Indians had no property rights comes from, I think. But if you look at other situations, if you look at the Indians in the Pacific Northwest, they pretty clearly established property rights to the Salmon Spawning Stream. Once the Indians got the horse they clearly had property rights to their horses, and they even had a rental market in horses. A good buffalo hunting horse would be rented to a person who had the best abilities to ride through herds of buffalo and try to take one of them.

WOODS: Now, suppose we're imagining people who are settling out in the Old West and maybe hoping to make their fortunes. There are certain sorts of law-and-order type

things that need to be done. You would need to establish some system for designating that this is my land and that's yours, or establishing water rights and so on. How did they perform this basic function that we associate with government when, as you say, there was a very light to trivial federal presence? There was no organized state government at that point. How did this most fundamental function of government get carried out?

HILL: Basically there was an agreement and I don't know exactly how it first got started. The first was in a mining camp. They would decide what the size of the claim should be and maybe it would be the first two or three or four people who would be there, the first dozen people would be there so they would write out rights, and they often times wrote them down so people could see them to tell how big a claim would be. It was often times how much one person could work easily. I think the basic reason was that they discovered very quickly that arguing and fighting, particularly when some people are armed, is pretty expensive and it's a lot better to try to get along. So I think very quickly they said, "Let's see if we can't decide you own this chunk, I own that chunk, we'll establish some rules about how you define your property rights." You have to drive a stake in. It wasn't the case that a person could just claim all up and down the stream to take anything he wanted to. The claims were limited and maybe you would want to call that government and if it is, it's a very weak sort of a government, but at least there's an enforcement mechanism and they did agree upon what a person could own.

WOODS: You have a chapter called "Wagon Train Governments." What are these wagon train governments and how would they compare to governments we're familiar with today, not in the Old West?

HILL: A lot of it again occurs because there is so much potential for violence. You've got this huge number of people between 1840 and 1860, about 300,000 people trying to make their way across the Great Plains. They're trying to get to the California gold strikes after 1848 or they're trying to settle in Oregon and so these people are coming together, sometimes they know each other and sometimes they don't. Jumping off points were usually somewhere in Missouri—say, St. Joseph, Missouri—so they would form a wagon train of, let's say, 50-60 wagons. They'd find a wagon master, and again it would appear that it would be pretty hard to get all that organized, but they did form a government and they actually called it a local government. They wrote wagon train constitutions almost and so that was the agreement. I think the difference between that and what we think of as a government today is that it was very small and very small scale and the cost of exit was pretty low. If you didn't like a wagon train you could leave and go to another one, and just that opportunity of exit meant that government couldn't be as predatory as it often times is when government gets big.

WOODS: There's a discussion in here about establishing the rights to livestock. Now again, this is in a situation with a very, very limited government presence. You have a discussion in here about how rights to livestock were established and how roundup

rules were established and how cooperation occurred in this way, so can you say a word about that?

HILL: Yes, there was at least some form of registration of ownership, and one of the first things that a territory would do before it became a state would be to establish a brand ownership system. There was a legal framework system in which you could register your brand, and once the cattle have a brand on them, then that belongs to that person. Tthere was at least a regional or sometimes a statewide registration system. For instance, I have a cattle brand, PJ, and that was registered by my grandfather in 1894 in Montana, and any cow in the state of Montana that has a "P" on the left rib and a "J" on the left hip belongs to me unless the person that has that cow has a bill of sale, and so that was part of the way of establishing property rights—just some ownerships and some people made marks that enabled those to be identified. They were generally recognized and it was considered bad form. There were some cattle thieves. They would alter brands and take the cattle and try to take them out of an area, but again there was a general agreement that there would be some bad actors around, but that the community established general rules that we ought to enforce property rights for each other. I think the overall idea would be in the West we saw lots of entrepreneurial activity, lots of productive activity and not a lot of redistributive activity.

WOODS: How did people resolve the inevitable disputes that must have occurred? Were there formal institutions for dispute resolution?

HILL: In most cases there were not formal courts. The things that we write about in terms of people coming together to form their own adjudicary mechanisms we find exist, and so in a mining camp, it was pretty costly to have someone be a sheriff. In a mining camp everyone wanted to mine, so if there was a dispute, a cry would go through the camp of claim jumper, claim jumper and people would rush to some designated gathering spot. They would empanel a jury on the spot and the person who was supposedly the claim jumper could make his case as to why he wasn't and the other people would make their case as to why that person was a claim jumper. If the person was found guilty he was usually banished from the camp. It was pretty expensive to maintain a jail and to incarcerate them there but again, spontaneous institutions do arise to solve these sorts of problems. The same thing happened with wagon trains. There were questions of theft, and in some sense you could say they had almost a memory of, say, the British common law or something like that because there was a right to trial by jury and a jury of your peers, but those sorts of institutions came about fairly quickly whenever there were issues that had to be resolved.

WOODS: Now how about dealing with water rights out in an arid environment? Again it would seem like water rights might be tricky to designate and yet apparently that was done, too.

HILL: That happened most. It started in mining camps in California that it made sense to divert the water from the stream in order to engage in something we called washing gravel or to try to get the gold out. The water rights regime that the U.S. inherited from England didn't allow any property rights in diverted water, so a brand new doctrine developed in the West called the doctrine of prior appropriation, and it allowed people to divert water for mining. Eventually that came about to also work for agriculture and that has worked quite well. Part of the problem is that states eventually adopted the doctrine, but in fact they froze in place the rules that were there once the states decided to take that doctrine up. So we now still have a lot of water rights conflicts, and most of that is because we don't have regimes that allow water to be transferred from one place to another. That is often times because of state rules that prevent it.

WOODS: Now the overall thesis of this book is, as you realize, quite striking, especially to the lay reader. I have to say I am very curious to know—especially since the book was published by Stanford and it wasn't published by Joe's Publishing House, so that gives it a certain plausibility to the scholarly reader—how it was received.

HILL: Reasonably well. We've had some disagreement about minor parts of it. People want to argue about—if you get a historian, they will argue about, "did you get the treaty date right," on some particular part of it, but I would say that whenever we've been able to present our evidence, generally people have said, yes, it seems to make sense. Generally, also, if you talk with historians about any particular regime, like the mining camps or like wagon trains or like trailing cattle from Texas to Montana, I would say there is a pretty good consensus that what we have in there is correct. What people haven't done is try to draw that all together and say what does this tell us about government overall. How do you get government that works well and one of the ways you get it is by starting small and trying to keep it small, and I think that's where probably I think our lessons would be generally accepted by historians in most situations. But trying to pull all of that together with some sort of an understanding of institutions and how they developed is what I would say is the main point of the book.

WOODS: Well, it's obviously not a coincidence that you have an interest in topics like this and you also are a Senior Fellow at the Property and Environment Resource Center there in Montana. Can you take a few minutes to tell people about what PERC is and what types of things it's doing?

HILL: PERC works largely on research questions and environment and natural resource issues. We approach it from what I would call a free market perspective, which means we think property rights are important and getting incentives right is important. So much of our environmental policy in the US is what I would call top-down, command and control. We'll just tell people to not do bad things and we'll tell them to do more good things. I think it would be better to start from the bottom up and try to think about most of the issues as property rights issues. There are usually property rights conflicts when we are talking about environmental issues, and so we think a lot about where the

incentives are wrong in terms of environmental policy and how can we go about getting them right.

WOODS: In a lot of states there are landowners who have had bad experiences with federal and environmental bureaucrats or the EPA. Does PERC help them out? Or does PERC instead do policy studies saying that maybe the federal government ought to take a different approach? What types of disputes do you see—especially in Montana—the federal government having with just your ordinary landowner?

HILL: A lot of these have to do with things like EPA regulations on land, water rights or water areas. We get a lot in terms of water rights disputes. We get involved in Indian policy, that's a big issue in Montana. We think a lot of the power has been taken away from the Indians on their reservations. We just had a conference finish up last week on that topic. Trying to give them much more control over their own destinies. The federal government owns a lot of the land here and has basically not managed it very well. Bureaucratic incentives often times stand in the way of good environmental policy, so we talk about those sorts of issues. We look at mining issues and all those sorts of things that we deal with.

WOODS: Can you tell everybody what the website for PERC is? I bet it's straightforward. I bet we can guess it.

HILL: It's very straightforward. Just Perc.org. We have publications, conferences, and programs for graduate and undergraduate students. We also publish a newsletter, so people can get on the mailing list and find out more about us. They just have to go to Perc.org.

WOODS: Well, I hope people will do that. I strongly recommend it. The book is *The Not So Wild, Wild West: Property Fronts on the Frontier*. It's a tremendous thing, I think, to be able to say that you were involved in a revisionist work that will forever change the way we think about a chapter in our history. What a privilege to be involved in a project like that and I hope people will rush out and get copies, and budding historians will see this is how it's done. So, P.J. Hill, thank you so much for taking some time with us today.

HILL: Thank you.