

ANTI-CORRUPTION CRUSADE OR “BUSINESSMAN’S REVOLUTION”? —

An Inquiry into the 1856 Vigilance Committee

BY DON WARNER*

INTRODUCTION

In a work published during the year 2000, the noted California historian Doyce B. Nunis stated that “a judicious history” of the 1856 San Francisco Vigilance Committee “has yet to be written.”¹ He had written the same in 1971.² It would appear that no one has publicly disagreed with Professor Nunis’s opinion in the ensuing forty years.

This article is, by necessity, not a complete history of the Vigilance Committee. It will, however, examine in a judicious manner the facts pertaining to one central question concerning the Committee’s existence and operations. That question is whether the Committee’s actions conformed to the ostensible reason for which it was formed: to protect the citizens of

* Don Warner is a member of the California Bar and Adjunct Professor at Loyola Law School Los Angeles, where his specialties include the legal history of California.

¹ DOYCE B. NUNIS, JR., ED., *ANOTHER VIEW OF THE SAN FRANCISCO 1856 VIGILANCE COMMITTEE: ROBERT GEORGE BYXBEE’S LETTER TO HIS SISTER, JUNE 1856* (Los Angeles: Zamorano Club [“Keepsake”], (2000), 5.

² DOYCE B. NUNIS, JR., ED., *THE SAN FRANCISCO VIGILANCE COMMITTEE: THREE VIEWS* [BY] WILLIAM T. COLEMAN, WILLIAM T. SHERMAN [AND] JAMES O’MEARA, 1856 (Los Angeles: Los Angeles Westerners, 1971), 9 [hereinafter “THREE VIEWS”].

San Francisco from a situation in which crime was rampant, and murderers were systematically going unpunished.

The methodology for this examination will be to use existing primary source material, produced by the Committee itself, to describe the Committee's actions as they pertain to the question of whether they served its ostensible purpose.

This is an important task because the Second, or Great, San Francisco Vigilance Committee, which controlled the city during the months of May through August 1856, was a major event in the early history of California. It can claim several superlatives. Although not the most deadly of the state's insurrections, it was the best organized, the longest-lived, and the most successful in its resistance to the established governments of the day. It was, and remains, the most controversial.³

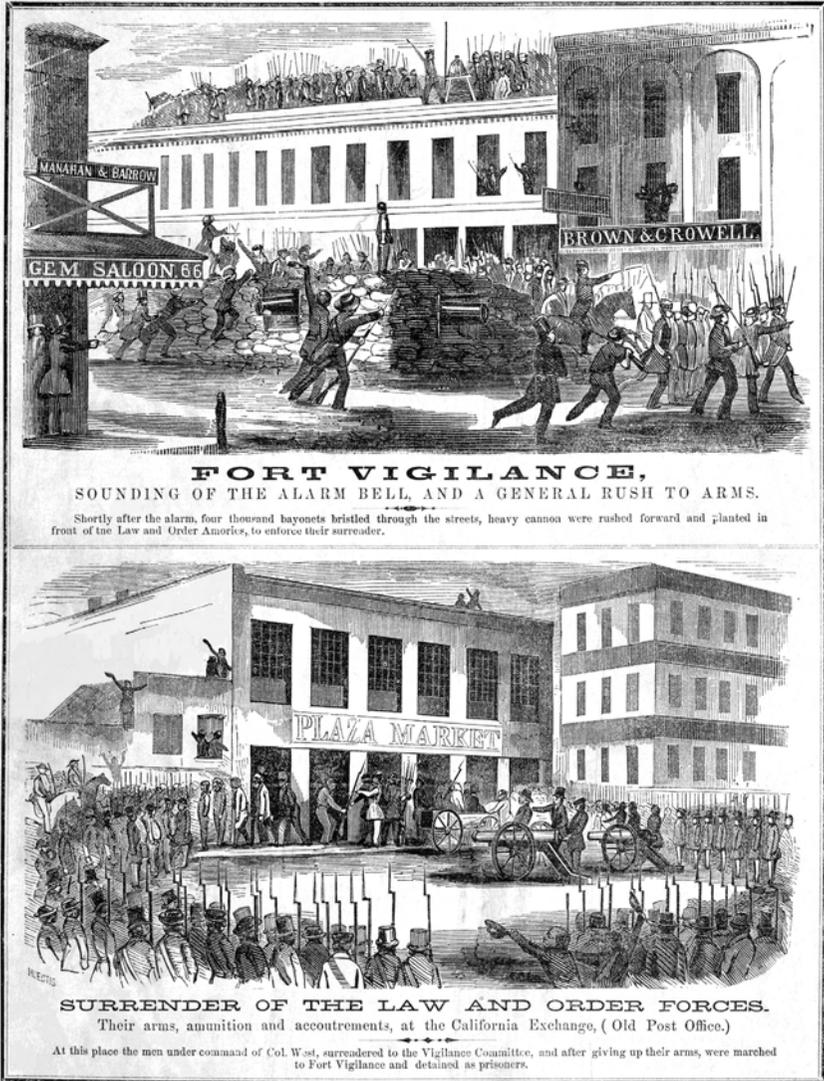
The controversy is not about whether what the Committee did was an insurrection. All would agree — the Committee itself and those who opposed it, called the "Law-and-Order Party," and its defenders and detractors in the years since — that it was an insurrection, an open rebellion against an established government.⁴ They differ, however, on whether the Committee's actions were justified under the circumstances.

It is necessary to disambiguate the term "justified" because there are several possible meanings. Actions may be justified legally, politically, or morally. The Committee's actions in deliberately hanging four men cannot be *legally* justified, under the criminal statutes in effect in California at that time.⁵ Those actions may be justified politically, however, as acts

³ It has also been the subject of a mountain of historical writing. In that vein, please note that this article is not a historiography of the Committee. That was done, well, in Professor Nunis's 1971 introduction to *Three Views*, and updated through 1985 in ROBERT SENKEWICZ, *VIGILANTES IN GOLD RUSH SAN FRANCISCO* (Stanford: Stanford University Press, 1985), 203–31. No additional history of the Committee has appeared since then.

⁴ WEBSTER'S ENCYCLOPEDIA UNABRIDGED DICTIONARY (1989), 738.

⁵ Stats. 1850, Ch. 99. Sec. 13: "Murder is the unlawful killing of a human being with malice aforethought, either express or implied." Sec. 14: "Malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof." Sec. 29: "Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony."



(TOP) “FORT VIGILANCE,
SOUNDING OF THE ALARM BELL, AND A GENERAL RUSH TO ARMS. SHORTLY AFTER THE
ALARM, FOUR THOUSAND BAYONETS BRISTLED THROUGH THE STREETS, HEAVY CANONS
WERE RUSHED FORWARD AND PLANTED IN FRONT OF THE LAW AND ORDER ARMORIES,
TO ENFORCE THEIR SURRENDER.”

(BOTTOM) “SURRENDER OF THE LAW AND ORDER FORCES.
THEIR ARMS, AMMUNITION, AND ACCOUTREMENTS, AT THE CALIFORNIA EXCHANGE,
(OLD POST OFFICE.) AT THIS PLACE THE MEN UNDER COMMAND OF COL.
WEST, SURRENDERED TO THE VIGILANCE COMMITTEE, AND WERE MARCHED TO
FORT VIGILANCE AND DETAINED AS PRISONERS.”

California Letter Sheets 1850–1871. *Huntington Library, folder #112, UID: 48771.*