

**W**hen James Marshall discovered gold at Sutter's mill on January 24, 1848, California was a Mexican province under occupation by the United States Army. American military officers by and large permitted the existing local authorities—the *alcaldes*—to remain in office. Alcaldes exercised broad administrative and judicial powers. The military governors hesitated to limit their powers or to alter their rules of civil and criminal practice, but there were exceptions. Colonel Richard Mason, military governor from May 1847 to February 1849, ordered a firing-squad execution for three army deserters who had murdered an Englishman and his family at San Miguel mission. Mason also abolished all Mexican laws and customs relating

to the private acquisition of land and mineral rights. Ignoring the Indian population, he turned California's undivided lands into part of the national public domain. Mason acted on February 2, 1848, ten days before the signing of the Treaty of Guadalupe Hidalgo, which ended the Mexican War. That treaty guaranteed the property rights of all Mexican citizens, including Indians, living in the lands surrendered by Mexico to the United States. Mason did not announce Mexico's surrender of California to the United States until August.<sup>1</sup>

The treaty left California neither a territory nor a state, but with a legal system ill-designed to cope with a gold rush. Moreover, the United States, never a center for precious-metal mining, lacked a strong gold-mining tradition.<sup>2</sup>

## Disorder, Crime, and Punishment

by Martin Ridge

When George Burgess painted his masterwork, *San Francisco in July, 1849* (right, 1891, oil on canvas, 62" x 143"), he depicted an orderly scene with busy people going about a variety of pursuits. In fact, when he arrived there in 1850, early California struggled with a mix of ill-fitted laws and customs that, as the author says, "lifted the lid on the Pandora's box of social disorder."

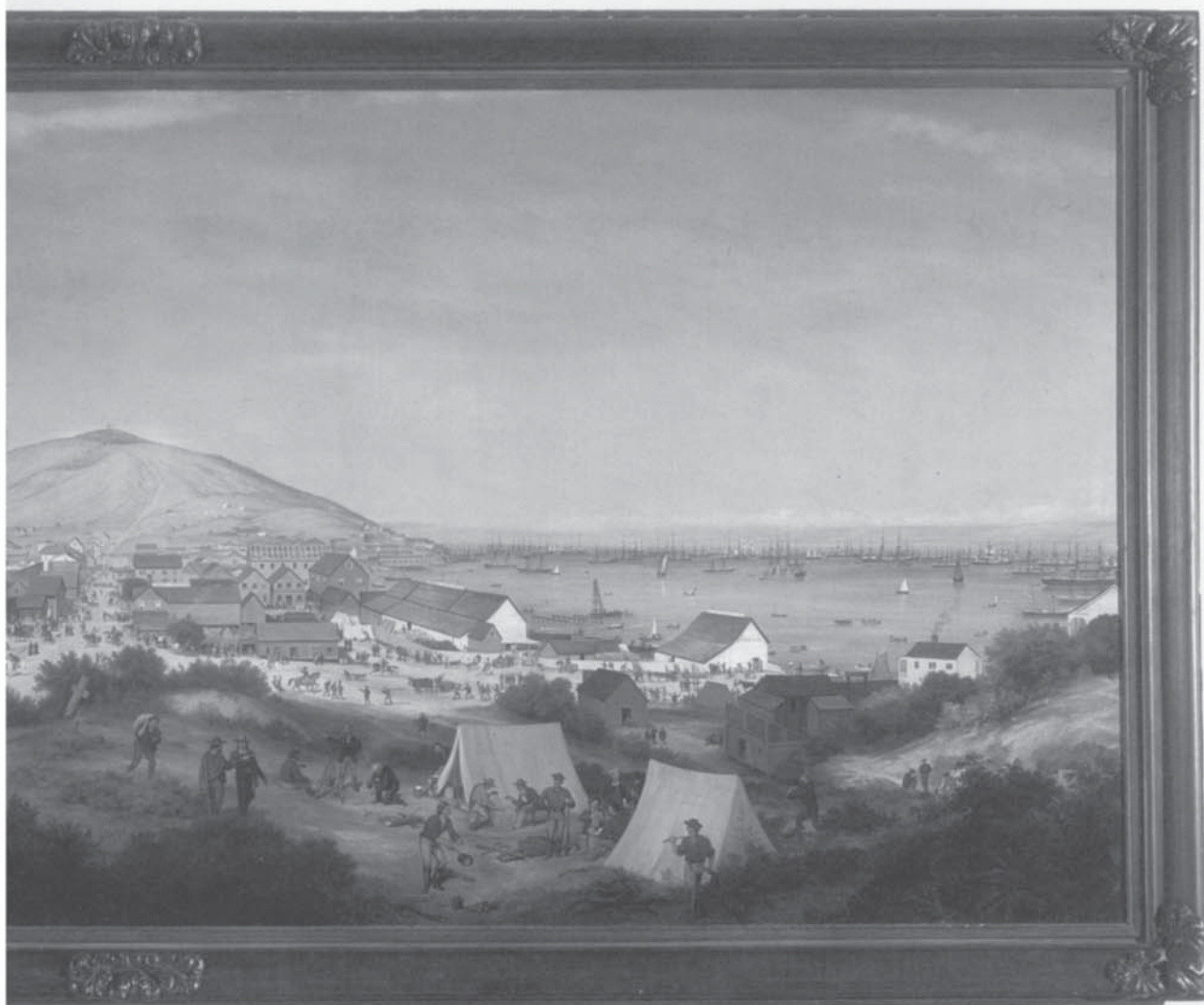


The federal policy regarding mining became one of acquiescence. Under common law, however, a person disturbing a miner's claim on the public domain could be charged with trespass.<sup>3</sup> The army in California lacked both the power and the authority to prosecute or control gold hunters. Moreover, so many soldiers began prospecting that the army granted furloughs to avoid wholesale desertions.

Soon, demobilized soldiers (veterans of the Mormon battalion and of Colonel Jonathan Stevenson's New York Regiment, which consisted of men recruited to settle in California), Indians (controlled, owned, or employed by whites),<sup>4</sup> Mexican miners from Sonora, Chilean prospectors, and overland emigrants from the Middle West all searched the foothills of the

Sierra for signs of gold, pried huge chunks of it out of crevices along river banks, and panned the streambeds for nuggets. The rewards were great, but they were dwarfed by exaggerated reports of easy money to be made in the mines. The result was an onslaught of California-bound fortune hunters. They traveled on foot, on horses, in wagons, and on aged and refitted vessels from ports in the United States, Europe, the Pacific Islands, and Asia.<sup>5</sup> Although some argonauts, as the gold seekers were called, ventured alone, many formed companies with written constitutions. They planned to remain and work together. In many instances these companies—the Chinese and the French were major exceptions—broke up en route or quickly disbanded when the men reached the mines.

## in the California Gold Rush



Oakland Museum of California





When James Wilson Marshall (far left, circa 1872) found gold at the mill he was building for John Sutter in February 1848, California, though occupied by United States forces, was technically still a Mexican province.

Nonetheless, Colonel Richard Mason (left, no date), California's military governor, declared all undivided lands public domain, thus ignoring Indian rights and abolishing Mexican laws and customs.

like hard-working men, found release in alcohol, cruel sports, gambling, and rough-and-tumble fighting. None left behind in the States the racial and ethnic prejudice characteristic of antebellum American society. No one in the mining camps expected the argonauts to be concerned with chastity, piety, or sobriety, the benchmarks of middle-class society during the Victorian era, and they were not. Their behavior shocked foreign as well as eastern observers who mistakenly saw the miner's world as chaotic and lawless. But an analysis of disorder, property rights, personal safety, crime, punishment, racism, xenophobia, and lynch law indicates that the miners from the United States, who dictated public behavior, ignored many of practices of eastern society except when they affected person and property. They proved, for the most part, to be lawful, even to replicate in fact or behavior procedures easily identified with existing customs.

These first miners were not alienated, isolated, rebellious figures: they were socially acculturated men who sought wealth. They had small interest in anything else. Little wonder that when Colonel Mason toured the mines in late summer of 1848, he found the men hard at work, untroubled by disturbance or social disorder. In fact, weapons were rare. The army, concerned with pacifying the province, prohibited the sale of ammunition for fear of a Mexican uprising.<sup>7</sup> Many of the earliest weapons introduced into the early mining camps had probably been carried west by overlanders from the East who feared Indian attacks.

**M**ost argonauts came only in quest of gold they could take home. They were like fishermen. To them the California goldfields seemed a vast commons, like the sea, open to anyone bold enough and lucky enough to exploit it.<sup>6</sup> Like fishermen, too, most understood accepted rules of behavior and tried to abide by them. Conflict among them was rare as long as resources were abundant. Some,

1. See Hubert Howe Bancroft, *History of California*, 7 vols. (San Francisco, 1881–1890), 7:450. For an extensive discussion of Mexican and American law in California, see Richard R. Powell, *Compromises and Conflicting Claims: A Century of California Law, 1760–1860* (New York, 1977); John R. Umbeck, *A Theory of Property Rights, With Application to the California Gold Rush* (Ames, Iowa, 1981), 69; Richard Griswold Del Castillo, *The Treaty of Guadalupe Hidalgo: A Legacy of Conflict* (Norman, 1981), 62–86.

2. Ray August, "Gringos v. Mineros: The Hispanic Origins of Western American Mining Law," *Western Legal History*, 9 (Summer/Fall 1996), 147–75. August argues that Mexican mining law, based on Spanish ordinances, was the true basis for American mining law and that historians who deny the significance of Mexican practice reflect an American or Anglo-Saxon xenophobia. His case is unconvincing.

3. Umbeck, *Theory of Property Rights*, 4.

4. James J. Rawls, "Gold Diggers: Indian Miners in the California Gold Rush," *California Historical Quarterly*, 55 (Spring 1976), 28–45. Rawls emphasizes the lack of hostility between Indians in the early period and the large number who worked in the mines. See also Albert L. Hurtado, *Indian Survival of the California Frontier* (New Haven, Conn., 1988), esp. 103.

5. J. S. Holliday, *The World Rushed In: The California Gold Rush Experience* (New York, 1981).

6. On the concept of the commons, see Arthur F. McEvoy, *The Fisherman's Problem: Ecology and Law in the California Fisheries, 1850–1980* (Cambridge, Mass., 1986).



At first, the all-consuming quest for wealth and the abundance of surface gold meant that San Francisco was almost crime free. Rinaldo Rinaldini Taylor, on his way to the mines, told his wife Catherine: “Millions of dollars worth of goods of every description from Canton silks & toys to Yankee ‘nick-nacks’ lie stacked up in the streets or strewed about the vacant lots, for want of buildings to store them in. The place is quiet & orderly, nobody thinks of having anything stolen, & nothing is watched or locked up.” But that condition did not last. The town soon confronted a wave of theft and disorder as newcomers drifted in. The “responsible” citizens resorted to a vigilance committee that scoured the town, arrested, fined, imprisoned, and overawed the rowdy and criminal element.<sup>8</sup>

While Congress wrangled over slavery and at length approved the Compromise of 1850, Californians had an election, held a convention, and organized a de facto government. As the basis for local legal administration, the state constitution replaced the office of alcalde with that of justice of the peace (JP), an officer with limited authority. Most JPs, however, behaved like alcaldes and exercised the same broad powers.<sup>9</sup> The effectiveness of the justices remained untested. At Governor Peter Burnett’s urging, the 1851 state legislature passed an act making grand larceny—any theft over one hundred dollars—a crime subject to the death penalty. Petty larceny could bring a punishment of fifty lashes on the bare back. Moral behavior remained a private not a public matter. Miners judged such actions themselves. Therefore, crimes against property took precedence over social control.<sup>10</sup>

The gold rush lifted the lid on the Pandora’s box of social disorder. The behavior of the forty-niners in the towns, especially San Francisco and Sacramento, earned the opprobrium of not only foreign journalists but also many sober-minded Americans. “In the course of a month or a year [in San Francisco],” wrote the proper English travel author and amateur miner John David (J. D.) Borthwick, “there was more . . . money made and lost . . . more sudden changes of fortune, more eating and drinking, more smoking, swearing, gambling, tobacco chewing, more crime and profligacy

. . . than could be shown in any equal space of time by any community of the same size on the face of the earth.” The streets of San Francisco, he added, “presented a scene of intense bustle and excitement . . . [but] here and there was a drunken man lying groveling in the mud, enjoying himself as uninterruptedly as if he were merely a hog.”<sup>11</sup>

Later, having spent more time among miners and picking up some of their spirit of laissez-faire individualism, Borthwick confessed that he had seen so much intoxication that when he saw a drunken man arrested, he “was almost inclined to think it an infringement of the individual right of the subject . . . not to allow this hog of a fellow to sober up in the gutter, or to drink himself into a state of quiescence if he felt so inclined.”<sup>12</sup>

**O**ther argonauts were less surprised by the social scene than by the honesty of the people. John Ingalls, on his way to the mines in August 1849, found San Francisco “very peacable [*sic*] much more than one would suppose where there are twenty-five different nations mixt [*sic*] up.” Israel Lord, writing in the evangelical *Elgin, Illinois, Western Christian*, found affairs in Sacramento similar: “I think there is less of what is ordinarily called stealing here,” he noted, “than in any place I was ever in. . . . A vast amount of property, easily moveable, is daily and nightly exposed without a watch, or even a lock.—The security occurs, too, in a population composed of representatives of all parts of the Globe.” One historian believed that this honesty was due less to “any consideration of prudence or fear” or “to the fact that every man went armed” than to the simple circumstance that everyone worked with his hands and money was easily earned.<sup>13</sup>

Property rights were broadly but clearly defined. For example, a man’s place in the post office line was a possessory holding. This was no mean consideration. “Hours before the appointed time for opening the [post

7. John A. Hussey, ed., *John A. Swan, A Trip to the Gold Mines in 1848* (San Francisco, 1960), 16-17. As late as early January 1850, guns cost more in Philadelphia than in San Francisco. If the need for weapons had been great, it would have been a seller’s market.

8. John Walton Caughey, ed., *Seeing the Elephant: Letters of R. R. Taylor, Forty-niner* (Los Angeles, 1951), 54. On the movement against the “Hounds,” a group of thugs that terrorized Chileans and others in San Francisco, see Bancroft, *History of California*, 6:212. See also Roger W. Lotchin, *San Francisco, 1846-1856: From Hamlet to City* (New York, 1974), 188-96.

9. Theodore H. Hittell, *History of California*, 4 vols. (San Francisco, 1898), 3:226.

10. Bancroft, *History of California*, 7:193. See also Jason Robert Beck, “California Gold Rush Violence, 1849-1854: A Psychological Interpretation” (Ph.D. diss., University of Southern California, 1978), 110. See also Gordon Morris Bakken, “Death for Grand Larceny,” in *Historic U.S. Court Cases, 1690-1990: An Encyclopedia*, ed. John W. Johnson (New York, 1992), 34-36.

11. J. D. Borthwick, *The Gold Hunters* (New York, 1917), 58-59.

12. *Ibid.*, 313.

13. R. W. G. Vail, ed., *California Letters of the Gold Rush Period: The Correspondence of John Ingalls, 1849-1861* (Worcester, Mass., 1938), 13-14; Israel Shipman Pelton Lord, “Journal of an Overland Trip to California by Way of the Oregon Trail; Life in the Mines, [and] Return Journey . . .,” December 26, 1849, manuscript collection, Huntington Library, San Marino, California (hereafter Lord Journal); Hittell, *History of California*, 3:175.





From R. E. Mather and F. E. Bowwell, *Artist of the Gold Rush* (Salt Lake City, 1989), p. 169

There was more money “made and lost,” more “sudden changes of fortune,” more eating, drinking, smoking, swearing, gambling, tobacco chewing, crime, and profligacy in early San Francisco than in any other place the same size in the world. So observed the English travel writer J. D. Borthwick (left, 1852), who depicted the game of faro in the illustration reproduced above.

office] windows,” Borthwick wrote, “a dense crowd collected, almost blocking up two streets which gave access to the post office, and having

the appearance at a distance of being a mob.” Despite its length, “perfect order prevailed: there was no such thing as a man attempting to push himself ahead of those already waiting, nor was there the slightest respect of persons [regardless of wealth or social status]. . . . The principle of ‘first come first served’ was strictly adhered to, and any attempt to infringe the established rule would have been put down by the omnipotent majority. A man’s place in line was his individual property.” Isaac Barker said he waited in line unperturbed an hour and half. Another pioneer, David A. Shaw, recounted that “selling out”—selling space to an anxious mer-

chant—“became a way an impecunious miner could make \$20.”<sup>14</sup>

“Rights of property are respected,” a miner observed, “for the interests of all effects this; but for the tender sympathies . . . you must look in other lands.” Frank Marryat, a British sportsman and popular author, agreed. Although life and property were safe in San Francisco, he wrote, the fact that so many men went armed meant that shootings were “very common, and dueling in particular became quite the rage.” Benjamin Baxter recorded that after a bull fight, a common form of amusement in San Francisco, “there was a street fight near the post office between some rowdies and some of the ‘Buties’ of the— [brothels]. The girls used their revolvers wounding several of the sterner sex. Next day they were hauled before police and fined for their

14. Borthwick, *Gold Hunters*, 89-90; “Isaac Barker Diary of a Voyage around Cape Horn from Boston to San Francisco . . . and Life in the Mines near Mormon Island, California,” June 23, 1850, manuscript collection, Huntington Library, San Marino, California (hereafter Huntington Library); David A. Shaw, *Eldorado; or, California as Seen by a Pioneer* (Los Angeles, 1900), 138. On the sanctity of private property in the westering experience see John Phillip Reid, *Law for the Elephant: Property and Social Behavior on the Overland Trail* (San Marino, Calif., 1980).

15. John Cumming, ed., *The Gold Rush: Letters from the Wolverine Rangers to the Marshall Michigan, Statesman, 1849-1851* (Mount Pleasant, Mich., 1974), 74; Frank Marryat, *Mountains and Molehills: or Recollections of a Burnt Journal* (Stanford, Calif., 1952), 315; “Benjamin Baxter Diary,” August 11, 1850, manuscript collection, Huntington Library; Borthwick, *Gold Hunters*, 62.

16. Borthwick, *Gold Hunters*, 61, 68.

17. Vail, *California Letters of the Gold Rush Period*, 50.

18. Roberta Evelyn Holmes, *The Southern Mines of California: Early Development of the Sonora Mining Region* (San Francisco, 1930), 39.

19. Joseph Henry Jackson, *Anybody’s Gold: The Story of California’s Mining Towns* (New York, 1941), 100.

20. John Walton Caughey, *Gold is the Cornerstone with Vignettes by W. R. Cameron* (Berkeley, 1948), 238. Caughey relies on Hubert Howe Bancroft who believes that violence spread from the mines to the towns; Bancroft, however, refers to the conditions that resulted from the terrible state of the mines in the winter of 1850. See Bancroft, *History of California*, 6:434, 466. For the opposing view, see Jackson, *Anybody’s Gold*, 121. See also William Tell Parker, “Journal,” September 16, 1850, manuscript collection, Huntington Library (hereafter Parker Journal).



bravery.” Little wonder that a crowd would gather to see a “difficulty between two gentlemen” referred “to arbitration [by the use] of knives or pistols,” but if no one was killed the crowd would disperse just as quickly as it had collected. Although dueling was illegal, an alcalde or JP tended to view a resulting homicide as self-defense.<sup>15</sup>

Both Borthwick and Ingalls were struck by the greed, gambling, lack of class consciousness, and disorder in San Francisco and Sacramento. A “man might approach in appearance to the conventional idea of a gentleman,” wrote Borthwick, but “the man standing next to him in the guise of laboring man, was perhaps his superior in wealth, character, and education.” Even worse to this Victorian gentleman, a “man was judged by the amount of money in his purse.” Borthwick deplored the mad scramble for wealth. At the door of a saloon, “with one foot raised on the step, would be a well-dressed young man, playing thimblig, on his leg with a gold pea, for the edification of a crowd of gasping greenhorns, some of whom would sure bite,” while not “far off would be a precocious little blackguard of fourteen . . . standing behind a cask, and playing . . . ‘French monte.’”<sup>16</sup> Ingalls, with some disdain, reported that Sacramento was “growing up like an *Irishman’s family*,” and was not much different. The environment, he believed, unleashed in their most naked and bold state the unrestrained inclinations and bad passions, the basest impulses of men. “Gambling is carried on here to an alarming extent,” he wrote, and “as openly as

any mercantile business in New York. Sunday is usually their [the gamblers] best day.”<sup>17</sup>

Within three years of the find at Sutter’s mill, California had more than its share of unsavory and dangerous characters: “Sidney ducks,” former deportees to the English penal colony in Australia; “Joaquin Murietas,” which applied to virtually every Mexican bandit—social revolutionary or otherwise; and an overfull quota of American ruffians, criminals, fugitives, n’er-do-wells, and knaves. Most miners were anonymous. “No one knew who anyone else was, wrote a popular writer, “and only the more ill-mannered and uneasy desired to be known.”<sup>18</sup> A limerick ran:

O, what was your name in the States?  
Was it Thompson or Johnson or Bates?  
Did you murder your wife?  
And fly for your life?  
Say, what was your name in the States?<sup>19</sup>

There is some logic to the argument that the criminals, gamblers, and riffraff element that lived by its wits at first avoided the mines because of the rigors of camp life; but after confronting the increased pressures from law enforcement and vigilance committees in the larger towns, they moved to the goldfields.<sup>20</sup> Harsh times in the mines in 1850 forced many an impoverished miner back to San Francisco and may have made him a predator. The mines, therefore, remained peaceful.

Shoveling ore in a dry digging or standing in the icy rivers and creeks that flowed from the snows of the

If San Francisco seemed rowdy, J. D. Borthwick, John Ingalls, and others found Sacramento (below, as it appeared in 1849) equally riotous. What astounded them most was the greed and gambling, lack of class consciousness, and social disorder.

From William Downie, *Hunting for Gold* (1893; Palo Alto, Calif., 1971), p. 20





From James J. Ayers, *Gold and Sunshine* (Boston, 1922), opp. p. 42



Placer mining was for many unsuspecting forty-niners surprisingly hard work. Men not used to exhausting physical labor had to stand in icy streams and creeks day in and day out panning and shoveling, as illustrated above in a rare woodcut drawing of a scene on the Mokelumne River in 1849.

Sierra left men unfamiliar with physical labor bone weary. The less rugged fell fatal victim to disease and exhaustion. For the survivors in the isolated diggings in 1848 and early 1849, recreation before the coming of the saloon and gambling hall was peaceable; reading, card playing, swapping yarns, and enjoying what music they could manage. Most miners sought companionship and worked with one partner or several. General Persifer F. Smith, who commanded the Pacific Division of the Army and wanted to exclude Mexican and Chilean miners, thought that any large city in the East would witness more disorder than all of California; and General Bennett Riley, who visited the mines in summer 1849, found that in the small camps the men had elected alcaldes and sheriffs who proved both diligent and loyal.<sup>21</sup>

Mining camps were anything but a stable society. Partnerships formed and dissolved quickly; claims were bought, sold, and traded; word of richer strikes drew off populations; and there were few mechanisms to control antisocial but not necessarily criminal behavior. Although the mines attracted many men who might look with disgust on the personal habits of their neighbors, they rarely did much about them. One group of miners did agree among themselves not to smoke,

gamble, drink, swear—there was a four-bit fine for swearing—and to shave once a week; but they may have been a singular exception. T. S. Elliott's chorus in "The Rock" asks: "Do you huddle so close together because you love each other?" Miners, moiling in the riverbeds and tablelands below the Sierra, would have exclaimed, no!<sup>22</sup>

Many camps appeared chaotic, and their very names are symbols of disorder: Whooping Boys Hollow, Hangtown—later Placerville—and Murderers' Bar. Sherlock Bristol, a pioneer preacher, noted that the clergy, often harassed by the "boys," were seldom welcome in the camps. Bullying tactics were not unusual. J. D. Borthwick tells of "two hulking [American] fellows who came swaggering in [a small Catholic church], and jostled their way through the crowd of Mexicans, making it evident from their demeanor, that their only object was to show contempt for the congregation and for the whole proceedings." There was no authority to discipline them. The straight-laced German traveler, Friedrich Gerstäcker, was appalled by the pictures of seminude women displayed in gambling houses and saloons, noting "the farther you went into the interior, the more indecent these pictures became, becoming in the mines the most obscene points . . .

21. Owen Cochran Coy, *Gold Days* (San Francisco, 1929), 203-4.

22. Lord Journal, enclosing an article from the *Western Christian*, March 31, 1850; T. S. Elliott, ed., *Complete Poems and Plays of T. S. Elliott* (London, 1969), 155.

23. S. Bristol, *Pioneer Preacher: Incidents of Interest and the Experiences in the Author's Life* (Chicago, 1887), 168-70; Borthwick,

*Gold Hunters*, 298-99; Friedrich Gerstäcker, *California Gold Mines* (Oakland, Calif., 1946), 68.

24. Sarah Royce, *A Frontier Lady: Recollections of the Gold Rush and Early California* (New Haven, Conn., 1932), 80.

25. Bayard Taylor, *Eldorado, or Adventures in the Path of Empire*, 2 vols. (New York, 1850), 1:93.



every decent man would turn away in disgust from a shameless sight. These gambling houses are for California, what slavery is to the United States.”<sup>23</sup>

Sarah Royce, a proper New England woman, recalled her unease when she and her physician husband moved into a tent: “Still, there was a lurking feeling of want of security from having only a cloth wall between us and out of doors. . . . But I soon learned that I had no reason to fear.”<sup>24</sup> She had yet to discover that in most mining camps the tent was “held inviolate” and protected all that it enclosed. There “was a tacit disposition to make the canvas . . . as sacred as once were the portals of a church.”<sup>25</sup> Outside the sanctity of the tent, however, the absence of respectable women and the want of refined entertainment fostered dissipation in the saloon, the gambling den, and later the brothel. “All kinds of wickedness is done in these ‘diggings,’” complained Lord, “drinking, swearing, swindling, litigation, quarreling and fighting.” He was writing about life at Park’s Bar, but he could have been describing almost any camp after 1850.<sup>26</sup>

The camps succumbed to disorder, especially as predatory elements invaded the mines. Amador County was almost typical by 1851. There the dance hall, gambling den, and saloon prevailed.<sup>27</sup>

Take a sprinkling of sober-eyed, earnest, shrewd, energetic New-England business-men,” wrote George F. Parsons of Marshall during its heyday, “mingle with them a number of rollicking sailors, a dark band of Australian convicts and cut-throats, a dash of Mexican and frontier desperadoes, a group of hardy backwoodsmen, some professional gamblers, whiskey dealers, general swindlers, or ‘rural agriculturalists’ . . . and having thrown in a promiscuous crowd of broken-down merchants, disappointed lovers, black sheep, unfledged dry-goods clerks, professional miners from all parts of the world, Adullamites generally, stir up the mixture, season strongly with gold-fever, bad liquor, faro, monte, rouge-et-noire, quarrels, oaths, pistols, knives, dancing, and digging, and you have something approximating . . . the early days.”<sup>28</sup>

David Shaw remembered a slightly more honest form of theft at Drytown: “The ‘shingle,’ of the man who neither used the ‘hoe,’ shovel, or rocker but reaped a rich harvest nevertheless. He was in evidence as elsewhere, bearing the ‘legend,’ ‘Si compra oro aqui’—gold dust bought here.” Lucius Fairchild confessed that on

the Cosumnes River, “it’s ‘dog eat dog’ & every man for himself in this country.” Fairchild probably exaggerated. Mrs. Royce, striving to establish a sense of community, felt that there were “about us selfish men, who would stop at nothing for the sake of gain; but I am glad to say . . . generous aid and ready sympathy were more common.”<sup>29</sup> Although she would have conceded that a man might well be killed in a bar fight—fights were almost a spectator sport—and, unless he had friends, it might be simply ignored as part of the general disorder. She did not mean that there was a lack of payback vengeance, but that no one demanded that the camp take action against the culprit. At least one mining camp responded differently: after a miner was shot, Stringtown barred all gamblers.<sup>30</sup>

**A**lcohol contributed largely to disorder and violence. Lord noted with irony that many habitués of the saloons were temperance men at home. At Long’s Bar, where he mined, Lord believed “that one sixth of the whole population will get drunk—dead—rolling down drunk.” Mrs. Royce wrote: “It was very common to hear people who had started on this downward moral grade, deprecating the very acts they were committing, or the practices they were countenancing; and concluding their weak lament by saying ‘But *here* in California we *have to do such things*.’” Fairchild thought Scott’s Bar, “decidedly the Roughest place and the miners the most Rowdy drunken set I ever seen in my life. Every night some party is on a spree whooping & yelling around town, fighting, swearing, and breaking the Rum holes up &c. One night it will be the Dutch (the most respectable portion of men) celebrating [*sic*] some annaversary [*sic*] of the ‘Faterland.’ The Irish will have a general drunk, when you may look for any quantity of fights, the French will take a turn, sometimes all together.” As long as drunkenness resulted only in disorder and not in serious property damage or homicide, it provoked little more than private censor.<sup>31</sup>

Crimes against person were often handled in a summary way. What might start as a verbal altercation between intoxicated men could lead to a fistfight and ultimately homicide.<sup>32</sup> As a result, even when an inquest was held, self-defense was broadly interpreted and accepted. Payback vengeance, too, seems to have

26. Lord Journal, enclosing *American Baptist*, December, 1850.

27. Shaw, *Eldorado*, 145.

28. Quoted in Charles Howard Shinn, *Mining Camps: A Study of American Frontier Government* (New York, 1965), 158.

29. Shaw, *Eldorado*, 145; Joseph Shafer, ed., *California Letters of Lucius Pratt Fairchild* (Madison, Wisc., 1931), 59; Royce, *Frontier Lady*, 96.

30. S. Weston, *Life in the Mountains, or, Four Months in the Mines of California* (Providence, R.I., 1854), 26-27.

31. Lord Journal, April 4, 1850; Royce, *Frontier Lady*, 107; Shafer, *California Letters*, 185.

32. Beck, “California Gold Rush Violence,” 43; Hittell, *History of California*, 3:166.



been punished rarely. There was often a rush to judgment. The French physician Pierre Garnier asked to serve as coroner, found that the inquest was held in the room with the cadaver. He was told to perform his work during the hearing, while witnesses testified. "Everything," he observed, "is very fast for Americans."<sup>33</sup>

There were very few women in the early camps and few recorded instances of crimes of passion, domestic violence, or acts of aggression against women. An attempted assault upon a woman provoked an immediate public response. A black man working on the Cosumnes River, charged with assaulting a white woman, was promptly hanged.<sup>34</sup> In Stockton, the journalist Bayard Taylor reported: "The night before my arrival, three negroes [*sic*], while on a drunken revel, entered the tent of Chilian [*sic*], and attempted to violate a female within. Defeated . . . They fired their pistols at the tent and left. Complaint was made to the Alcalde, two of the negroes seized and identified, witnesses examined, a jury summoned, and verdict given, without delay." One man was given fifty lashes, the other twenty; and both were ordered to leave town in forty-eight hours and not return on pain of death. As "the negroes were stripped, tied to a tree standing in the middle of the principal street. . . . Bystanders jeered, laughed, and accompanied every blow with coarse and unfeeling remarks."<sup>35</sup> Some men objected to the cruelty, but with no prisons the alternative was death. Because the woman was associated with a Chilean, and there was intense ethnic hostility toward Chileans, neither the status of the woman nor her ethnicity seemed an issue; morality overcame prejudice.

Prejudice, however, was not absent in 1851 when a Mexican woman in Downieville killed an Australian miner. He had burst into her cabin while quite drunk the night of a Fourth of July celebration. Later—the sources do not agree—when the offending miner may have returned to offer an apology, she stabbed him. She was taken before what amounted to a kangaroo court, convicted, and hanged before a jeering crowd of a thousand people. The woman's husband was exonerated. Men who protested against such brutality placed themselves at risk. Historian Hubert Howe Bancroft later defended the miner's actions. This epi-

sode was so unusual that it is reported in scores of miners' journals and memoirs. It is sometimes seen as distinguishing "the early and innocent" era of gold mining from "the dawning of the second [more violent] phase of the California gold rush."<sup>36</sup>

**T**he racism and xenophobia characteristic of the United States in the 1850s produced both social disorder and interpersonal violence in the mining camps. The group that suffered most over time and had the least hope of redress, other than vengeance, was the native people. For many miners the Indian did not warrant consideration. His lands were invaded, his property often taken, and his women abused.<sup>37</sup> "If he dares to strike a blow . . . even in defence [*sic*] of his wife and children," wrote Bancroft, "an outcry was raised, and mounted men with rifles would ride to the rancheria, and shoot down men, women, and children innocent and guilty promiscuously." Bancroft is often guilty of hyperbole but not in this case.<sup>38</sup> Murderers' Bar earned its unenviable name because of an Indian raid. Seven Oregonians, prospecting on the American River, tried to take advantage of some Indian women. A fight broke out between Indians and miners that left three Indians dead. Later, when the miners made camp, the Indians took payback vengeance—a practice widely shared among Indians—by killing five of the whites. The remaining two fled to Coloma, about fifteen miles away, where, claiming their hands were clean, they incited the miners to attack and kill a group of nearby peaceful Indians. White miners often acted against any Indians, usually the closest, even if they were peaceful.<sup>39</sup> The practice was wholly outside the Anglo-American legal tradition where only those actually guilty are supposed to be punished.

In dealing with Indians white argonauts did not treat all homicides the same way. When miners on the Feather River apprehended three Indians who had killed five white men, they promptly hanged them. A miner, William Tell Parker, recorded that after two whites had been killed, a group of men attacked an Indian village and slaughtered women and children as

33. Quoted in George W. Groh, *Gold Fever, Being a True Account, Both Horrifying and Hilarious, of the Art of Healing (So-called) during the California Gold Rush* (New York, 1966), 255-56.

34. Beck, "California Gold Rush Violence," 113-14.

35. Taylor, *Eldorado*, 99.

36. Jackson, *Anybody's Gold*, 106. See also Hubert Howe Bancroft, *Popular Tribunals*, 2 vols. (San Francisco, 1887), 1:577-87; John R. McFarlan "Journal of a Voyage to California via Cape Horn in 1850 . . . and Life in the Mines at Downieville, California," manuscript in

school notebook, p. 156, Huntington Library. McFarlan probably copied his account from a newspaper.

37. This point is clearly made in both Rawls, "Gold Diggers," 28-45, and Hurtado, *Indian Survival*, 101-24.

38. Hubert Howe Bancroft, *California Inter Pocula* (San Francisco, 1888), 235-36. For examples of Indians and whites shooting at each other, see Richard Brown Cowley, "Journal of a Voyage on the Barque 'Canton' from New York to San Francisco . . . [and] Life in the Mines on the Mokelumne," n.p., manuscript collection, Huntington Library. See also Borthwick, *Gold Hunters*, 275.



From William Downie, *Hunting for Gold* (1893; Palo Alto, Calif., 1971), p. 151



The hanging of a Mexican woman in Downieville in 1851 after she stabbed an Australian miner to death proved an exceptional incident that scores of men noted in their journals and memoirs. In the estimation of some, it also marked the end of an early, more orderly era in the mines and the advent of greater violence often born of prejudice.

well as men. Parker, who thought in American legal terms, doubted the guilty had been punished.<sup>40</sup> When in 1851 a band of irate Indians attacked and killed a group of white desperadoes who had been active near the mining camp no one objected because the culprits had plagued the countryside.<sup>41</sup> Parker also reported the camp's dilemma when a white man shot a harmless, unarmed Indian: "The report is today that he is dead. Some of the citizens were in favor of delivering the offender up to the Indians for them to punish, & others were for arresting him by law, and others were in favor of letting him run at large. The later council prevailed & the man has 'vamosed'."<sup>42</sup>

If whites had little enthusiasm for punishing a white man, not all whites had the stomach actually to whip an Indian for theft. Hungry Indian women often rummaged through miners' tents to take food, knowing that as women they were unlikely to be whipped.<sup>43</sup> Alfred T. Jackson reported that at Rock Creek, when an Indian was caught stealing gold, he was sentenced to fifty lashes on his bare back. "Nobody would volunteer to

do the whipping," said Jackson, however, "so we drew lots and Dick Stiles got the job. . . . but the Indian after the first-half dozen strokes made such a howl that we let him go."<sup>44</sup>

African Americans in the camps were always potential victims of discrimination as well as interpersonal hostility. Southerners spurned social contact with blacks and refused to accept the fact that California was a free state and that Negroes who lived in California before annexation were free under Mexican law. Israel Lord pointed to the tensions in Marysville by noting a Dr. Jamison, who caused a row by refusing to drink with a man he called a "nigger." Lord, a northerner, put the word in quotation marks. Borthwick found the race issue more complex than he had imagined. Some Americans were tolerant—"not that negroes were allowed to sit at a table with white men, but," he observed with irony "the important fact that a 'nigger's dollars were as good as any others . . . overcame their prejudice so far as negroes were permitted to lose their money in gambling houses; and . . . might be seen receiving drinks at the hands of white bar-keepers."<sup>45</sup>

39. Hittell, *History of California*, 3:76-77. I am indebted to John Phillip Reid for the expression "pay Back vengeance" and setting out the different uses of vengeance among Indians and whites.

40. Parker Journal, October 15, 1850, February 29, 1852.

41. Reva Holdaway Stanley and Charles L. Camp, eds., "A Mormon Mission to California in 1851, From the Diary of Parley Parker Pratt," *California Historical Society Quarterly*, 14 (March 1935), 69.

42. Parker Journal, December 8, 1850.

43. Pringle Shaw, *Ramblings in California, Containing a Description of the Country, Life at the Mines, State of Society & C. . .* (Toronto, 1857), 76.

44. Chauncey F. Canfield, ed., *Diary of a Forty-Niner* (San Francisco, 1906), 36.

45. Bancroft, *History of California*, 6:313-14; Lord Journal, August 5, 1850; Borthwick, *Gold Hunters*, 163.



Racism could lead to cruelty. Jacob Henry Bachman, the so-called “used up miner,” reporting cynically on a fellow from Bombay, demonstrated the underlying peculiar strain of racism in the miners’ justice system. The fellow

says that he has been robbed of nineteen hundred dollars by some Indians near Douglas Flatt [sic] a party immediately start after them kill one . . . and wound two others— burn their rancherie. & C. . . . People in town talk of hanging the black fellow—say that his story about the robbery was false— get up a trial—jury cant [sic] agree. . . . The black fellow received twenty-five lashes in the presence of the Indians as a caution that he not be robbed again. The white men who shot the Indian go scot free—so all parties are satisfied.<sup>46</sup>

What Bachman failed to realize was that for the Indians this probably was not an issue of individual culpability—who fired the shot—but of causation. Therefore the whipping of the black man covered the eyes of the dead and whitened the path of peace between parties.

In eastern states xenophobia focused on Catholic and Irish immigrants. In California it centered on Mexicans, Chileans, French, and later Chinese miners, all of whom tended to keep to themselves. There was much angry talk, threats, the enactment of a foreign miners’ tax, and some criminal behavior. The miners’ tax, \$20 per month, was intended to drive out the Mexicans and Chileans. Thousands of Mexicans and Chileans returned home or abandoned mining, much to the disappointment of local merchants. Others simply balked at paying the tax, and in Sonora some raised a ruckus, where they were a majority. Alarmed, the Americans in the surrounding mining camps ral-

lied for self-protection. There followed so drastic a reduction in the miners’ tax that foreigners remained in the fields.<sup>47</sup>

Gerstäcker reported that when the American thugs found a lone foreign miner, they tried to drive him off by claiming that he had not paid the tax. The Mexicans were fearful of these claim jumpers, and when

asked by a passer-by, “Mucho oro acqui?” answered, “Si, poquito, Senor,” which confused the American, who had exhausted his knowledge of Spanish.<sup>48</sup> Claim jumpers boasted that since California was part of the United States, they had a superior right to the mines. Sometimes they looted a placer mine before they were ousted. Their actions were, an American admitted, “an outrage on the Mexicans.” Little wonder, even though the Mexicans tended to be accommodating, they fought with the Americans, but bloodshed was uncommon unless banditry or gambling was involved. Violence and bloodshed were more common in attacks on Chileans, who were far from docile. They were often driven from their claims, beaten, and even killed by toughs who escaped punishment.<sup>49</sup>

The French also faced hostility because they kept together, and spoke and behaved

differently. The same forty-niner who denounced the “outrage on the Mexicans” reported that when some toughs jumped the claim of Frenchmen who owned one of the richest mines at Nigger Hill, there “was a big excitement and a miner’s meeting called, which decided the Frenchmen’s titles were as good as anybody else’s and so the foreigners got the ground again.” “All this,” he continued, shows “that we have more regard for other peoples than the Mariposa miners [who drove



In California, xenophobia and prejudice, focused most on Mexicans, Chileans, French, and Chinese, could and did escalate into violence and inequitable laws like the miners’ tax. These argonauts spoke, behaved, and often dressed differently, as Francis Samuel Marryat indicated in the above illustration, titled *The French Miner* (1855).

46. Jeanne Skinner Van Nostrand, “The Diary of a ‘Used Up’ Miner, Jacob Henry Bachman,” *California Historical Society Quarterly*, 22 (March 1943), 72.

47. Bancroft, *California Inter Pocula*, 236; Bancroft, *History of California*, 6:405.

48. Gerstäcker, *California Gold Mines*, 70, 94-95.

49. Canfield, *Diary of a Forty-Niner*, 39-40; Edwin A. Beilharz and Carlos U. Lopez, trans., eds., *We Were 49ers! Chilean Accounts*

*of the California Gold Rush* (Pasadena, Calif., 1976). See also Jay Monaghan, *Chile, Peru, and the California Gold Rush of 1849* (Berkeley, Calif., 1973).

50. Beilharz and Lopez, *We Were 49ers*, 40-41; Cowley, “Journal of a Voyage,” April 27, 1851.

51. See Borthwick, *Gold Hunters*, 256. For a general discussion of anti-Chinese sentiment, see Alexander Saxon, *The Indispensable Enemy: Labor and the Anti-Chinese Movement in California* (Berkeley, Calif., 1971).



out foreigners].” The response to the French miners often proved ambiguous. In a fracas on the Mokelumne River concerning a claim, while “one of the Americans was attempting to drive the Frenchmen off, one man shot an American, mortally wounding him. The excitement was so great the Americans sent up [river] . . . for men and arms.” In recounting the event an American diarist wrote: “All they done with the French was to take away their arms as they could not find the Frenchman that shot the American, they let them all go.” The French were not always that lucky.<sup>50</sup>

Of all the miners, none suffered more from discrimination and violence than the Chinese. Their dress, collaborative enterprises, food, eating habits, mining practices, use of opium, and especially their willingness to work mines considered unprofitable made them victims of the most vicious racism.<sup>51</sup> That other miners saw them as an economic threat is indisputable. “They are not looked upon as human beings,” one wrote, “and have no rights that a white man is bound to respect.” He added that after Mexican bandits raided the Chinese at Deer Creek, they killed two Chinese miners and reportedly got away with thirty thousand dollars. The Chinese appealed for protection, but their request was ignored. A short time later at Deer Creek, some Chinese diverted water without permission. In response, “about fifty [white] miners gathered together, ran the Chinamen out of the District, broke up their pumps, burned up their cabins, tore out their dams, destroyed their ditches, and warned them not to come back under penalty of being shot if they made a reappearance.”<sup>52</sup>

**J.D. Borthwick would have found** the Chinese action unusual because they “did not venture to assert equal rights so far as to take up any claim which other miners would think worth while to work; but in such places as yield them a dollar or two a day they were allowed to scratch away unmolested. Had they happened to strike a rich lead, they would have been driven off their claim immediately.” Frank Marryat, who had lived in Amoy, knew the Chinese were not aggressive: “Chinamen are [a] long time com-

ing to blows.” “When a couple of Chinese dispute over the right to a claim,” he wrote, “the noise and gesticulations are frightful. . . . but further than a dreadful uproar, no harm came from these rencontres.” The only time the Chinese fought, Marryat explained, was when someone “was driving poor ‘John’ into a corner.”<sup>53</sup>

At Deer Creek, which was strongly anti-Chinese, the miners called a meeting and adopted a “law” that the Chinese should not be allowed to take up or hold ground unless purchased from a white owner. Some miners favored driving the Chinese out of the country, “but the majority thought it was a good thing to sell them claims, as it was an easy way to make money.”<sup>54</sup>

Such xenophobia, gambling, and violence yields the impression, reinforced by the stories of Bret Harte and others, that early miners lived in a world with no law. Even many miners believed that property and life were safe only because so many of them had guns.<sup>55</sup> “There was no law except the natural law of self preservation,” wrote one. “Every man was armed and generally surrounded by armed friends.” And, he added: “The delays of law and the tricks of lawyers could not avert the just doom of the criminal.” Frank Marryat summarized this point: “For the fear of the law, in the best regulated community, is not so strong as the fear of sudden death; and if quarrels and assassinations were rare, comparatively, in the mountains, it was owing to the fact that every man was able to protect himself. It is generally inferred, as a matter of course, that where all men carry arms, blood is shed on the first passion, and life is not safe. This is not so; it is where all carry arms that quarrels are rare.” A modern scholar agrees: “one reason the crime rate was so low was because everyone carried a gun.”<sup>56</sup>

This idea that there was no law but individual force of arms defies historical evidence. Many miners no doubt owned guns. Hinton Helper thought that ninety-nine out of one hundred did, but that did not mean men were always armed. Quite the contrary; the work of mining would have made carrying a gun a burden: “every man had to pick, shovel, remove boulders, carry earth, dip water, work the rocker or keep the sluice box—day in an day out, often standing in ice-cold water.”<sup>57</sup> No doubt, in gambling dens and saloons, disputes, slight misunderstandings, or grave difficulties,

52. Canfield, *Diary of a Forty-Niner*, 202, 211.

53. Borthwick, *Gold Hunters*, 144; Marryat, *Mountains and Molehills*, 296-97.

54. Canfield, *Diary of a Forty-Niner*, 202. See also Pringle Shaw, *Ramblings in California*, 72-76; and Caughey, *Gold is the Cornerstone*, 230.

55. Bret Harte, “The Argonauts of ’49: California’s Golden Age,” pamphlet, n.p., n.d., Huntington Library. The most popular gun in the goldfields was an Allen’s pepper box. It was seen as “a singularly ineffective gun, more dangerous to the possessor than anyone else.”

See Canfield, *Diary of a Forty-Niner*, 26. For the slow rise of gun culture in the United States see Michael A. Bellesiles, “The Origin of Gun Culture in the United States, 1760-1865,” *Journal of American History*, 83 (Summer 1996), 425-55.

56. Julius Pratt, *Reminiscences Personal and Otherwise* (privately printed, 1910), 76; Marryat, *Mountains and Molehills*, 249. At least one modern scholar agrees. See Umbeck, *Theory of Property Rights*, 87, 100.

57. Helper, *Land of Gold* (Baltimore, Md., 1855), 157; Hittell, *History of California*, 3:61.





From Archer Butler Hallbert, *Forty-Niners* (Boston, 1931), p. 299

Group behavior was most likely to turn violent in cases involving theft, homicide, or claim jumping, the latter of which artist Charles Nahl depicted in his illustration (above) titled "Driving Away Squatters from a Mining Claim."

or even a few misplaced words could result in an armed fracas. But there is almost no evidence of an individual on his own using a gun to settle a civil or criminal grievance. There is overwhelming evidence that such action was taken by the group, especially in cases of claim jumping, theft, or homicide. Moreover, even if the group became a virulent mob, the participants argued that they were reclaiming the law because established institutions had failed or were absent.

Contemporary observers were either appalled or impressed by what they called "lynch law"—instances when miners gathered to deal with crimes. Many critics misused the expression. Lynch law is the act of doing "justice" in an irregular or irresponsible manner, by unauthorized anonymous individuals, and in opposition to the regular legally established and open courts.

What took place prior to 1851 occurred most often where there were no courts and where the alcaldes or JPs were either too far away or ineffective. Action was taken by known persons in broad daylight. Critics of the miners' tribunals, Hinton Helper believed, "committed the very common error of judging the institutions of one set of people by the standard of another. They have applied to California the same rule which would guide them in their judgment of an Atlantic state. In reality there is no parallel between them."<sup>58</sup>

The American argonaut carried more baggage in his head than in his hands—notions of God, rules of right and wrong, and the customs of lawful behavior. Like other pioneers, when he modified institutions—as in later mining law or water rights—he was conscious of how things should be done. At Eagle Gulch, for ex-

58. Hittell, *History of California*, 3:241-42; Helper, *Land of Gold*, 238. Actually Hinton Helper erred. Popular tribunals mirrored the legal system in using the whip, banishment, and the rope as penalties. See Gordon Morris Bakken, *Practicing Law in Frontier California* (Lincoln, 1991), 101-7.

59. Reproduction of Fariss and Smith's *History of Plumas, Lassen and Sierra Counties California, 1882* (Berkeley, 1974), 213.

60. See Canfield, *Diary of a Forty-Niner*, 26; Lord Journal, April 15, 1850.

61. A. J. McCall, *Pick and Pan: Trip to the Diggings in 1849: Reminiscences of California Life by an Argonaut* (Bath, N.Y., 1883), 14.

62. Bancroft, *Popular Tribunals*, 1:152, 144; Canfield, *Diary of a Forty-Niner*, 96; Charles D. Ferguson, *The Experiences of a Forty-Niner during a Third of a Century in the Gold Fields* (Chico, Calif., 1923), 117-18.

63. Borthwick, *Gold Hunters*, 301; Ferguson, *Experiences of a Forty-niner*, 90.

64. Canfield, *Diary of a Forty-Niner*, 51; Jane Bissell Grabhorn, ed., *A California Gold Rush Miscellany . . . from California Lithographs, Broadsides, & C* (San Francisco, 1934), 35-36.

65. Pringle Shaw, *Ramblings in California*, 69; Alexander Saxton, *Indispensable Enemy: Labor and the Anti-Chinese Movement in California* (Berkeley, 1975), 50.



ample, when Daniel Price was crushed to death, a mass meeting was held, a committee selected to take charge of his effects, notice posted requesting that persons having claims against him to come forward, the appropriate claims liquidated, and the remaining assets sent east to his widow. The entire procedure—essentially a probate—was handled without a court.<sup>59</sup> The Price episode was not unusual. Most miners kept their contracts and paid their debts.<sup>60</sup> They did not take loose property, even though mules and horses often ran free and housing seemed abandoned. They were concerned not only that the rightful owners might come back to claim them but also because others might think the property was stolen, which did not go down well with miners. The miners had in effect implemented the common law principle that unexplained possession assured conviction, and thus shifted the burden of proof. One miner, Anselm J. (A. J.) McCall, believed that “men beyond the reach of the civil law or statute law are more sensitive to the [property] rights of others and so more disposed to regard them.”<sup>61</sup> Tools were never taken or even moved because they indicated the location and mining right of the owner. Evidence of occupation and use provided a possessory right. The miners had, in a sense, accepted the law as custom, sometimes even attempting to follow legal forms.

**T**he procedures and punishments pursued by miners’ courts have been much criticized. Bancroft thought these courts were often capricious mobs that inflicted punishment in an off-hand manner. A trivial incident could determine whether a culprit would be whipped or hanged. There were enough bizarre episodes after 1851 for Bancroft to picture the oak trees of the Sierra foothills as “tasselled with the carcasses of the wicked!” Mobs, he wrote, for good or evil, worked tyrannies on the populations of both cities and camps. But there is no agreement. Alfred T. Jackson believed that, although most miners were willing judges, only the riffraff watched a sentence carried out:

There were few miners there and it would be hard to get together a worse lot of savages than those who stood around gloating over the wretches. The chances are that nine out of ten of the lookerson, if they got their just desserts, deserved the same sort of punishment that was being dealt out to the culprits. The trouble is that most of the men are too ready to see themselves set up as judges, and swayed by their passions, inflict penalties, even the sentence of death, on insufficient evidence.

Most miners looked with disdain upon those who administered punishment and those who reveled in it. Charles D. Ferguson said that Butcher Bill, who accepted \$500 to deliver thirty-five lashes to each of three convicted felons, “dropped to the lowest round of the social ladder, even to that of thieves themselves.”<sup>62</sup>

Borthwick spent “two or three years cruising about in the mines” and never saw a “lynching.” Another miner, Charles D. Ferguson, wrote “never in my experience did I either know or hear of any excited crowd carry their design to execute until the culprit had a fair and impartial trial.”<sup>63</sup> Miners often noted cases where men were severely punished, but recorded that such action was taken only after a trial where the truth was sought out, juries were selected, defenders and prosecutors named, and a judge elected. Witnesses were heard and often interrogated by any miner present. This was true in early civil cases—conflicts over mining claims—as well as in criminal cases. Punishment was determined often by consensus rather than by a judge. In Nevada City, wrote a forty-niner, “the miners have elected an alcalde, but his decisions are not binding, only as they are accepted by the people.” One miner recorded, after a verdict: “Some were for hanging and some were for whipping & branding so there was a committee appointed to what the punishment should be so the committee concluded that he be given fifty lashes and branded on the cheek with a letter & never to show himself in these parts or they would hang him.”<sup>64</sup>

Many contemporaries praised the rough-and-ready justice as a triumph of America’s Anglo-Saxon heritage. But a twentieth-century historian, looking to the philosopher Josiah Royce, himself a product of the

66. Isaac Jones Wister, *Autobiography of Isaac Jones Wistar*, 2 vols. (Philadelphia, Pa., 1914), 1:123.

67. Stephen J. Field, later an associate justice on the United States Supreme Court, when practicing law during the gold rush wrote: “The Americans in the country had a general notion of what was required for the preservation of order and the due administration of justice.” See Stephen J. Field, *The Personal Reminiscence of Early Days in California* (1880, 1893; reprint, New York, 1968), 24.

68. Hittell, *History of California*, 3:291. Bakken rightly points out that there were many lawyers in the early goldfields and demonstrates how they used their talents for personal advancement. Bakken, *Practicing Law in Frontier California*, 101-7.

69. Lord Journal, April 24, 1850.

70. Bancroft, *History of California*, 7:210; Field, *Personal Reminiscences*, 22-23.

71. Gerstäcker, *California Gold Mines*, 104. Also see Shinn, *Mining Camps*, 185-86, and Bakken, *Practicing Law in Frontier California*, 22-23.

72. Hittell, *History of California*, 3:162; Bancroft, *Popular Tribunals*, 1:749. See also Beck, “California Gold Rush Violence,” 105.

73. Malcolm J. Rohrbough, *The Days of Gold: The California Gold Rush and the American Nation* (Berkeley, Calif., 1997), 216-17; Canfield, *Diary of a Forty-Niner*, 184; Joseph Henry Jackson, *Bad Company* (New York, 1936), 44.



mining town of Grass Valley, wrote: "A miners' court might conduct a splendid fair and 'earnest' trial. Then having convicted the accused, say of theft, the court would either hang him, which was immoral; or whip and banish him, which was equally immoral since it turned him loose, hurt and embittered to prey on other camps." Because miners would not build jails or send culprits to the towns for trial, Royce concluded, "Social irresponsibility led invariably to social immorality."<sup>65</sup>

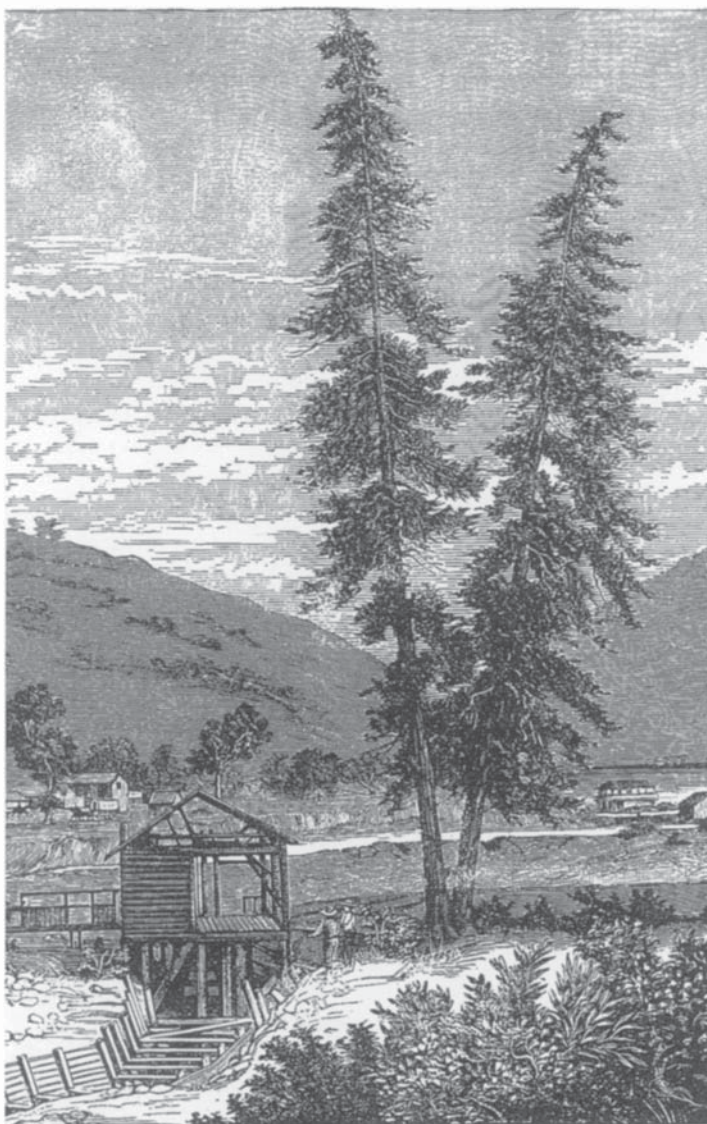
Others saw the policy more as the only practical solution to an intractable problem. "At all events," wrote Isaac Jones Wister, "the method was not without substantial advantage while it lasted, and it may be worth the while of philosophers to note that the novel judicial phenomenon need not necessarily be bad be-

cause worked out by practical men, not given much to speculation or remote consequences."<sup>66</sup> Wister may have been more insightful than many critics of miners' tribunals for he recognized moral patterns of behavior hidden in their apparent formlessness.

What critics and defenders of the miners' tribunals missed was that the miners tried to follow law and procedure as they understood them.<sup>67</sup> But California's miners had a distrust of judges and lawyers because they used rhetoric and technicalities to shield the guilty or protect the patently dishonest.<sup>68</sup> Many Americans believed that a legal system in the hands of professionals generated random results. Defending the miners' tribunals, Israel Lord wrote: "The unsworn witnesses, no doubt, 'told the truth, the whole truth, and nothing but the truth,' which is more than I can say for them in any court of law I ever attended—and why? The law-

yers will not let them. . . . In our case the jury was not sworn, and yet, I doubt not, did exact justice, which is more than the law, the judges, and the lawyers will allow them to do in the States."<sup>69</sup>

Lord's views were hardly unique, especially regarding alcaldes and JPs. Many untrained justices fared badly. Bancroft mentions one JP who was whipped by an unhappy plaintiff and another who was stabbed to death. Stephen J. Field, later an associate justice of the Supreme Court of the United States, tangled repeatedly with an alcalde who was eventually forced from the bench. Field himself confessed that, when he was an alcalde, he knew little of Mexican law.<sup>70</sup> Some JPs, notorious for bad decisions, collecting high fees, and levying outrageous fines, were driven out of town. Most



SUTTER'S MILL, COLOMA, CAL.—WHERE MARSHALL FIRST DISCOVERED GOLD.

James Marshall's discovery of gold at John Sutter's mill, pictured at left in a drawing from Major William Downie's *Hunting for Gold* (1893; reprinted 1971, p. 28), surely brought social transformation to mid-century California. Abuses of Indians and ethnic immigrant groups were numerous and tragic, but among themselves the miners saw to it that turmoil had its limits.



maintained their authority by relying on common sense.<sup>71</sup>

There is a tendency to depict the early California mining camps as being without law, as a Hobbesian universe where the gun prevailed and it was every man for himself. Overlooked is that when the miners wrote rules establishing possessory rights and enforced them, and even when they acted more like a lynch mob than a fair tribunal to punish someone for homicide or theft, they were engaged in a group legal exercise, however coarse and crude. There is irony in the fact that after 1851, as county courts were established and more trained lawyers argued cases involving homicides, mining claims, water rights, and waste, true lynch law did become a fact. Moreover, claim jumping and theft became increasingly prevalent. Miners hid their hoards and could no longer leave their tools to mark their claims. Bancroft points out that in 1855 there were 535 homicides, seven legal executions, but forty-nine informal ones.<sup>72</sup> As new gold mines became scarce and competition more keen, the social fabric, which had early been firm, although skewed by prejudice, had begun to unravel before the mid-1850s. The opening of courts neither prevented crime nor ended mob violence, popular tribunals, and vigilance committees. The first mention of a highwayman occurs in 1852, and the

first stage robbery in California took place in 1856.<sup>73</sup>

Both romantics and critics, relying on shocked Victorian observers, have overly dramatized the turmoil of the early California mines. Disorderly, brawling, intemperate, xenophobic, and racist, California's early miners surely were. But in cases of severe antisocial behavior, such as theft, homicides, or attempted rape, and in cases involving mining claims or possessory rights, they had a clear understanding of legal customs and tried to abide by them. Although American miners were not members of a community in a technical sense, most miners shared a moral code based on experience and logic in their daily dealings with each other that had little to do with the power of a sovereign. This is not to deny that the record of abuses is sorry and disheartening, especially in dealings between American miners and Indians, Mexicans, Chileans, and Chinese. The California mines were not a peaceable kingdom. There was plenty of disorder. But the miners were never beyond the law. *M*

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Miners not only shared living conditions, as these miners and their Chinese cook did at a claim in Nevada in 1865, they shared a moral code that they willingly enforced when formal systems of justice failed or were absent.

The Huntington Library, San Marino, California

