

MINING DISTRICT RULES: POPULAR LAW MAKING ON THE AMERICAN MINING FRONTIER

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**Abstract:** When gold was discovered in California in January in 1848, the area was technically a province of the Republic of Mexico but the United States had for all practical purposes won a war for control of the area. The treaty ending the war, however, was not signed until later that year. The miners that flooded into the area were therefore in a position to overwhelm the fledgling military and civil government and were permitted to carry on unimpeded a practice of establishing their own rules for the acquisition and maintenance of mineral rights. The result was an exercise of popular law-making that was debated by contemporary writers and historians as attributable to either (1) an adaption of the laws of Cornwall, Derbyshire, and the Spanish colonies or (2) simply an example of natural law applied in a context of an American inclination to organise.

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This paper discusses the district rules that were developed by popular law-making in mining camps of the western United States during the middle years of the 19th century. It also provides a description of some of the literature dealing with such district rules.

In preparing this paper, I have quoted liberally from the works of earlier students of the subject, particularly those written in the elegant prose of the 19th century.

No one has more succinctly described district rules than Robert S. Morrison in his handbook on mining rights (Morrison 1936 p1):-

Mining districts and their rules had their origin in the mining camps of California in 1849, before any territorial form of government had been established, and their system became the precedent for like organizations wherever discoveries of mineral values in other sections brought together an influx of prospectors.

Practically all the Pacific Slope and the land east of the mountains to the Missouri River was then public domain. The vast orebodies of the Comstock, the wealth of Alder Gulch, the placers of Pikes Peak, and of countless intermediate mineral localities were all appropriated and their values extracted under the protection of this form of local self-government for many years, with no paternal interference by the National Legislature.

Each local camp called itself a Mining District as defined by the action of a mass meeting of the miners. Some of them were less than a mile square, others quite extensive, and they have become permanent geographical divisions for purpose of description in the conveyance of real estate of all kinds in the mining states.

After defining the name and local extent of the district these meetings usually designated certain officials to be elected from time to time, and then proceeded to adopt rules regulating the size of claims and the prerequisites of location and providing for annual labour or periodical representation in some form.

Before the territorial organisations were complete, and while the diggings were remote from organised society, they often took a much wider scope, and provisions were made for executive officers, for miners' courts, and covering all sorts of subjects....

With almost no interference by State or Territorial acts they were the mining laws of the land until the Act of Congress of July 26, 1866. This but slightly limited their essential authority, but the Act of May 10, 1872 covered so many essential incidents and has been so supplemented by state legislation, that [Districts] have been gradually abandoned, and survive now only as a name of description.

As stated by Morrison, United States free mining tradition begins with the California gold rush. The magnitude of that event is not well appreciated today, but the amount of gold mined and the number of people involved were staggering even by today's standards.

William A. Ashburner, writing in November, 1866 (Browne & Taylor 1867 p37) in a contribution to one of the first official compilations of many statistics states that:

[Gold] was.....[first found]....on the 19th of January, 1848,...on the South Fork of the American River, at a place now called Coloma...[Despite efforts]...to preserve the fact a secret, the news soon spread..., and by July of that year...[as many as]...four thousand people...were [at work]...on the American River...[system], [collectively extracting]...\$30,000 to \$40,000 a day, and by November it is thought that four to five millions of dollars had already been extracted.

It was not until a year subsequent to this discovery, or in the spring of 1849, that commenced the most extensive immigration that the world has ever seen. Adventurers poured into California from all quarters of the globe; first from Mexico, Chili, and Peru; then from the Sandwich Islands, China and New Holland; lastly from the United States and Europe. During the six months between the first of July 1849, and the first of January, 1850, it is estimated that 90,000 persons arrived in California from the east by sea or across the plains. The western slope of the Sierra Nevada was soon covered with explorers, who, with their 'pans' upon their shoulders, penetrated every ravine or gulch, 'prospecting' the sands and washing the gravel wherever there was chance of finding the precious metal. Mining towns sprang up with almost incredible rapidity, and for several years they presented a scene of busy life.

Perhaps of most interest to students of the mining customs of Derbyshire are the lodes that were soon discovered in California. The Empire Mine at Grass Valley was discovered in 1850 and produced for 105 years, ultimately becoming one of the deepest mines in the world, developed to an inclined depth of 11,007 feet (Dempsey 1987). The Empire and a number of other early California mines produced in excess of one million ounces of gold each. Total production of gold in California from 1848 to 1866 was 38.8 million ounces, worth \$17.46 billion dollars at today's gold price. The peak year was 1852 when 3.9 million ounces were produced. That is more than the total of all U.S. gold production in 1986 (Dempsey 1987).

The discovery of gold in California occurred at a time when the United States was at war with Mexico, and U.S. sovereignty over the area was not finally established by the Treaty of Guadalupe Hidalgo until later in 1848. That treaty vested the paramount title to all public lands in the United States, but at that date no federal law dealt with mining. John F. Davis, writing in 1901, stated that the miners "were permitted to remain only because they were in possession and outnumbered the authorities". In the popular parlance of the day they "had the drop on the army". The prospectors and miners were then, at the start, simply trespassers upon the public lands as against the government of the United States, with no laws to guide, restrain or protect them, and with nothing to fear from the military authorities" (Davis 1901 p284).

A Public Land Law Review Commission report published in 1880 takes up the theme from Davis describing the development of placer and lode regulations by the California miners as follows:

Finding themselves far from the legal traditions and restraints of the settled East in a pathless wilderness...the adventurers of 1849 spontaneously instituted neighbourhood or district codes of regulations, which were simply meant to define and protect a brief possessory ownership.

In the absence of State and Federal laws competent to meet the novel industry, and with the inbred respect for equitable adjustments of rights between man and man, which is the inheritance of centuries of English common law, the miners only sought to secure equitable rights and protection from robbery by a simple agreement as to the maximum size of a surface claim, trusting, with a well-founded confidence that no machinery was necessary to enforce their regulations other than the swift, rough blows of public opinion. The gold seekers were not long in realising that the source of the dust which had worked its way into the sands and bars, and distributed its precious particles over the bed-rocks of rivers, was derived from solid quartz veins... Still in advance of any enactments by legislature or congress, the common sense of the miners, which had proved strong enough to govern with wisdom the ownership of placer mines; rose to meet the question of lode claims, and decreed that ownership should attach to the thing of value, namely, the thin sheet-like veins of quartz, and that a claim should consist of a certain horizontal block of the vein, however it might run, but extending indefinitely downward with a strip of surface, on or embracing the vein's outcrop, for the placing of necessary machinery and buildings. Under this theory, the lode was the property, and the surface became a mere easement (Davis 1901 p285).

Lode regulations adopted at a meeting of miners held in Nevada County in December 1852, which included extralateral rights, became the model for districts all over the Rocky Mountain West. The regulations read as follows:

**Article 1.** The jurisdiction of the following laws shall extend over all quartz mines and quartz mining property within the county of Nevada.

**Article 2.** Each prospector of a quartz claim shall hereafter be entitled to one hundred feet on a quartz ledge or vein, and the discoverer shall be allowed one hundred feet additional. Each claim shall include all the dips, angles and variations of the vein.

**Article 3.** On the discovery of a vein of quartz, three days shall be allowed to mark and stake off the same in such manner, by name of the owner and number of the claim, or otherwise, as shall properly and fully identify such claims. Parties having claims may cause a map or plan to be made and a copy filed with the recorder, if deemed requisite to more particularly fix the locality.

**Article 4.** Work to the extent of one hundred dollars in value, or twenty days' faithful labor, shall be performed by each company holding claims, within thirty days of recording the same, as provided in article six of these laws; and the duly authorized representative of a company making oath that such money has been expended, or that such labour has been performed, shall be entitled to a certificate from a county recorder or deputy, guaranteeing undisputed possession of said claim for a period of one year; and a like sum of money or amount of labour expended or performed within twenty days of each succeeding year, duly acknowledged as herein named, shall entitle the claimant or company, from year to year, to further certificates of undisputed proprietorship and possession; and a company having a mill contracted for in good faith, to the amount of five thousand dollars, for the working of its claim or claims, the proper representatives of the company making oath of the same, shall be entitled to receive from said county recorder a title-deed to said claim or claims, guaranteeing to the claimant or company, their successors and assigns, undisputed possession and proprietorship forever under these laws; provided that nothing in this article shall at any time be inconsistent with the laws of the United States.

**Article 5.** Whenever the requisite amount of money or labour has not been expended within thirty days from the adoption of these laws, the claim or claims thus neglected shall be considered abandoned and subject to be relocated by any other party or parties.

**Article 6.** Any person a citizen of the United States, or any person having taken the necessary steps to become a citizen of the United States, shall be entitled to hold one quartz claim as provided for in article first, and as many more as may be purchased in good faith for a valuable consideration, for which certificates of proprietorship shall be issued by the county recorder.

**Article 7.** The regularly elected county recorder of Nevada county shall serve as recorder of this county in quartz claims, authenticating his acts by the county seal. He shall appoint as his deputy such person for Grass Valley as may be elected by the district of Grass Valley, and he shall pass his records to his successor.

**Article 8.** The fees of the recorder and deputy shall be the same as the statute fees for recording per folio.

**Article 9.** No title to a claim hereafter taken up or purchased shall be valid unless recorded in the books of the aforesaid county recorder or deputy within ten days of its location or purchase.

Adopted December 20, 1852, and still in force (King 1885 p330).

The Secretary of that meeting was William A. Stewart, a young lawyer who eventually became the chief lawyer on the Comstock Lode, a United States Senator from Nevada, and "father of the mining law" (Elliott 1983). It is not hard to find a link between the Nevada County meeting and the federal lawmaking of 14 years later.

District rules adopted in hundreds of mining camps across the Rocky Mountain region are generally similar in setting the size and number of claims that can be taken up, enforcing the law of use, maintaining extralateral rights, and requiring recordation of claims. Some establish criminal rules and provided for miners' courts. At least one district in Colorado barred from the district lawyers and other scalawags.

Lawyers, judges and historians have for years debated the origins of the district rules. Many students of the subject hold to a theory that wily frontiersmen thought up solutions to problems on the spot. Others trace mining district rules to European precedent. Senator Stewart argued that "the miners were forced from the necessity of the case, to

make laws for themselves" (Yale 1867 p58). But Gregory Yale, who wrote the first American treatise on mining law, says that:

Most of the rules and customs constituting the code, are easily recognised by those familiar with the Mexican ordinances, the Continental Mining Codes, especially the Spanish, and with the regulations of the Stannary Convocations among the Tin Bounders of Devon and Cornwall, in England, and the High Peak Regulations for the lead mines in the county of Derby... In the earlier days of placer digging, in California, the large influx of miners from the western coast of Mexico, and from South America, necessarily dictated the system of work to Americans, who were almost entirely inexperienced in this branch of industry... The Cornish miners soon spread themselves through the State, and added largely by their experience, practical sense, and industrious habits, in bringing the code into something like system. The Spanish American system which had grown up under the practical working of the mining ordinances for New Spain, was the foundation of the rules and customs adopted: (Citation omitted.) (Yale 1867 p58).

Commenting on Sen. Stewart's statement of origin, Yale argues that:

Senator Stewart has ascribed undeserved merit to the early miners in pronouncing them the authors of the local rules and customs... [He] is correct in stating the nature of the rules and customs, and the uniformity of their adoption. But they were not all the spontaneous creation of the miners of 1845-50. Historical accuracy ascribes a different origin to them. They reflect the matured wisdom of the practical miner of past ages, and have their foundation, as has been stated in certain natural laws, easily applied to different situations, and were propagated in the California mines by those who had a practical and traditional knowledge of them in their varied form, in the countries of their origin, and were adopted, and no doubt gradually improved and judiciously modified by the Americans. This self-evident fact can be admitted without detracting from our national pride. The Romans preserved the mining laws and customs which had prevailed in the gold and silver mines in Spain long before its conquest by Rome; and the legions of Julius Caesar were taught the mode of mining fortune by the ancient Britons, whose very name is derived from the vulgar metal, and whose laws and customs are still in force in the same localities originating in a remote antiquity surviving all changes of conquest, language and race. In acquiring the mines, our magnanimity will enable us to accept the mining customs, in part, from the same people, and not exhibit the selfishness of Great Britain, whose exclusive codes are so perfect and absolute, according to her most distinguished author on Mining Laws, that the local law of a provincial realm, prevailing before Cornwall and Devon were parts of England, must be rejected as an *imperium in imperio*. "The law of England allows no supremacy of this kind. It tolerates a *lex loci* as a reasonable usage, and it only admits the written Pandects of Justinian and the decretal of Gregory in the same humble garb of custom" (Yale 1867 p58).

Yale backed up his statement about Cornish miners.

As many as fifteen Cornish miners were employed at one time by a Mariposa company, in the summer of 1850. They came to the State under contract with Sir Henry Huntley, representing a bogus London company, whose miners were supposed to be located on the Calaveras. Professor Whitney is mistaken in his Geological Report (page 224) in stating that quartz mining commenced in Mariposa County, in 1852. The company alluded to, of which the writer was a victimised shareholder, erected the first steam quartz mill in the State, upon what is known as the Jackson Lode, in Mariposa, in September 1850. The machinery was of the Stockton pattern, and purchased from Major Allen, in San Francisco, in May 1850 (Yale 1867 p58).

John Davis, citing the Yale-Stewart argument, weighs in on the side of the spontaneous frontiersmen, saying that;

With all deference to any opinion expressed by Mr. Yale, it appears to me that he has in this chapter failed sometimes to distinguish between the practical work of mining taught by the pioneers by their Mexican, Chilean and Cornish associates and their comrades from the southern gold, and western lead states, and the framing of rules and regulations... Nor is it necessary to hold with Mr. Yale... that the Mexican system was the foundation for the rules and customs adopted, for in the matter of lode claims that system is the direct antithesis of the California system, the former recognising vertical planes through the exterior boundaries and the latter recognising the extra-lateral right.

The California pioneers who were Americans did not have to learn the science of

organisation from their foreign associates. Professor Macy, of Johns Hopkins University, once wrote: "It has been said that if three Americans meet to talk over an item of business, the first thing they do is organise. "This trait is as characteristic as the one of periodically saving the country by assembling in mass meeting and passing resolutions. Californians were not the first American settlers upon the public domain of the United States who were left for a time without statutory law, federal or local. The institutional beginnings of more than one western state, notably of Wisconsin and Iowa, furnish a most interesting parallel, and the groundwork of their rules and regulations, except with regard to the extra-lateral right in mining, are in many respects absolutely identical. The lead miners of Dubuque [Iowa] who on the 17th of June, 1830, assembled around an old cottonwood log, stranded on an island, and appointed a committee of five miners to draw up regulations for their government, would have been surprised to be told in after years that the rules they framed had any source for their inspiration than the courage, the necessities and the resourcefulness of intelligent frontiersmen (Davis 1901 p287).

Herbert Hoover, in his extensive Historical Note on the Development of Mining Law in the translation of *De Re Metallica* states that "if the American 'Apex Law' is of English descent, it must be laid to the door of Derbyshire, and not of Cornwall, as is generally done. Our own belief, however, is that the American "Apex Law" came straight from Germany (Agricola, Hoover tr, 1912 p86). This author shares the view that American miners had at least some knowledge of European practices and that self-initiation and Apex laws come out of a common heritage with earlier miners across the sea.

District rules were no longer required after adoption of federal mining statutes, but miners' meetings were continued after 1872 in some districts, and local mining organizations are still active in some areas of the U.S. The free miner tradition continues in the U.S., and self-initiation still prevails in the west. It is interesting to note that a number of mining district meetings were held after adoption of the federal statute, and after considerable deliberation, the miners voted to adopt the federal law. One wonders what would have happened in a district where the vote went the other way.

Much has been written about district rules and popular lawmaking in the United States mining camps. Persons interested in the subject may wish to start with Charles Howard Schinn's book on mining camps originally published in 1885. Yale's treatise on Legal Titles to Mining Claims and Water Rights, which deals extensively with early California mining law, and the background of the 1866 federal act, is also well worth reading. A more recent study of the history of U.S. mining laws is Robert W. Swenson's Legal Aspects of Mineral Resources Exploitation which is a chapter of Paul W. Gates' History of Public Land Law Development. A collection of mining district rules was published by the Tenth United States Census conducted in 1880 (King C. 1885 pp271-345). Students of district rules who wish to go beyond the standard references and collections ordinarily search for old copies of such district rules at county courthouses. Most western states required that copies of district rules be filed with the counties. I have added a few references to Colorado districts in the references hereto (Rogers & Stearns 1935).

People familiar with the customs of miners in Derbyshire will certainly recognise many of the same approaches in United States district rules. A detailed exploration of the similarities will help establish the link between the mining traditions of our two great countries.

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#### DISCUSSION

Q. (Geoff Cox) Obviously, water availability is critical to mineral development, and it seems a tribute to the miners that their procedures for mining claims led on to legislation for water rights.

A. Water was extremely important to the mining districts because all the mining districts were in the foothills of the Sierra Nevada Mountains of California. This resulted in frequent circumstances when water was not available at the mine site as had previously been the case with the alluvial washings along the stream beds. There were some thus some incredible waterworks constructed, for they actually moved certain rivers, and then, when hydraulic mining was introduced, water hoses were used for mining operations. In the 1870s, a court decision supporting the agricultural interest finally stopped the practice because it was silting up the streams. Many of the water rights systems of the Western United States is based on "prior appropriation" which was the basis of the miners' system. Also the construction of the early delivery systems show some of the genius of the mining industry.

Q. (Roger Burt) You told us that in the far West of America the development of mining was under a different system than that of the Eastern area, that is, in the West, the first claimant got the claim and then worked the vein. In much bigger workings of copper and lead one assumes that the illegal structure that evolved in the 1840s would have caused problems. Have there been any major changes in the mining law?

A. The first problem which occurred in the operation of the mining district rules was that the rules tended to change, and only the miners who actually remained within the district at all times could protect their claims. This was one of the main reasons for the general mining law that would have universal application. Since the passage of the general mining law, the law has been able to accommodate major changes in technology and governmental policy. There are, however, those that would like to see a leasing system. There have, however, been several significant changes in recent years to the system. Some recent legislation requires proof of performance of work on the claim, and if proof is not provided, the claim is considered abandoned. Further, quite apart from the rules for determination of ownership, a number of changes have been made to protect against environmental damages.