

THE MOUNTIES AS VIGILANTES: PERCEPTIONS OF COMMUNITY AND THE TRANSFORMATION OF LAW IN THE YUKON, 1885-1897

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The transformation of law in the Yukon attendant upon the arrival of the North West Mounted Police and their successful attempt to eliminate the authority of the miners' meeting in the district is reviewed. In this instance, it appears that the symbolic as distinct from the instrumental functions of law led to the acceptance of a fundamental change in the character of local legal institutions.

I. INTRODUCTION

When the North West Mounted Police were dispatched to the Yukon district in the 1890's, they confronted a population of largely American or Americanized miners who were relying on the "miners' meeting"—a fully autonomous, highly democratic and egalitarian institution—as the basis for law and government in the gold camps (Zaslow, 1969: 183-184). Given the prevailing image of the undisciplined and disorderly American frontiersman (Reid, 1977a: 37; Gough, 1975: 278) coupled with the distrust of American democratic institutions which characterized Canadian opinion (Brown, 1967), it is hardly surprising that the arrival of the Mounties was widely viewed as posing a confrontation between Canadian law and American frontier lawlessness. In the popular imagination of both Canadians and Americans, the Mounties of the Yukon became a symbol of justice, peace, and order in the district, their presence serving as the only barrier to dangerous and potentially violent anarchy.

The facts of the case, however, appear otherwise. The evidence suggests that before the summer of 1897, when the Klondike rush began in earnest and the character of Yukon

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society was radically transformed, "lawlessness" was not a problem. There is little indication that people were either in serious danger of having their rights violated or that they lacked an effective remedy for those grievances that did arise. The presence of the Mounties, which displaced the authority of the miners' meeting in Canadian territory, did little to improve the administration of justice. In certain respects, in fact, it appears only to have incapacitated it. On the other hand, the Mounties did effectively symbolize class dominance in a situation where incipient stratification and a perception of threatened class conflict were beginning to emerge. And in this role, ironically, the Mounties stand as the counterpart in the Yukon of the vigilante movements which emerged on the American mining frontier (Brown, 1969: 178-190).

The case of the Mounties in the Yukon, however, has even broader relevance. The miners' response to the appearance of the police provides an illustration of the distinction between the symbolic and instrumental functions of law and the role of the former in conditioning public attitudes toward legal institutions. Legal agencies perform an instrumental function through law enforcement and dispute resolution. At the same time they perform the symbolic function of publicly affirming social ideals and dominant norms (Gusfield, 1967: 176-177). While the instrumental and symbolic functions of legal agencies often arise from the same activities, they are analytically separate (Gusfield, 1963, 1967; Edelman, 1964; Erikson, 1966) and often pull in different directions.

In the present case, the appearance of the Mounties failed to improve—and indeed demonstrably weakened—the instrumental functions of law in the Yukon district. Nonetheless, their authority was quickly accepted and hailed as a welcome replacement for the miners' meeting by the established miners and their spokesman. The reason for this, it can be shown, lies in the fact that the authority of the Mounties reliably ensured the public affirmation of established community values and norms at a time when these were perceived as being threatened.

II. THE MINERS' MEETING IN THE YUKON

By 1894, the year the Canadian government first dispatched Charles Constantine of the North West Mounted Police to the territory, the region of the upper Yukon drainage in the vicinity of the Alaska-Canada boundary had drawn a substantial influx of gold miners and prospectors. Their activities were largely

centered in two districts on opposite sides of the border. At the junction of Fortymile Creek and the Yukon River, in Canadian territory, there was Fortymile post, a town of some 150 log buildings, mostly cabins, but including saloons, restaurants, a theater, and a billiard room (Constantine, 1895; Archer, 1929: 138). Fortymile was the supply center for the major mining district on the Yukon in 1894. Close to 1,000 miners worked in the district in the summer of 1894 (PAC, 1894a).¹ Downriver to the Northwest, across the international boundary in Alaska, a new supply post was just being established that same summer to service the newly discovered Birch Creek mining district. A year later, Circle City (as this new post came to be called) and the Birch Creek district not only rivaled but had begun to outstrip Fortymile as a center of population and mining activity in the region, even though the Fortymile district itself did not substantially decline in population (Goodrich, 1897: 119).

Gold prospectors and miners had been drifting into the region in increasing numbers since 1878, but mining activity was scattered and desultory until strikes on the Stewart River in 1885, followed quickly by the Fortymile strike in 1886, concentrated the population first (briefly) at the Stewart, and then at Fortymile. Fortymile then dominated the upper Yukon, remaining the center of population and mining activity until the discoveries on Birch Creek. In the early years, a small summer population would typically shrink to an even smaller community of less than 100 miners and prospectors who would remain during the long winter season, gathered together in winter quarters at the site of a trading post. With the arrival of the relatively short summer season, the men would again disperse to prospecting or mining operations on the creeks, joined by a summer influx of returning and new prospectors entering the district. As time went on, the size of the summer influx and the smaller wintering population grew markedly.

From the beginning of mining operations until the Klondike rush of 1897, other trends in the social development of the region can be noted. Not only did population increase steadily, but noteworthy institutional growth and elaboration took place as Fortymile (and later Circle) acquired the trappings of civilization. The population also became less homogeneous as women began to arrive and occupational diversity increased.

¹ PAC in this and subsequent references stands for Public Archives of Canada.

Furthermore, there was growing differentiation, both socially and culturally, between the scattered, small mining camps on the creeks—where working miners who had developed methods of winter mining had come to spend most of their time—and the post towns of Fortymile and Circle City which serviced these camps. By 1896, for example, Circle City could boast two theaters, three stores, three blacksmith shops, a library, a schoolhouse, eight dance halls and 28 saloons (Haskell, 1898: 162, 164; Berton, 1972: 29). On the creeks, in contrast, life was lived in relatively small, isolated camps. The men worked long hours during the summer; and even during the winter, when more leisure time was available, they enjoyed few of the diversions which the town afforded. In those somewhat austere, small, homogeneous, and isolated communities, life was more akin to that of the small, close-knit winter settlements centered on the trading post in early years than to life at the posts themselves in later years (Spurr, 1900: 110-206).

By 1894, working miners commuted between these two worlds, although most of their time was spent on the creeks. During the frenetic summer season, when the accumulated gravels of a winter's work were sluiced in the annual "cleanup," hired labor joined the claim owners of the creeks. Two shifts a day, providing for work around the clock in the continuous daylight, were the rule. But in addition to claim holders, the growing population of the region swelled the ranks of unemployed or occasionally employed prospectors and would-be prospectors—men who, along with shopkeepers, saloon keepers, and other nonminers—populated the towns for greater or lesser periods of time.

It was this changing Yukon society which provided the context for the operation of the miners' meeting, an institution which had emerged by 1885 to provide for the administration of law and government in the camps and which had its roots in the early system of camp government in California and the American West (reflecting the American origin of many of the Yukon prospectors). The miners' meeting was simply an assembly of all those residents in a particular camp who chose to attend when a meeting was called. This assembly considered with a minimum of formality any question which might provide the occasion for its being called. Decisions were rendered by a simple majority vote. In cases where it might be deemed necessary, a committee of the assembled miners was elected to see to the execution of the meeting's decision.

Goodrich, writing in 1897, described the typical miners' meeting as follows:

The powers of the miners' meeting are threefold—legislative, judicial and executive. No provision is made for a governing officer, the whole fabric resting on the great American principle, "majority rules." Universal suffrage is given, and all have an equal vote. The method of procedure is as follows: If a man has a grievance, he posts a notice to that effect and calls a meeting for a certain date. At the appointed time the miners of the locality assemble, generally in the open air, and a moderator from their number is appointed. Then the prosecutor presents his case; the defendant answers. There is a cross-questioning, speeches pro and con are made, and in the end someone puts a motion, which is either carried or defeated. If carried, the penalty is imposed without delay (Goodrich, 1897: 127).

Details of procedure varied slightly from one place and time to another, but virtually all sources agree to the accuracy of the description which Goodrich provides. The jurisdiction assumed by these meetings was wide ranging: they functioned as a forum for the disposition of private disputes; they prosecuted what could be regarded as crimes; they established special mining regulations which might apply in a particular creek or locality; and they established by-laws relating to almost any conceivable matter of public concern within the camp (Ogilvie, 1913: 245; Zaslow, 1969: 184). Decisions and action taken through a miners' meeting might range from seemingly trivial matters, such as the case where a meeting acted to prevent a white saloon-keeper from renegeing on a marriage proposal to a half-breed Indian girl (Walden, 1928: 55-56), to the potentially dangerous (and, by outside standards, illegal), as in the case of a decision to commandeer a winter supply outfit for each man from a passing riverboat (Walden, 1928: 102).

During the period of community growth, from 1885 to the Klondike rush in 1897, the setting for these assemblies changed from small camps of a few miners depending on a particular post for supplies, to sizable towns with a substantial population drawn from widely scattered camps and where the meetings, in later years, were often held in one of the town saloons. And after 1894, when the Mounties first arrived on the scene at Fortymile, it appears that the meetings in Canadian territory were treated with a good deal less seriousness than before; they increasingly acquired an entertainment function at the expense of giving relatively serious and thoughtful attention to matters of government and the administration of justice.

Certain elements appear to have remained constant in spite of such changes. The meetings dispensed a form of justice where character judgments figured prominently and the prevention of possible future trouble was an overriding

concern. The kind of justice they dispensed was of a sort familiar to students of the nature of law in small-scale, egalitarian societies lacking executive offices or a centralized authority (Colson, 1974: 31-59). The limited data regarding the decisions taken by these assemblies certainly do not permit any statement of a comprehensive, systematic body of legal "rules" enforced in the camp. They suggest, in any case, that "rules" as such may not have been fundamental to the system of justice administered by the miners' meeting. The familiar legal model of ascertaining and linking "facts" to "rules" to derive a decision and a set of legally acceptable consequences did not necessarily apply. Rather, legal process here was much more akin to that familiar to anthropologists observing societies where specific rights are not gained or lost by specific acts, but rather potential rights and their recognition may wax and wane over time as the cumulative result of a person's participation in a broad range of activities and relationships (Crocombe, 1971: 14). In the miner's meeting, decisions regarding the rights which should be accorded and enforced on behalf of any party rested heavily on judgments of individual character derived from participants' knowledge and impressions of a person's behavior and attitudes.

The significance of character judgments in the deliberations of the miners' meeting is clearly apparent in the record. Contemporary observers consistently note that the meetings did not dispense a highly formal, "impersonal" justice, but "justice" as much from the reputation of the parties as from the "facts." Such procedures were neither unrecognized nor necessarily condemned by the miners themselves. Walden, for example, noted that "As one man expressed it to me, 'What is the use of leading a good, honorable life if a man doesn't get credit for it when he gets into a scrape'" (Walden, 1928: 48-49).

Elizabeth Colson has pointed out that such assessments of character often figure prominently in the public sanctioning of behavior in egalitarian societies, and she follows Radcliffe-Brown in noting how "the one public crime in such societies was often that of being a bad character" (Colson, 1974: 53). The importance of judgments of character in adjudication and imposition of public sanctions is, in Colson's view, likely to be related in turn to an essentially "forward looking" (Colson, 1974: 54) system of social control. The primary *public* concern in such societies is not so much what a person *has* done in a particular instance, but rather the kind of person he is and

what, accordingly, he can be *expected* to do in the future. It is the individual who is being judged, not the crime (Colson, 1974: 59). Given this forward-looking aspect in a system of social control, it is not surprising to find that the ultimate sanctions at the disposal of such a community—exile, ostracism, or death—may be invoked “only to abort what ‘the criminal’ *might* do and never in punishment for what he *had done*” (Colson, 1974: 53).

In the particular instance of the miners’ meeting, the evidence suggests that the emphasis on character was accompanied by a “forward-looking” system of control with the emphasis more on preventing trouble and “maintaining order” than on any strict rule or “law” enforcement. Evidence for this can be found in the decisions reached in individual cases and in the type of penalties administered for particular offenses.

On the Stewart River, for example, in the year before the establishment of Fortymile, one member of a party of five miners attempted to poison, then shoot the others before he was discovered and apprehended by his partners (Ogilvie, 1913: 42-51). The murder attempt was carried out by the man who had originally organized the party, a man referred to simply as “Discoverer.” Discoverer claimed to have had first-hand information about a lost mine in the Yukon district. He convinced the others in Seattle of the truth of his information, and headed north with them. After a season of unsuccessful prospecting for this fabulous source of gold, the party was forced to settle in for the winter on the Stewart. One particularly querulous member of the group began to talk of lynching Discoverer for misleading them, and while the others did not appear to take this talk seriously, neither did they openly oppose the idea. Discoverer ultimately concluded that his life was in danger and laced a supper of beans with a generous dose of arsenic. The others in the party became violently ill (and Discoverer feigned illness as well), but not fatally so. The following night when the others appeared to be sleeping, Discoverer was observed preparing to shoot one of the men. He got off his first shot, but fortunately missed, and was quickly restrained before he could fire again. Rather than administering punishment on the spot, it was decided to bring the matter to the whole camp at the mouth of the Stewart, some 60 miles away.

At the Stewart camp, a miners’ meeting was called to hear the case, and both Discoverer and the others related their sides of the story. According to Ogilvie’s informants, the earnest manner in which Discoverer related his perception of events

convinced the miners of the genuineness of his own fear for his life, and some of the others in the party also admitted, quite frankly, that if they had been in Discoverer's position, they would have felt cause for alarm. As a result, according to Ogilvie:

It appeared to the majority that Discoverer acted in self-defense only, nevertheless, he was considered an undesirable citizen, and after much discussion it was decided to banish him, so he was furnished with a sled, provisions enough to get out if he could, and was ordered to move up-river at least one hundred and fifty miles from that camp, and assured that if ever he was seen within that distance of it, any one then present would be justified in shooting him on sight (Ogilvie, 1913: 50).

In another case on the Stewart recorded by Ogilvie (1913: 267-271), a seemingly much less serious "crime" which took place in the same winter received virtually the same sentence. Provisions for the camp on the Stewart had run very short by the fall of 1886, and the traders Harper and McQuesten had allotted equal shares of the available provisions to each man known to be working in the district. Later in the winter a miner known as "Missouri Frank" came in from his camp 15 miles up the river; since he had already received the allotted amount of butter, Harper refused to sell him more. That night, Frank broke into the storehouse and absconded with all the remaining supply of butter, which amounted to the allotment for 3 or 4 men who had not yet come in to the post. When the butter was later missed, Missouri Frank was suspected; and a deputation of miners from the Stewart camp traveled up the river to apprehend him. His partner—whom Frank had told that he had purchased the butter at a high price—confessed to the extra supply which Missouri Frank had brought home. Frank was brought down to stand trial at a miners' meeting. In this case the vote was unanimous "that he be exiled from camp at least one hundred and fifty miles, and that he never come near it" again on penalty of death (Ogilvie, 1913: 270). Ogilvie observes: "This may be considered a severe sentence for such a crime, but the idea appeared to be that he was a bad man, and lest he get the camp into difficulty over a killing, it was deemed best to get rid of him in time" (Ogilvie, 1913: 271). It is perhaps worth noting here that prior to this incident Missouri Frank had (rather unwisely, it would appear) "let it be assumed he was a bad man from somewhere" and "had notches on his gun, and all the other insignia of the class" (Ogilvie, 1913: 268).

These two cases were described to Ogilvie by participants within a year of their occurrence. In both, consideration as to the character of the defendant, specifically as it relates to his

being a source of potential trouble in the future, is given explicit consideration. And the sentence in each case—banishment—is designed to prevent further trouble. That the same sentence was handed down in response to two acts which seem to be quite different in their degree of seriousness—the attempted murder of four men as contrasted with the theft of some butter—is also understandable in these terms. Again, Colson’s point that the individual, not the crime, is being judged seems relevant here. Missouri Frank had already attested to his readiness to kill (whether in *fact* this was the case or not) and had shown by his act of theft a disregard of camp standards and willingness to act aggressively in his own interests. He was perceived to be potentially as troublesome as Discoverer. He posed a threat of “getting the camp into difficulty over a killing” even though the specific crime at issue, the butter theft, was minor.

At Fortymile and Circle City, where the miners’ meeting continued to function under conditions of substantial population growth, the same concerns remained evident. Both the resident Anglican clergyman, William Bompas, and Constantine of the Mounted Police, for example, alluded to a “shooting and stabbing” incident involving two miners at Fortymile prior to the initial dispatch of police to the district. The shooting and stabbing took place while both men were drunk, and proved fatal to neither. As a result of the incident, a miners’ meeting was called; it was decided that if the man who had been shot died, the other would be hanged, and that *both* would be banished if any further trouble occurred between them. In 1894, while one of the men remained at Fortymile, the other had moved to Davis Creek in Alaska (PAC, 1893a; Constantine, 1895: 81).

A more detailed report of a case resulting in a similar decision is provided by A.T. Walden, who was on the scene at Circle City in 1896. Two miners at the camp quarreled, and the incident escalated into a shooting match. Before either was seriously injured, a miners’ meeting was hastily convened. The two were brought before the assembled miners from the camp at McQuesten’s trading post, but proceedings were temporarily forestalled because each refused to make an accusation against the other. The two then proceeded to leave to “settle things” outside. The chairman of the meeting quickly called them back, gave up the chair, and proposed a motion:

Mr. Chairman and Gentlemen! I make a motion we let these two men fight. If one is killed we will give him Christian burial; if both are killed

we will give them both Christian burial. But if one survives, we'll hang him!

Walden's account continues:

Another man took the cue, and stepping forward said, "I'll make the amendment that if either man is found dead under suspicious circumstances, the other shall be hung without trial!" Unanimous verdict (Walden, 1928: 52).

The decision was effective in preventing any further trouble between the two.

In this emphasis on character and forward-looking justice the nature of law under the Yukon miners' meeting thus conformed to the general model provided by Colson (1974) for small-scale societies lacking centralized, specialized agents of law enforcement and control. And to this extent, of course, the miners' system was at variance with at least the ideal model of American law and legal institutions.

In one important respect, however, Colson's generalized portrait of law in a diffusely governed, small-scale society does not apply to the 19th-century Yukon. Responsibility for securing compensation or administering punishment for wrongs, she suggests, is likely to be left to the aggrieved party, rather than being assumed by the community at large. "Only an individual, and his supporters," she reasons,

[A]re interested in what a man has done, for this is the basis of their claim for compensation. The general public, on the other hand, is interested in what he is and can be expected to do in the future since this is a guide to the risks they encounter in dealing with him. It gives them some incentive to assess what has happened on particular occasions, but little reason to ensure that compensation in fact be paid or punishment administered (Colson, 1974: 53-54).

In the case of the mining camps, it is clear that this did not hold true: securing compensation or administering sanctions was, indeed, a function allocated to the community at large through the public institution of the miners' meeting, and case after case illustrates this. There was frequent (as opposed to limited) appeal to *public* authority in matters of securing punishment or redress. There is no way of telling, of course, how many undocumented instances of self-help were undertaken to secure compensation or sanctions on the part of aggrieved individuals. But such matters were a public concern, and sanction and compensation were subject to public deliberation and administration. The appeal to public authority and sanction in the institution of the miners' meeting, furthermore, was by no means limited to cases which might be conventionally regarded as involving "criminal" matters. Appeals to secure sanctions or damages or to otherwise adjudicate rights were common enough in disputes stemming

from what could be regarded as voluntary and private arrangements.

How can we explain this rather striking departure from Colson's portrait of the law of egalitarian, diffusely governed societies? Why, in the Yukon context, would a "legal" institution be so readily mobilized in preference to methods of private redress? Perhaps the public administration of sanctions through the vehicle of the miners' meeting had positive functions within this particular setting.

Unlike the indigenous societies from which Colson derives her portrait, the mining populations of the Yukon did recognize their *de jure* (if not *de facto*) incorporation into a larger state polity and their ultimate liability to the authority and control of that polity. Despite long years of residence in the mining district, virtually all the white inhabitants of the region viewed themselves as transients. They were there to find gold which would ultimately make them rich, and they looked forward to getting their "homestakes" and eventually returning to society "outside" (Haskell, 1898: 330). The Yukon miners and prospectors were adventurers: that "distinctive type of migrants who seek wealth and fame beyond the geographical, but not the social, confines of their own society" (Hamilton, 1978: 1466). And if, as Hamilton has asserted, adventurism is properly viewed as a mobility strategy (1978: 1468) with respect to standing in the migrant's home society (from which, psychologically, he has never fully departed) then, indeed, the perceived potential reincorporation into the society (and its legal institutions and jurisdiction) of much of the migrant population can be fairly assumed.

Added to this, no doubt, was a recognition that events on the Yukon would be ultimately communicated to the outside (through each season's movement of men and supply vessels). There was an awareness of the possibility that formal legal control (with agents of enforcement) might at any time become established in the district. It is not surprising, therefore, that the Yukon miners were concerned and attentive to the possible liabilities they might encounter before the law back home as a result of their actions in the district. This concern underscored the need for some sort of legitimate authority to endorse whatever actions one took in defense of his rights or interests on the creeks. Such an authority would reduce personal liability and responsibility for any consequences which might ensue.

For example, in the "Discoverer" case, the decision of the men to take the issue to a general meeting at the Stewart camp, rather than to simply dispatch the guilty party themselves, is noteworthy. As far as the action of the camp meeting in this case is concerned, Ogilvie is explicit as to the unwillingness of the miners to assume responsibility for a killing, even if it might seem a legitimate execution:

[A]s they had no prison in which to confine him, nor any way to detain him for any length of time, all they could do was hang him or banish him. His death they did not wish to be directly responsible for, though many of them felt they were condemning him to death in agreeing to the sentence imposed (Ogilvie, 1913: 51).

Here we see evidence of how a concern for responsibility might have forestalled the resort to self-help in response to a serious grievance. An appeal to the collective decision of the miners' meeting reduced personal responsibility for the consequences of imposing a severe sanction.

In societies lacking any superordinate agents of control, citizens must resort to self-help in redressing grievances and defending their rights. But those imposing sanctions may have to face the problem of avoiding possible retaliation for their actions in enforcing community norms. This problem of retaliation has been suggested as one basis for institutionalized oaths and ordeals (Roberts, 1965) and divination (Park, 1963), as ritual mechanisms whereby sanctioners avoid the negative consequences of acting strictly on their own behalf and on their own responsibility. The isolated mining camps on the Yukon were in a peculiar position in this regard. Given a transient population, bound in principle to abide by the laws of a state, the institutions of state control nonetheless remained inaccessible for the disposition of local issues and grievances. Resort to a system of self-help might eliminate the problem of not having a readily accessible remedy mechanism, but it would also incur potential liability to retaliation for one's action, as well as possible prosecution under the law.

The miners' meeting on the Yukon provided an institutional means for resolving this dilemma. Unlike the remote authority of the state, it provided the advantage of access to an immediate, readily accessible remedy mechanism; unlike the resort to self-help, it took responsibility for action out of the hands of any one individual and lodged it in the members of the community collectively. Support for seeking the formal intervention of the miners' meeting in resolving grievances was also, beyond a defense against future liability, a reflection of the attitudes and experiences which the miners brought with them to the Yukon. In their home communities,

no doubt, grievances of this kind were normally handled by duly constituted legal authority; emulation of this authority in the form of the miners' meeting was an obvious expression of the miners' cultural roots.

III. THE ELIMINATION OF THE MINERS' MEETING: CANADIAN "LAW" VERSUS AMERICAN "LAWLESSNESS"

In 1894, a new source of Canadian law and authority appeared at Fortymile. In that year Inspector Charles Constantine and Sergeant Charles Brown arrived to assess the situation, undertake what measures in the way of enforcement of Canadian law they deemed prudent, and report back to Ottawa. The following year a full contingent of 20 Mounted Police under Constantine was dispatched to establish permanent quarters in the district.

The circumstances leading to the Canadian decision to establish the Mounted Police in the Yukon district are well documented. The government had dispatched G.M. Dawson, R.G. McConnell, and William Ogilvie to survey the upper Yukon region in 1887-1888; this was the first official interest displayed by Canadian authorities in the district (Morrison, 1968: 7; Zaslow, 1969: 183). The question of establishing Canadian authority in the Yukon was raised at that point, but Ogilvie recommended against any such action, arguing that an attempt to impose Canadian laws would drive most of the prospectors to the American side of the international boundary (Ogilvie, 1913: 142-144; Zaslow, 1969: 183-184) and thus militate against development of resources in the district. By 1893, however, the continuing expansion of mining activity and the increasing influx of American miners into the district led Ogilvie to reconsider. In his own words: it was "time we were moving in the matter of establishing authority over the Yukon in the goldfields, as we might, if the work were delayed, have to face annoyances, if not complications, through possession, without protest from us, by American citizens" (Ogilvie, 1913: 144).

Ogilvie's recommendation and the subsequent dispatch of Constantine and Brown the following year reflected a growing concern in Ottawa for the effective establishment and security of Canadian sovereignty in the region. Furthermore, there were private interests which had a stake in the effective imposition of Canadian sovereignty and law. In 1893 the government also received requests for the dispatch of police to

the district from two other sources. Bishop William Bompas, an Anglican clergyman who maintained an Indian mission at Fortymile, requested the immediate dispatch of a magistrate and detachment of police to halt what he described as a burgeoning liquor trade with the Indians (PAC, 1893a, 1893b). And the assistant manager of the North American Trading and Transportation Co., which operated a post adjacent to Fortymile, requested police assistance to regulate the liquor traffic in order to forestall potential trouble between the whites and the Indians, as well as to provide for the collection of customs duties (PAC, 1894b).

More than an assertion of Canadian sovereignty and the interdiction of the liquor trade was at issue, however, once the decision was made to dispatch the police. As Zaslow has noted:

[T]wo diametrically opposed principles for the government of a pioneer environment confronted one another. The American philosophy, exemplified by the mining camps, was libertarian and laissez-faire, based on the matter of squatter sovereignty; the Canadian approach was authoritarian or colonial . . . it was the duty of the frontier to accept the regulations of the superior authority and the agents sent by the authority to administer the affairs of the region (Zaslow, 1969: 185-186).

Given such a confrontation, it is hardly surprising that the Mounties and authorities in Ottawa alike would anticipate a potentially difficult contest pitting Canadian authority and law against American "lawlessness" in the district. The critical distinction between the proper Canadian and American frontier community was not so much a matter of any specific "law" or "crime" or custom. Rather, it was the broader matter of superordinate control, of law (the law of the state, promulgated and enforced by special agents of state control) versus lawlessness (the freedom from external state regulation and control), at least as they saw it. Resistance to police control from a largely American population of miners was expected.

Anticipating a hostile reaction from the miners, the Privy Council decision included a recommendation that Constantine proceed cautiously, specifically instructing that he:

[B]e on the spot to collect customs duties on all importations arriving in the Yukon district during the season of navigation, and that he be authorized to exercise, discretely, but without risk of complications, the powers conferred upon him by his several commissions and towards the end of the season report on all subjects, with suggestions and recommendations, thus placing the government in possession of information upon which further development of a system of government in the Yukon district could be based (PAC, 1894c).

Furthermore, on the recommendation of NWMP Comptroller Frederick White, Constantine was not to be styled an officer of the police but, rather, an "Agent of the Dominion

Government" (PAC, 1894c). White doubted "whether a police officer with only five men to enforce his authority would be met in a proper spirit by between three and four hundred miners who hitherto have respected no laws except those of their own making . . ." (PAC, 1894d).

In a subsequent letter to the Commissioner, White reiterated the need for circumspection:

With regard to the preservation of law and order. The Yukon District has hitherto been without any form of government, the inhabitants are principally of the mining class, and the mining operation (sic) are reported to be in the vicinity of the International Boundary. These conditions, together with the fact that Inspector Constantine will have to depend on the support of those in the District, will demand most careful judgement and discretion on his part. In the event of his finding a disposition to resist authority, he will abstain from exercising his Magisterial and Police powers until he has reported the condition of affairs for the consideration and instructions of the Government (PAC, 1894e).

Following his first visit to the Yukon camps, Constantine recommended dispatch of a force of more than 40 men. "The miners are very jealous of what they consider their rights," Constantine wrote, "and from what I could see and learn, any enforcement of the different laws will have to be backed up with a strong force at least for a time" (PAC, 1894a). A force of 20 men was dispatched in 1895, under the command of Constantine, but despite the fears of the police and officials in Ottawa, there was little resistance by the miners to the exercise of police authority and the imposition of Canadian law.

In fact, the Mounties soon discovered that there was little crime to contend with. Reports from observers suggest that the residents were law-abiding and orderly; and if they did not welcome the police with open arms, at least they treated them with respect (Hayne, 1897: 79, 85-86). Apparently the Mounties made a very favorable impression on the community (Ogilvie, 1898: 388). Whether it was their presence, or whether the miners were really a peaceable and orderly lot, the situation remained quiet and orderly. In a confidential letter to the Commissioner, Constantine commented that "the trading Companys feel secure. The miners are satisfied. This is the end governments seek to secure" (PAC, 1896a).

Constantine's specific accounting of criminal activity in the district is consistent with those generalizations. In his annual report for 1895 he noted that "no crime of any seriousness has been committed"; and he enumerated only three incidents where the police had become involved: one case where a man was ordered out of the country to prevent trouble after he had

taken another man's wife; one case of selling liquor to Indians; and one case of assault, following which the accused individual fled Canadian territory (PAC, 1895c). Even the liquor trade appeared to pose no serious problem. In a letter to the Commissioner dated 4 September, 1895, he reported that "The arrival of the police in this part of the country has almost finished the moving in of liquor, and in several cases where liquor had been ordered by the saloon men here, was the cause of the orders being cancelled" (PAC, 1895d). On the 25th of June, 1896, he provided the Lt. Governor of the North West Territory with the following assessment:

Up to the present time there has been no crime, only one or two minor cases. The most serious being selling liquor to an American Indian. The party in this instance was arrested and fined \$100.00. He has since left the country. I do not mean to say that this is the only case, but it is the only one in which we had sufficient grounds and evidence to work on. Since our coming in, drunkenness has much diminished and to such an extent that even Bishop Bompas, who has no love for myself or the police generally, has been good enough to say that there is a great change for the better (PAC, 1896b).

These repeated assertions about the apparent absence of crime in the district are consistent with the Judicial Return of the Yukon Detachment for July 1, 1896 through February, 1897, certified by Constantine on 15 May, 1897. The Return lists only seven cases heard during this period: one for nonpayment of wages, two for breach of peace (both summons stemming from the same incident), one for giving liquor to Indians, one for lunacy, one for wounding with intent, and one for fraud (PAC, 1897a).

The presumption that the police would be faced with the task of imposing order on a chaotic and crime-ridden society was patently false. With or without police control, crime in the Yukon did not pose a problem. At Circle City, where the police exercised no authority whatsoever and where they assumed that the "criminal element" on the Canadian side of the border had retreated in the face of their authority, observers found things every bit as peaceful and crime free as at Fortymile. A.T. Walden, who was working as a dog driver at Circle City in 1896, described that American settlement in the following terms:

Here there was no murder, stealing, or dishonesty and right was right and wrong was wrong as each individual understood it. Here life, property and honor were safe, justice was swift and sure, and punishments were made to fit the case (Walden, 1928: 45).

There is thus little reason to assume that it was, in Hayne's terms, "the mere knowledge of our [the police] presence and the fact that we held supreme power" which restrained criminal activity in the district. It appears, rather, that Hayne

may have been more correct in suggesting that “the men were really a peaceable, orderly lot” (Hayne, 1897: 85).

There was one confrontation between police authority and the miners’ meeting. In August, 1895, the owner of a claim on Glacier Creek, in the Fortymile District, leased it to a man named Gordon. Gordon hired a number of men to work the claim for him, but failed to pay their wages and “jumped the country,” going to Circle City (PAC, 1896c). The workers who had lost their wages called a miners’ meeting. Its decision was to order the owner of the claim to pay the wages owed by Gordon—a sum amounting to about \$800. If the wages were not paid, the miners’ meeting ruled, the claim was to be sold.

The owner protested to Constantine and requested police protection. Constantine then dispatched a notice to the committee of miners which had been appointed to carry out the orders of the meeting, informing it that “there is but one authority in this country, and that is the law as laid down by the Parliament of the Dominion of Canada. . . . [A]ny action taken by you as to selling the claim for wages due by Gordon is illegal and done at your own peril, and that should you carry out your intention the party buying takes no title and is a trespasser” (PAC, 1896d). The incident was quite rightly regarded by the police as a critical test of their authority, and Constantine’s response reflected the perceived gravity of the situation (Ogilvie, 1913: 250-252; Hayne, 1897: 121-124).

Constantine’s notice was served on the committee three hours after the sale had taken place, on June 28, 1896. Upon reading the notice, the highest bidder refused the claim. Thereupon the committee took possession of the claim and turned it over to the second highest bidder. The owner then notified Constantine of these developments by special messenger in a communication dated July 1. On the 4th of July, Constantine responded by dispatching a small force to the creek, with instructions to “remain on the claim until such time as seems to you wise to leave” and “to proceed with greatest caution in dealing with this case. You will, in a quiet manner, be guided by circumstances as they arise, but the law must be upheld” (PAC, 1896e). When the purchaser of the claim arrived at Fortymile to register the Bill of Sale given him by the miners’ committee, Constantine refused to register it. The purchaser left that night for the creek, in Constantine’s words, “breathing defiance, and saying that the miners would see him through” (PAC, 1896c).

Strickland, the officer in charge, recounts the events following the arrival of the police contingent on the creek:

[W]e reached Glacier Creek and went to Messrs. Van Wagoner and Westwood claim #19 above discovery, the seat of the trouble. Mr. Westwood informed me that Jerry Barker [the purchaser] had put a man in possession of the claim. I ejected this man and warned Jerry Barker to attempt no further occupation of the place. I saw the chairman of the committee appointed by the miners and gave him a similar warning. I think they saw the force of our argument as one of the committee took to the bush immediately on our arrival at the creek. The better class of miners on the creek are in favor of law and order and seem to be glad that the so-called laws made by the miners meeting are null and void. Several of the miners of the worst class indulged in some big talking and were very anxious that I should call a meeting of the miners—to explain the law to them. I gave a decided refusal to this proposition stating that . . . you had sent them a written notice which they had chosen to utterly ignore and that my present business on the creek was not to talk but to act, they had nothing further to say to this (PAC, 1896f).

The matter ended there. Strickland returned with the police after remaining on the creek for two days and “receiving the assurance of the principal parties concerned that no further trouble would ensue” (PAC, 1896f). Commenting later on the case, Hayne (who was a member of the detail dispatched with Strickland to the creek) observed:

This is the only occasion on which the miners in any way attempted to assert themselves, and was a complete justification, if any such were needed, of our presence there. No ill-will was borne us for our share in the proceedings, and I think that every one was in his heart glad to feel that there was a force in the land that would protect his individual rights and those of others (Hayne, 1897: 124).

Once it was evident that the police were opposed to the continuation of the miners' meeting and were ready and willing to take action in response to an appeal from the judgment of such an assembly, the institution was doomed. The attitude of the police meant that the meetings had lost their power of enforcement. If an assembly attempted to enforce a judgment against an unwilling defendant, the latter could simply apply to the police for protection and any action taken against him would be punishable. Cases of successful defiance of the meetings quickly made it apparent that they had become powerless (Haskell, 1898: 153-154; Ogilvie, 1913: 252-254). By the fall of 1896 they had virtually ceased to function on the Canadian side of the boundary. The fact that the police had undermined and supplanted them was not generally resented. “[A]ll in the country,” Haskell notes, “were quite ready to join in their [the meetings'] obsequies when the Canadian police instituted a different condition of things” (Haskell, 1898: 154). And writing from Fortymile in May 1897, Ogilvie could report that “The cry everywhere is ‘let us have law administered by disinterested men who are above influence and reproach’ as

proof of this sentiment I have only to say no miners' meetings have been held in this District for over six months . . ." (Zaslow, 1969: 187).

Given the initial concerns of the police and authorities in Ottawa when the Mounties had first come into the Yukon in 1894 and 1895, not only the absence of crime, but even more, the apparent reaction of the miners to the police themselves was surprising. In spite of the sharply contrasting American and Canadian styles of frontier control, coupled with the fact that "to all intents and purposes, the Canadian Yukon was part of the American frontier, inhabited by American (or Americanized) miners . . ." (Zaslow, 1969: 183), the authority and control of the Mounties appears to have been accepted with relative ease. The miners appeared, in a sense, ready and willing to quickly abandon their American-style frontier "anarchy" for Canadian-style frontier "law." This ready acceptance in a context where the police were evidently not being called upon to combat any problem of serious, endemic crime raises the question of what functions they *were* serving.

The law as administered by the Mounties failed to serve any significant *instrumental* functions above and beyond those which the miners' meeting had served prior to 1895. Indeed, in this respect the law of the Mounties proved decidedly more limited than the earlier law of the miners' meeting. However, the law of the Mounties performed certain *symbolic* functions which the miners' meeting could not. The Mounties, unlike the more egalitarian miners' assemblies, were capable of reliably sustaining the public affirmation of a particular set of class norms and values in the face of a perceived threat to the supremacy of these norms within the community. Both of these aspects of the consequences of police control may now be examined.

IV. THE CONSEQUENCES OF POLICE CONTROL

As the police became the primary agents of authority and social control in the district, there were elements of continuity between their instrumental role and the kind of justice dispensed by the miners' meeting. An illustration of this continuity is seen in the first case of maintaining order confronting the Mounties when the detachment was constructing its quarters at Fort Constantine in 1895 (Hayne, 1897: 68-73).

The incident began with a report that two miners were carrying guns and had threatened to shoot each other. To

prevent trouble, the first of the two to be found was promptly arrested and disarmed. The other party to the dispute, it was subsequently learned, was planning to marry the wife of the arrested miner. The police, in the company of the offended husband, intervened by going directly to the Anglican clergyman William Bompas. They arrived at his mission just after he had married the couple, who were still present. Informed by Hayne of the situation, Bompas promptly declared the marriage void. The wife thief was taken in charge and the aggrieved husband was prevented from taking any further action. As Hayne tells it, "I was obliged to knock him (the husband) down by way of a gentle reminder that I was in charge of the case now, and any punishment to the culprit must be administered through the proper channels and not by him" (1897: 71). But, as Hayne points out, the administration of punishment to the wife thief was in this case a problem:

[W]e had no guard-room ready to put him into, and we could ill spare a man to guard him. It is impossible to prove bigamy in that out-of-the-way part of the world, owing to the irregularities of the American marriage laws; and the amount of correspondence any such attempt would have entailed would have been enormous and occupied months before it was settled, especially as winter was upon us, and no mails could get in before the following spring But still there remained the problem of what to do with him. He was an American citizen, and we did not want any disturbance Still less did we want to keep him. We therefore determined to get rid of him. The man was a thorough-paced scoundrel and a coward into the bargain He lived entirely by his wits when he was at liberty, subsisting on the proceeds of his gambling, moving restlessly from camp to camp I had, therefore, no difficulty in persuading him that I was going to connive at his escape, for it would not exactly have done for him to think that we were definitely setting him free. We should have lost our authority from the very outset (Hayne, 1897: 71-73).

The escape was duly arranged, enabling the prisoner to successfully flee downriver to American territory. Following the escape, Hayne notes, "we never saw him again, and never heard what became of him, and we were undoubtedly very well rid of him, for, in any capacity, he was about as undesirable a person to have in any settlement as I ever saw" (1897: 73).

While the police clearly represented, and were acting as agents of, state authority in this case, they did, by and large, just what the miners' meeting would have done. The major difference, indeed, seems to be simply that in this instance the capacity to render the judgment and implement the sanction had been taken from the community and assumed by a few select individuals, operating in just as informal, personalistic and nonlegal a fashion as did the miners' meeting.

The case described by Hayne was not unique. In another instance, Constantine's own diary provides a record of police

resort to a familiar style of justice. A diary entry for August, 1895, records the following disposition of a case where, on the previous day, one miner had brought an accusation against another concerning the theft of a diamond stud valued at \$60.00:

Monday 16th . . . Case Walker vs Williams before Messrs. Strickland and Wills JPs case dismissed for want of evidence. Williams ordered to leave country by Inspector Constantine, as was a bad character. Left at night for Circle City (PAC, 1895e).

Similarly, in a communication to the Deputy Minister of the Interior concerning a disputed claim, Constantine reported that even though "The evidence is not as clear as I should have liked . . . as I was aware that Cobb was known as a claim jumper on creeks down the river" he had decided to award the claim to the original locator (PAC, 1896g).

The ideals of an impersonal justice which the police themselves espoused (and were a basis for some of their own criticisms of the miners' meeting) were obviously not always realized. Influenced by their own conceptions of criminality and deviance as well as the obvious impediments to procedure in the frontier setting, the police imposed the same kind of forward-looking justice, where character as much as crime was being judged, as had the miners' assemblies.

The instrumental consequences of police control, then, did not include any radical change in the style of justice as it was being enforced in the community. There was, however, one noteworthy development with respect to the instrumental functions of law in the district. This was the introduction of some significant new limits on the provision of remedies. The miners' meeting, it will be recalled, had exercised wide-ranging jurisdiction: it was bound by no formal distinctions between "civil" and "criminal" matters and could readily be called upon to deal with either as the occasion might arise. On the other hand, even though the Mounties exercised judicial as well as police powers, their jurisdiction was limited to criminal cases. This was a distinction which they scrupulously observed. But since the miners' meeting was discredited and no longer a viable institution, many disputes and issues were left without an appropriate forum for resolution.

As late as March of 1897, when the rush to Dawson was well underway, no effective civil authority had yet replaced that formerly exercised by the miners' meeting. This is evident in a case involving a man by the name of Whipple who had staked a claim on Bonanza Creek and secured legal title to it. He then apparently made a verbal agreement to enter into a partnership with two other men (Lindquist and De Young), but Whipple

apparently refused, subsequently, to divide the proceeds of the claim with his partners. Lindquist and De Young then appealed to Constantine, seeking an injunction on the dumps of the disputed claim. In response, Constantine was forced to reply:

[I] cannot lay an injunction on the dumps referred to. That is, the laying, granting, and issuing of any injunction is one of the most important functions of the Supreme Court Whipple did not keep his word to you, hence all this trouble. I don't know outside of honor [how] he was bound, so far as I am informed it was simply verbal and has no legal force The rest will have to await the establishment of a civil court here which will in all probability be this coming summer.

Personally I am very sorry for the manner in which you have been treated.

The only legal remedy that I can see you having is to bring an action for specific performance of a contract and damages for nonfulfillment, which as I have before stated is a matter for a high court (PAC, 1897b).

The Mounties were acutely aware of the problem. As early as 1895, Constantine recognized the need for civil courts. In his report for that year, he wrote: "Civil courts are much required and should be established without delay. Many take advantage of the fact of there being no machinery for the collection of small debts" (PAC, 1895c). Again, in his report for 1896, Constantine pleaded:

The necessity for civil courts is daily increasing. They should be established with the least possible delay. The want of them creates a distrust in the administration of government and there is an idea spreading that the country is occupied by the government solely for the purpose of revenue (Constantine, 1897: 235).

The evidence suggests, therefore, that the establishment of police control entailed no profound change in the character of criminal justice from the way it had been administered under the miners' meeting. Elimination of the miners' meeting did create at least a temporary void in the authoritative resolution of civil disputes. On this evidence it seems reasonable to conclude that the transition from miners' meeting to police authority resulted in substantial continuity of the law enforcement function, although there were, of course, important changes in law enforcement personnel.

By the time the police arrived in the district, however, the changing character of the mining communities had created an opportunity for the Mounties to assume a significant symbolic role which the miners' meeting was incapable of performing.

As early as 1894, fears had been expressed that population growth was bringing a change for the worse in the character of the district's inhabitants. The population of the towns was swelled with unemployed or only occasionally employed

miners, in addition to increasing numbers of merchants, entertainers and saloon-keepers. The bulk of the miners who held claims were located much of the time outside the towns along the outlying creeks, where they worked their claims in camps which resembled the small, close-knit communities typical of the early years of mining in the district. There had thus emerged a clear division between a relatively stable, propertied segment of the population (the established claimholders and working miners of the outlying creeks, the principal businessmen in the towns) and an unpropertied, more transient segment (the more newly arrived adventurers, without claims of their own and much of the time without work, who hung about the towns).

The growing ranks of unemployed adventurers at Fortymile and Circle City no doubt reflected the stimulus to adventurism provided by economic depression in their home society. But this was also a time when unemployed migrants in the United States were being viewed with considerable suspicion and identified and treated as a criminal class, in spite of their solidly working class character (Harring, 1977: 876). Not surprisingly, given the largely American character of the Yukon population, these same suspicions were shared by members of the propertied establishment in the district. The growing population of drifters in the towns began to be viewed as a threat to the peace and good order of Yukon society.

Such perceptions and fears are perhaps reflected in the establishment of the Yukon Order of Pioneers at Fortymile in December, 1894. The YOOP was initially limited in its membership to those who had been residents in the Yukon before 1888. The constitution of the organization stated that its purpose “shall be the advancement of the great Yukon Valley, The Mutual Protection and Benefit of its Members” and “to unite the members in the strong tie of Brotherhood and to prove to the outside world that the Yukon Order of Pioneers are men of Truth, Honor and Integrity” (Yukon Territorial Archives, 1894). The establishment of the YOOP by the earlier miners in the district was an effort to preserve for themselves—through the brotherhood—the kind of community, system of values, and status which they associated with the early camps. As early as his 1894 report, Constantine also noted the fear of some of the “old miners” that an improved route into the district “would bring in a class of men who will not work for their living but would simply come in to prey on those who do. They refer more particularly to gamblers and men of that

stamp who are so numerous in the American mining districts” (Constantine, 1895: 73).

One important consequence of the changing demography of this community was a growing dissatisfaction with the miners’ meeting. The meetings provided a natural forum for the “disreputable” new class which threatened to subvert the governance of the community, the administration of justice, and the maintenance of some cherished social values. The favorable response of the older miners to the police, as they asserted their control in the district, was a reflection both of this anxiety concerning the miners’ meeting and approval of the kinds of norms and values the police themselves represented.

In 1893, Warburton Pike visited the region and expressed the view that the miners’ meeting was “an excellent court as long as the better class of men are in the majority, but a dangerous power in the hands of the vile specimens of humanity who sooner or later get the whip hand in most of the mining camps” (Pike, 1896: 220-221). By 1896, the apprehensions expressed by Pike appear to have been realized, at least in the view of one segment of the local population. Following his visit in the summer of that year, Goodrich commented that in Alaskan territory (where the miners’ meeting still represented the only local institution of law and social control) “with the growth of the country and the introduction of a class of nonproducing adventurers, attracted by the hope of making fortunes at the expense of the producers, it [the miners’ meeting] is fast becoming a mockery. The better class of miners have already objected to having disputes occurring in the gulches settled in town, for the greater preponderance of the disreputable class in the latter makes it almost impossible to obtain justice there” (Goodrich, 1897: 127). Ogilvie, drawing on his own intimate acquaintance with the region in reviewing the development of the administration of law in the camps prior to 1896 offers a similar view:

As the country filled up and the communities grew larger, results became different, from various causes; sectionalism sprang up at times, and nationalism began to crop up, but, worst of all, that potent factor in modern mischief, the saloon, began to have an influence . . . Like the saloons everywhere else, they had their clientele of loafers, and, like all the tribe, they interfered with other people’s business more than they attended to their own. After the establishment of saloons, miners’ meetings were often held in them, and as all present were generally counted miners, as indeed they all were, more or less, only some were so when they had to be, seeing it was the only means of employment in the country, so all had a vote (Ogilvie, 1913: 247-248).

The police themselves were decidedly in tune with these sentiments. They were ready to interpret the potential for trouble in general, or perceived abuses of the miners' meeting in particular, largely in class terms. Writing in February, 1896, Constantine was moved to comment that "The advent of the police has had a quieting effect . . . the greater portion of the tough element have gone to the American territory lower down the river. Being nonproducers have not lessened the wealth or resources of the Country or community" (PAC, 1896h). In his annual report of 20 November, 1896, his view of the significance of the increasing criminal "element" entering the country surfaced again:

With such a large number of men coming into the country every spring, of necessity, there is a certain percentage of criminals amongst them. Having no means of learning their past record, it is impossible to pick them out until such a crime is committed. The element is increasing and will increase. It is noticed, however, that through the fear of Canadian law and its enforcement by the small police detachment here many continue their journey a couple of hundred miles down the river to Circle City (Constantine, 1897: 234).

One case provides a good example of police attitudes toward the "abuses" of the miners' meeting. In the winter of 1895, while Sergeant Brown remained stationed at Fortymile following Constantine's return to report to Ottawa, a miners' meeting was called against the local agent (G. H. Hamilton) of the NAT and T Co. on behalf of a young servant girl whom he had fired for staying out beyond an appointed hour in the evening. The meeting found in favor of the girl and ordered her employer to award her a full year's salary, first-class passage to Seattle, food until the arrival of the first boat, and any costs she incurred in securing suitable bed and lodging. Sergeant Brown, who attended the meeting in question, reported irately that "I could see as soon as I got there that the meeting was simply an excuse to get a knock at Hamilton" (PAC, 1895a), whom it would appear, did not enjoy any great popularity in the camp as a result of his failure to comply with the custom of providing unlimited credit.

Brown went on to characterize the miners' meeting in question as:

Nothing but a farce it is nothing more or less than mob law. I have spoken to old miners and one in particular who was in California in '50 and on the Fraser River in '56 and he states that the meetings in here are not at all like regular miners' meetings but are controlled by a lot of bums and that the miners never interfered with private matters (PAC, 1895a).

Brown objected to two specific aspects of the meeting. First, he regarded the apparent influence of personal feelings toward a defendant and toward his conduct as a trader as an affront to

justice. Second, he was incensed because the miners' meeting was exercising jurisdiction over "private matters" and not limiting its concern to settling mining claims or "any serious crime which may require immediate action" (PAC, 1895a).

It is obvious enough that the parties to the particular dispute Brown described were representative of the upper and lower levels of the class system—a merchant and a servant girl—and that the allegations of a miscarriage of justice reflected upper class values not necessarily shared by the entire community. Brown's reference to the meeting "controlled by bums" is a conscious denigration of the values of the lower class echelons.

Brown is also concerned with the extension of the authority of the miners' meeting to "private affairs." There is considerable irony in this view, for while the police were ready to accuse the miners' meeting of meddling in private affairs, they were well aware of the gap left by their own professed lack of jurisdiction to intervene in disputes of this kind. Clearly, there was a need for some institutionalized mechanism for resolving such disputes, whether or not the servant girl in this case had a legitimate complaint. It is also ironic that the police would so willingly condemn the "personal" justice meted out by the miners' meeting when their own disposition of similar cases was done in strikingly similar fashion.

V. THE MOUNTIES AS VIGILANTES

Gusfield (1967: 178) has emphasized that in symbolically affirming particular social ideals, law may serve the significant function of demonstrating which among a community's competing sub-cultures have legitimacy and which do not. In the Yukon, the authority of the police accorded this symbolic affirmation to the values and norms of the propertied, steadily employed inhabitants of the district. The miners' meeting, however, was considerably more ambiguous in this regard. In its early stages it articulated a reasonable consensus of community values. However, as it came to be dominated by "nonproducing adventurers," it alienated the more established elements in the community who, as a result, gave their support to the Mounties. This transfer of support came about even though the police were not necessarily more effective in law enforcement than the miners' meeting and did not, it seems, enforce a significantly different brand of justice.

The symbolic role of police control in the Yukon has a curious parallel in the rise of the vigilante movements which

similarly transformed existing systems of law in the earlier mining communities of the American west. Ironically, the Mounties—that prominent symbol of Canadian “law and order”—may have found support in their effort to eliminate the miners’ meeting and assume ultimate authority in the Yukon for some of the same reasons that the vigilantes—that equally prominent symbol of American frontier lawlessness—may have been supported in assuming power and usurping other forms of governance on the American mining frontier. The parallel deserves at least passing notice, not simply because of the irony involved, but because of what it suggests about the broader significance of the symbolic functions of law in the transformation of legal systems.

Among the early forms of local government in the California mining camps was the miners’ meeting, essentially identical in character to its counterpart in the Yukon. Shinn has termed this institution a “folk-moot” (1948: 167). It was the “original and central institution” of government in the California camps, amounting to rule by the whole body of freemen of a given locale. As Shinn described it, “this assemblage of the people, called together by any person or persons, after choosing a temporary officer, proceeded to discuss subjects of interest, try cases, make laws and enforce them. It was literally government by the miners of the district. Boys of fifteen and sixteen . . . often took part in the deliberations of the meeting” (1948: 167). From 1848 through 1850, this and other early forms of camp organization generally sustained each mining community as “a rudely but . . . effectively governed little state” (Royce, 1886: 313). But by 1851, the rapidly expanding and increasingly diversified gold rush population had begun to transform the character of the California camps. “Disturbances” and crime had become much more common and much more widely feared. Leading citizens singled out a growing “criminal element” and a growing population of “foreigners” as the cause of these disturbances. Throughout California, the mining communities began to spawn organized groups of citizens—typically styled “Vigilance Committees” or “Vigilantes”—dedicated to the (extra-legal) administration of law in response to the perceived breakdown, or threat of breakdown, of community law and order (Royce, 1886: 271-376; Bancroft, 1887: 70-75, 441-514; Brown, 1969).

The citizen bands thus moved to take the law into their own hands in the western mining towns were following a long tradition. Vigilante movements in response to frontier social

conditions can be traced back to the South Carolina Regulators of 1767. The typical vigilante organization was a committee of determinate membership whose leaders were drawn from the upper strata of the population. This group simply unilaterally assumed the law making and law enforcing authority within (and on behalf of) the community, continuing in the role for some definite (though often short) period of time (Brown, 1969; 1975). Typically organized in a command or military fashion, the vigilantes usually had a constitution, articles, or a manifesto to which members of the organization subscribed. In prosecuting malefactors, they typically proceeded with formal (although illegal) trials, where the accused was granted counsel or the opportunity to defend himself (Brown, 1975: 108-109). In California, during the period of most intense vigilante activity, from 1851 to 1858, some 28 separate vigilante movements were recorded (Brown, 1975: 306-307).

Richard Maxwell Brown's (1969; 1975; 1976) portrayal of the vigilante phenomenon, based on extensive studies of the movements in California and elsewhere, suggests that the movements had their roots as much in the symbolic as in the instrumental functions of vigilante "law." Many of the movements, to be sure, were mounted under circumstances of endemic crime and disorder, and represented instances of what Rosenbaum and Sederberg (1976: 10) have distinguished as "crime control vigilantism," i.e., vigilante action "directed against people believed to be committing acts proscribed by the formal legal system." But this is only part of the picture. Brown notes how "a vigilante roundup of ne'er-do-wells and outlaws followed by their flogging, expulsion or killing not only solved the problem of disorder but had an important symbolic value as well. Vigilante action was a clear warning to disorderly inhabitants that the newness of settlement would provide no opportunity for the erosion of the established values of civilization" (Brown, 1975: 97).

In the Western mining towns, the newness of settlement, the fact that their inhabitants arrived as relative strangers to one another, and ultimately the increasing differentiation and heterogeneity of the population, all combined to engender uncertainty about community structure and values and about how choices were to be made among opposed normative systems which were recognized as challenging one another for dominance. Under these circumstances, the vigilantes emerged to serve the function of dramatizing and affirming the "behavioral boundaries" (Erikson, 1966: 9-11) of the community,

defining and clarifying its structure and supporting establishment values. The fact that the movements were widely applauded, that movement leaders were typically drawn from the upper class, and that upon occasion the movements arose even where uncontrolled crime was not, in fact, an immediate problem attest to the significance of the symbolic function of the vigilantes (Brown, 1975: 105-112; 124).

Obvious differences did distinguish the Mounties in the Yukon from the vigilantes in California: the Mounties were a legal rather than extra-legal organization, and their rule was imposed from outside rather than from within the local community. But as to functions and the sources of support in the community, there are noteworthy parallels. The vigilantes, like the Mounties, derived their support from reactions to rapidly increasing community differentiation and increasing lack of certainty with respect to community structure and values. In each case, the new institution for the administration of law symbolized the dominance of a particular normative order. One might even speculate that had the Mounties not appeared in the Yukon, something akin to a vigilante movement might well have developed. The Yukon Order of Pioneers, as noted earlier, may have been formed in response to concerns similar to those which mobilized support for the police, and it could well have provided the nucleus for a vigilante movement. In fact, the relation between another fraternal organization—Freemasonry—and vigilantism in the American west was often intimate (Brown, 1975: 106).

But the point to be emphasized is that in the mining communities of the American west as well as in the Yukon, we see a significant symbolic function—the capacity to provide a clear public affirmation of the dominance of one particular set of social ideals and norms—supporting a fundamental transformation in the administration of the law. The Yukon case supports the view that increasing differentiation, accompanied by perceptions of increasing conflict of values and interests, may promote the acceptance and institutionalization of specialized, centralized agents of legal control regardless of their relative instrumental effectiveness. From the standpoint of the need for agents or institutions of control which can serve to define clear and consistent “behavioral boundaries” for a community, this is perhaps advantageous, if not necessarily laudable. In a differentiated community, divided by conflicting interests and values, consistency and clarity in the public affirmation and sanctioning of community norms may be best

served by the concentration of public sanctioning power in the hands of a specialized body identified with one particular set of such values and interests.

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