

“A Delicate Game”: The Meaning of Law on Grouse Creek

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At the end of June in 1862, one hundred miners returning from the Cariboo boarded the steamer *Henrietta* in Douglas for the trip to New Westminster. They refused to pay for their passage, claiming that their misadventures in the upper country gold fields had left them “starving and broken,” as well as broke. Despite the obvious illegality of the miners’ actions, Douglas magistrate John Boles Gaggin advised the master of *Henrietta* to “take the men on, and on arrival at New Westminster, apply to the proper authorities for redress.” Gaggin took this course of action believing, as he told the Colonial Secretary, that

to attempt coercion with a force unable to command it would have weakened the apparent power of the Law; . . . [and] that the getting of these men out of Douglas was in every way desirable, . . . any attempt to arrest would have provoked a riot, perhaps bloodshed, and I believe I acted prudently in avoiding the least risk of this.¹

In an effort to further justify his actions, Gaggin closed his report on a defiant note with this telling observation:

Magistrates in these up country towns have a delicate game to play, and I believe we are all of opinion that to avoid provoking resistance to the Law is the manner in which we best serve the interests of His Excellency, the Governor. . . . [A]s it is the matter passed off without riot and without defiance of the Magistrate, though the Master of the steamer . . . was somewhat annoyed — I shall be very sorry if the cautious way I acted, with such quiet results, does not meet His Excellency’s approval, but I acted for the best.²

The colonial government chastised the magistrate for his “want of nerve and judgment” in allowing “the occurrence of so lawless a proceeding.”³ “It appears,” noted Colonial Secretary W. A. G. Young,

¹ Gaggin to the Colonial Secretary, Douglas, B.C., 2 July 1862. British Columbia Archives and Records Services (hereafter BCARS), Colonial Correspondence, GR 1372, reel B-1330, file 621/14. For more on this episode and Gaggin see Dorothy Blakey Smith, “‘Poor Gaggin’: Irish Misfit in the Colonial Service,” *BC Studies* 32 (Winter 1976-7): 41-63.

² *Ibid.*

³ Cited in Smith, “‘Poor Gaggin,’” 45.

that you consider yourself vested with discretionary power to temporize with your duties, and that you are unaware that, while rigidly dispensing the laws for the protection of life and property, a Magistrate may act with perfect temper and discretion.⁴

This brief episode raises questions about the social meaning of the law which I am concerned to address. Gaggin considered law to be the preservation of order — “quiet results” — and told his superiors so. From his vantage point in Victoria, Governor James Douglas saw things rather differently. The law, through its rigid application, served a more particular end by securing life and property. There was yet another perspective. Both Gaggin and Douglas considered the miners’ actions “lawless,” but those who boarded *Henrietta* likely did not feel the same way. Different people attached different meanings to the law, and when they used the courts to resolve their disputes these differences became apparent. As legal anthropologists argue, courts are forums in which people “bargain for reality;” not only do they dispute the “facts” — what happened — but they also dispute what constitutes legal and just action.⁵

From their arrival, British Columbia’s miners possessed a reputation as a self-conscious and vocal interest group with a penchant for self-government which they learned in California’s gold fields. Despite their impermanent character, California’s gold mining camps developed an elaborate system of informal regulation centred on the Miners’ Meetings.⁶ These were elected tribunals of local miners who drafted the rules which governed

⁴ *Ibid.*, 47.

⁵ For instance, see Clifford Geertz, “Local Knowledge: Fact and Law in Comparative Perspective,” in his *Local Knowledge: Further Essays in Interpretive Anthropology* (New York, 1983); John L. Comaroff and Simon Roberts, *Rules and Processes: the Cultural Logic of Dispute in an African Context* (Chicago, 1981); Lawrence Rosen, *Bargaining for Reality: The Construction of Social Relations in a Muslim Community* (Chicago, 1984) and his “Islamic ‘Case Law’ and the Logic of Consequence,” in June Starr and Jane F. Collier, eds., *History and Power in the Study of Law: New Directions in Legal Anthropology* (Ithaca, N.Y., 1989), 302-19. In the latter essay, Rosen notes “Law is . . . one domain in which a culture may reveal itself. But like politics, marriage, and exchange, it is an arena in which people must act, and in doing so they must draw on their assumptions, connections, and beliefs to make their acts effective and comprehensible. In the Islamic world, as in many other places, the world of formal courts offers a stage — as intense as ritual, as demonstrative as war — through which a society reveals itself to its own people as much as to the outside world” [318]. This essay shares Rosen’s assumptions about the law and what it can reveal about society.

⁶ See Hubert Howe Bancroft, *Popular Tribunals* (San Francisco, 1887), v. 1, Chapter Ten; Charles Shinn, *Mining Camps: a Study in American Frontier Government*; and on California and British Columbia, David Ricardo Williams, “The Administration of Civil and Criminal Justice in the Mining Camps and Frontier Communities of British Columbia,” in Louis Knafle, ed., *Law and Justice in a New Land: Essays in Western Canadian Legal History* (Calgary, 1986).

behaviour in a specific locale. Their regulations covered a wide range of activities, from claim size, the technicalities of ditch widths and water rights to the use of alcohol and firearms in the camps.⁷ This experience instilled the miners with a taste for local government and a certain degree of independence.⁸ It was this independence that made those who streamed northward to British Columbia in 1858 to try their luck in the Fraser and Cariboo rushes so dangerous in the eyes of British colonial administrators like James Douglas and Supreme Court Judge Matthew Baillie Begbie.⁹ These men considered the miners a lawless bunch and took steps to prevent local government from gaining a foothold on the banks of the Fraser River.

In September 1858, just a month after the mainland colony was formed, James Douglas issued the first *Gold Fields Act*.¹⁰ It and subsequent Acts created and elaborated formal government institutions and regulations specifically designed to regulate gold mining.¹¹ An Assistant Gold Commissioner presided over locally based Gold Commissioner's or Mining Courts. He had jurisdiction to hear all mining or mining-related disputes and to dispose of them summarily. By doing so, the Gold Commissioner's Court allowed suitors to avoid the costly delays associated with Supreme Court actions and jury trials. A locally elected Mining Board replaced the Californian Miners' Meetings, drafting bylaws which governed behaviour. Unlike the American institution they replaced, however, the decisions of the Mining Board could be overturned by the Assistant Gold Commissioner, who also possessed the power to dissolve the board at his pleasure.

Despite the early intrusion of this formal regulatory institution into the gold fields, British Columbia's miners retained a sense of themselves and their enterprise as distinct and crucial to the development of the colony. Despite their impermanent character, gold rush communities were localis-

⁷ Williams, 217-19.

⁸ See Shinn, Introduction.

⁹ Morley Arthur Underwood, "Governor Douglas and the Miners, 1858-1859," University of British Columbia B.A. Essay, 1974.

¹⁰ *The Gold Fields Act, 1859* [31 August 1859]; William J. Trimble, *The Mining Advance into the Inland Empire* (Madison, Wisconsin, 1914), 187-214, 336-37.

¹¹ Rules and Regulations for the Working of Gold Mines under the "Gold Fields Act, 1859" [7 September 1859]; Rules and Regulations for the working of Gold Mines, issued in conformity with the "Gold Fields Act, 1859" (Bench Diggings) [6 January 1860]; Rules and Regulations under the "Gold Fields Act, 1859" (Ditches) [29 September 1862]; Further Rules and Regulations under the "Gold Fields Act, 1859" [24 February 1863]; Proclamation amending the "Gold Fields Act, 1859" [25 March 1863]; The Mining District Act, 1863 [27 May 1863]; The Mining Drains Act, 1864 [1 February 1864]; An Ordinance to extend and improve the Laws relating to Gold Mining [26 February 1864] and An Ordinance to amend and consolidate the Gold Mining Laws [28 March 1865]; An Ordinance to amend the Laws relating to Gold Mining, 2 April 1867.

tic, regardless — paradoxically — of their location.¹² Miners were particularly interested in the administration of the law, watching Mining Court decisions with an eye to their own fortunes. Though the law and the courts brought British Columbia's diverse and far-flung miners together in a common process of dispute settlement, they also were the cause of much division, for they resolved differences by creating other ones. The law defined plaintiffs and defendants, assessed guilt and innocence, and ultimately, in the eyes of those involved, determined right and wrong. The potential for conflict was thus inherent in the process of dispute settlement. As will be seen, different concepts of law stood in bold relief against this structured background of formal dispute resolution.

British Columbians understood and measured their laws with a standard that was rooted in a particular geographic, social, and cultural milieu and that was not always shared by those charged with its administration. Conflicting understandings of what constituted law underlay the disputes which culminated in the Grouse Creek War (1867) and which form the focus of the following narrative.

* * *

The three cases that lay at the centre of the controversy over the colony's judicial administration were all disputes over the ownership of mining claims.¹³ Each is rather unremarkable in terms of the issues of fact involved, which consisted of the recording and re-recording of claims and the placement of stakes.¹⁴ Once the cases were appealed to the Supreme Court, however, the issues of fact in these cases became secondary to Supreme Court Judge Matthew Baillie Begbie's actions. The judge's behaviour in the three cases and public reaction to them neatly illustrate the problems associated with administering the law in British Columbia, and adumbrate the limits of formal, institutional dispute settlement.

The first of these, launched in 1865, pitted the Borealis Company against the Watson Company. After the Assistant Gold Commissioner's decision awarding a disputed claim to the Watson Company was upheld by Begbie, the Borealis Company took the case to the Court of Chancery.¹⁵

¹² On this theme, and more generally, the idea that mining society was not as disorganized as traditionally thought, see Thomas Stone, *Miners' Justice: Migration, Law and Order on the Alaska-Yukon Frontier, 1873-1902* (New York, 1988).

¹³ Williams discusses them in "... *The Man for a New Country*": *Sir Matthew Baillie Begbie* (Sidney, B.C., 1977), 68-80.

¹⁴ *Ibid.*

¹⁵ A Court of Chancery is a court that has jurisdiction in equity; that is, it resolves disputes according to the rules and procedures of equity rather than the rules and

There, sitting this time as Chancery Court Judge, Begbie reversed his earlier decision, and awarded the disputed ground to the Borealis Company! By all accounts, the mining community of the Cariboo was incredulous, and the colony's three main opposition newspapers wasted no time in adding their voices to the growing cries of indignation over Begbie's ruling emanating from the gold fields. Most distressing to British Columbians was the use of the Chancery Court as a court of appeal, a process that was not only expensive and protracted, but was also capricious, because decisions appeared to be unfettered by any reference to statute law. "The late decision in the Borealis & Watson case strikes me as being the most flagrant and arbitrary stretches of power that has even been committed by an individual occupying the position of Judge," wrote "Miner" to the *Cariboo Sentinel* in 1866:

... we have mining laws containing explicit provisions as to the manner in which claims should be taken up and held, but at the same time that any parties having money enough to stand the costs of a Chancery suit may omit to comply with these provisions and set the law at defiance; it tends to create a feeling of insecurity as the value of every title, no man is secure if he strikes a good claim, as after strictly complying with the law which he supposed to be protection and spending his last dollar in prospecting, he may find when he thinks he has reached the long hoped for goal of his ambition, that some more favoured individual had intended in taking up the same ground long previously, but had neglected . . . staking it off or recording it, a grave error certainly, but one which can be expiated by filing a bill in Equity, making a score or two of affidavits, and paying his own costs in a Chancery suit, and this is what is called "Equity."¹⁶

Less measured was the commentary of the Victoria-based *British Colonist*, which contended that the "endless round of litigation" in British Columbia's mining districts was "ruining claimholders, shutting up the country's wealth and causing disasters in communities hundreds of miles away from the scene of the dispute." "The risks of mining are a mere bagatelle," the

procedures of common law. Though the principles of equity initially reflected the chancellor's own arbitrary and sometimes idiosyncratic ideas of justice (the Tudor Court of Star Chamber was the repository and dispensary of equity, for instance), over the seventeenth, eighteenth and early nineteenth centuries the principles of equity evolved into a more settled body of rules. Chancery never lost its negative reputation for arbitrary, protracted, and unnecessarily complex proceedings, however (see Charles Dickens' *Bleak House* (1859), for instance). Until 1870, Matthew Baillie Begbie was British Columbia's only Supreme Court Judge. This meant that the division of labour in the colony's superior court was one in name only. Begbie acted as judge in assize, nisi prius, appeal, chancery, bankruptcy, probate, and admiralty cases, often in the same session.

¹⁶ Letter from "Miner," *Cariboo Sentinel*, 31 May 1866.

newspaper concluded, "it is the risks of Begbie's Chancery Court that terrify the miner."¹⁷

Public indignation over Begbie's actions in the Borealis case scarcely subsided when his handling of another mining dispute again drew the attention and the wrath of British Columbians. After issuing an injunction ordering the Davis Company to cease work on disputed ground, Begbie discovered that the Supreme Court seals necessary to validate the injunction were unavailable — detained, with the rest of his luggage, on a wagon that had broken down en route to Bridge Creek. Undeterred, the judge sent a messenger to Richfield with the injunction and orders for William Cox, the Stipendiary Magistrate and Assistant Gold Commissioner there, to attach seals to the injunction in his capacity as Deputy Registrar of the Supreme Court. Cox, whose decision Begbie had overturned in issuing the injunction, declined to act as ordered, claiming that while he "entertain[ed] high respect for Mr. Begbie as Mr. Begbie and also as Supreme Court Judge," he held no commission as Deputy Registrar. Moreover, continued the magistrate,

Finding now that it is attempted to drag me into this disagreeable quarrel, and act contrary to my own conscience, I would if I actually did hold a commission as Deputy Registrar of the Supreme Court resign the post at once.¹⁸

Although delayed by Cox's "decisive stand," *Aurora v. Davis* came to trial before Matthew Baillie Begbie and a special jury on 18 June.¹⁹ After deliberating until midnight, the jury awarded half of the disputed ground to each side, because "the Aurora and Davis Companies have expended both time and money on said ground in dispute."²⁰ According to the *Sentinel*, the jury's decision met with the general approval of the entire mining community.

There is probably no instance on record where trial by jury has been so fully appreciated. . . . We are convinced that there is not a single miner on the creek that would not gladly submit his grievances to the decision of seven disinterested fellow citizens, and thus avoid the expensive and vexatious proceedings in Chancery.²¹

Despite the satisfaction with the jury's verdict evinced by the *Sentinel*, Begbie insisted that a decision by his court "would not end the litigation,

¹⁷ "The British Columbia Judiciary," *British Colonist*, reprinted in *Cariboo Sentinel*, 2 July 1866.

¹⁸ "Irresponsible Deputies." *Cariboo Sentinel*, 31 May 1866.

¹⁹ *Ibid.*

²⁰ "Supreme Court," *Cariboo Sentinel*, 18 June 1866.

²¹ *Ibid.*

and the expense of actions in one or two other branches of this Court would be heavy on both parties.” Instead of accepting the jury’s verdict, the judge suggested “that the whole matter be referred to me, not in my capacity as Judge, but as an arbitrator and friend, and that whatever decision I may arrive at will be final and absolute.”²² The two sides agreed, and the following day — 19 June — Begbie rendered his decision to an “anxious” courtroom. Perhaps hoping to forestall any criticism, the judge made it a point to downplay the irregularity of his actions and to praise the jury as an institution. “I have always had every reason to be satisfied with the findings of juries during the whole period of my own official experience in this colony,” Begbie remarked; but if “a jury finds a verdict contrary to the evidence, resulting from ignorance, fear, or any other cause it is [the judge’s] privilege to set aside their verdict.” Noting that “when men go to jump ground they do not see their enemies’ stakes,” Begbie ruled against the Davis Company and awarded all of the disputed ground to the appellant.²³

Reaction was immediate. Five or six hundred miners and residents of Cariboo gathered in front of the Richfield Court house on a rainy Saturday night six days after Begbie’s decision to discuss the administration of the colony’s mining laws.²⁴ Amid a great many speeches lasting well into the night, the participants passed three resolutions:

RESOLVED, ‘That in the opinion of this meeting the administration of the Mining Laws by Mr. Justice Begbie in the Supreme Court is partial, dictatorial, and arbitrary, in setting aside the verdict of juries, and calculated to create a feeling of distrust in those who have to seek redress through a Court of Justice.’

RESOLVED, ‘That the meeting pledges itself to support the Government in carrying out the Laws in their integrity, and beg for an impartial administration of justice. To this end we desire the establishment of a Court of Appeal, or the immediate removal of Judge Begbie, whose acts in setting aside the Law has destroyed confidence and is driving labor, capital and enterprise out of the Colony.’

RESOLVED, ‘That a Committee of two persons be appointed to wait upon His Excellency the Administrator of the Government [Arthur Birch] with the foregoing resolutions, and earnestly impress upon him the immediate necessity of carrying out the wishes of the people.’

²² *Cariboo Sentinel*, 21 June 1866.

²³ *Ibid.*

²⁴ “Mass Meeting,” *Cariboo Sentinel*, 25 June 1866.

With three cheers for “Judge” Cox, the *British Colonist*, the *Cariboo Sentinel* and the *Queen* (in that order), and three groans for Judge Begbie, the meeting adjourned.²⁵

As a result of the mounting public pressure for reform, the colonial government amended the *Gold Fields Act* in April 1867, limiting appeals from the Mining Court to questions of law only.²⁶ For all intents and purposes, this amendment made the decision of the Assistant Gold Commissioner final, something which bothered the colonial government greatly. “This change was made against the general feeling of the Legislative Council, at the insistence of the Members nominated for the Mining Districts and especially the urgent representation of the Mining Board of Cariboo,” Attorney General Crease wrote. However, “experience shews the power of appeal to be a safety valve for the preservation of the peace in the Mining Districts of the Colony.”²⁷ These were prophetic words. But for the next two months at least, all was quiet in Cariboo.

The *Borealis v. Watson* and *Aurora v. Davis* cases set the stage for the final and, according to one magistrate, most “humiliating” part of this mining trilogy: the Grouse Creek War.²⁸ Having found Chancery and arbitration wanting, and his government colleagues sensitive to public pressure, in 1867 Matthew Baillie Begbie found only one option remaining: to adhere to the newly amended *Gold Fields Act* and refuse to hear appeals from the Mining Courts. This course was not successful in restoring British Columbians’ faith in the administration of the law. The fault was not Begbie’s, however. A less outspoken Supreme Court judge might have succeeded in blunting the sharpest barbs, but no one could have bridged the gulf between the different meanings of law created by the colony’s geography.

In late April 1864, the Grouse Creek Bedrock Flume Company, a Victoria-based joint stock company, applied to Peter O’Reilly, Richfield’s Assistant Gold Commissioner, for the rights to a certain portion of land on Grouse Creek. O’Reilly granted the company title for ten years provided they fulfilled the usual conditions of occupation, licensing, and recording of the claim as outlined in the *Gold Fields Act*. During 1864 and all of

²⁵ Ibid. Also see “The Tyrant Judge,” *British Colonist*, 28 June 1866; “Another Verdict Set Aside,” and “From Cariboo,” *British Columbian*, 27 June and 4 July 1866.

²⁶ An Ordinance to amend the Laws relating to Gold Mining [2 April 1867].

²⁷ Crease to Seymour, New Westminster, 28 August 1867. CO 60/28. NAC. MG 11, reel B-97, 380.

²⁸ Nind to O’Reilly, Yahwalpa, Pimpama, Brisbane, Queensland, 11 April 1868. O’Reilly Family Papers. BCARS. Add. MSS. 412, v. 1, file 6a.

1865 the “Flumites,” as they came to be known, developed their claim, investing \$20,000 to \$30,000; but in late 1866 the company ran out of money, and their claim was left unoccupied from September to November. During this time — on 8 October — the Canadian Company, a locally based association of free miners, entered the Flume Company’s claim, and finding it apparently abandoned, applied for rights to it. Warner Spalding, who had replaced Peter O’Reilly as interim Assistant Gold Commissioner, duly recorded the ground in the Canadian Company’s name. At the beginning of the next mining season, in March, the Flumites renegotiated their lease to the Grouse Creek claim with the crown, managing to extricate themselves from all previous conditions regulating their occupation of the ground. Inexplicably, Spalding, who had just six months earlier granted the same piece of land to the Canadian Company, presided over this renegotiation on behalf of the Crown! It was only a matter of weeks before the two companies clashed, and the dispute was taken to the district’s Mining Court, again to be heard before Spalding.²⁹ There Spalding ruled in favour of the plaintiffs, and ordered the Canadians off the disputed ground.³⁰ The Canadians gave notice of appeal, but obeyed the Commissioner’s order.

Though the Canadians left quietly, they were back on Grouse Creek in a month. At the end of May, Anthony Melloday and three other Canadian Company members commenced work on the Grouse Creek Flume Company’s claim. This time, however, the Flumites took their complaint to the Magistrate’s Court, laying criminal charges of trespass against the Canadians. The foreman, Melloday, received the heaviest sentence: one month’s imprisonment. The others were sentenced to seven and fourteen days.³¹ Noting that the earlier injunction served on the Canadian Company by Spalding had been “given to their foreman . . . in an oral and extrajudicial manner, and not in the form of an order of Court,” the *Cariboo Sentinel* contended that the Canadians had been operating under a “misconception” and that the punishment meted out was “rather severe.”³²

At the beginning of July Begbie informed the two companies that he would not, in keeping with the newly amended *Gold Fields Act*, hear the

²⁹ *Canadian Company v. Grouse Creek Flume Co., Ltd.*, 27 September 1867. Archer Martin, *Reports of Mining Cases decided by the Courts of British Columbia and the Courts of Appeal therefrom to the 1st of October, 1902*. . . . (Toronto, 1903), 3-8.

³⁰ “Magistrate’s Court,” *Cariboo Sentinel*, 3 June 1867. Spalding heard the case on 22 April 1867, and the order ejecting the Canadian Company was issued on 24 April.

³¹ *Ibid.*

³² “Trespassing on Grouse Creek Bed Rock Flume Co.’s Ground.” *Cariboo Sentinel*, 3 June 1867.

appeal. Though he underscored his opposition to the new Act, the judge told the appellants that he was not willing "to drive a coach-and-four through this clause, [just] because I conjecture that it may prove mischievous or work hardship." Undeterred, the Canadians regrouped, and now thirty or forty strong, they again returned to Grouse Creek. Three constables and one surveyor were dispatched to eject the Canadians, but were prevented from doing so when the company's men "surrounded [them] . . . without showing any hostile disposition, or making any threats of violence, but simply claiming that as they all acted as one man, if any one was liable to arrest they all were. . . ." ³³ The constables left.

Local sentiment seemed to be very much on the side of the Canadians, particularly in light of Begbie's refusal to hear their appeal — a situation that was doubly ironic, given that local sentiment, and notably the pressure of the Canadian Company's principals, John MacLaren and Cornelius Booth, had led to the 1867 amendment! Writing on behalf of the members of the Canadian Company, Booth insisted they were not "acting in opposition to the law of the land." Since they could not appeal, they were more than willing to force a new case.

Since the Supreme Court sat, they have made the most strenuous efforts to bring their case into court, not with a view of setting aside, but carrying out the decision of Commissioner Spalding. Their case would not be heard at any time, and any action they have taken since is simply with the object of coming into court in such a manner, that the rights they contend for may be contested on the real merits of the case, supported by evidence, which is, I opine, the spirit of British law. ³⁴

Booth told the same thing to a public meeting of 500 people gathered to hear "a full and truthful statement of the grievances and position of the Canadian Company." The sympathetic crowd passed a resolution recording their sympathy with the Canadians and their commitment to aid the company "by all lawful means to obtain their rights." ³⁵

The good will manifested toward the Canadians made itself apparent the next day, when the district's magistrate proceeded to Grouse Creek, backed this time by twenty-five or thirty of "the most prominent businessmen, and respectable citizens of this town" who had answered court summonses to act as special constables. Once there, the "posse comitatus" exchanged "the most friendly greetings" with the Canadians and the nearly 400 eager onlookers who had "splashed through mud and mire, knee-deep,

³³ "Grouse Creek Difficulty," *Cariboo Sentinel*, 15 July 1867.

³⁴ Letter to the Editor from C. Booth, dated 13 July 1867. *Cariboo Sentinel*, 15 July 1867.

³⁵ "Public Meeting," *Cariboo Sentinel*, 15 July 1869.

in haste to reach the rendezvous." All settled in for a long and what must have been anti-climactic afternoon of negotiation by letter between the two companies. In the end, with no hope of settlement, the magistrate read a writ of injunction to the Canadian Company and asked them to leave the claim. "[A] unanimous NO was returned, whereupon Mr. Ball, along with his constables, left Williams Creek, and the crowd dispersed."³⁶ The magistrate immediately telegraphed the Governor, requesting that a detachment of marines be sent to assist him.³⁷ The Royal Navy refused to intervene, and Seymour, "at very considerable inconvenience to myself proceeded . . . to Cariboo."³⁸

It was this stalemate that greeted the Governor when he arrived in Richfield a few weeks later, on 7 August. Seymour, along with the rest of the colony, had been treated to a series of alarmist reports of "mob law" on Williams Creek from the *British Colonist* and the *British Columbian*, and no doubt expected the worst. "In our most important gold field the arm of justice hangs powerlessly by her side, while a company of men, under the most hollow and hypocritical professions of a desire to respect the law are wantonly and openly trampling it underfoot," screamed the *Columbian*:

. . . It is simply a question of British Law vs. Lynch Law. . . . [with reference to Governor Seymour's visit] To go to the scene of strife unarmed with a force to *compel* submission will simply to be to toy with outlawry while the coveted treasure is being grabbed up.³⁹

Calling for the imposition of "martial law," the *Colonist* noted that "by offering armed resistance to the mandate of a court" the Canadians were "criminals" who "went into court determined to obey the law if it was *with* them; [and] to break it if it was *against* them."⁴⁰ The *Cariboo Sentinel* took issue with its competitors' treatment of the Grouse Creek "War." "Victorians," the *Sentinel* speculated, "no doubt wrought up to the highest pitch of excitement by the graphic descriptions of the warlike attitude of the Canadians, would be surprised if they were here."

Canadians and Flumites may be seen daily in the streets of Barkerville, habited in the usual miners' garb, saluting each other without the slightest appearance of hostility.⁴¹

³⁶ "Grouse Creek Troubles — Great Excitement," *Cariboo Sentinel*, 18 July 1867.

³⁷ Seymour to Buckingham and Chandos, New Westminster, 16 August 1867. CO 60/28. NAC. MG 11, reel B-97, 333.

³⁸ *Ibid.*

³⁹ "The Situation," *British Columbian*, 27 July 1867.

⁴⁰ "The Grouse Creek Difficulty," *British Colonist*, 24 July 1867.

⁴¹ "The Governor and the Grouse Creek Difficulty," *Cariboo Sentinel*, 12 August 1867.

The *Sentinel's* attempts to emphasize the peacefulness of the Cariboo were not aided by the events which followed, however.

A few days after Governor Seymour's arrival, the Canadian Company strode into Richfield, not, noted one anonymous writer "in obedience to any order or summons," but at the suggestion of their leader, Cornelius Booth. Though Booth—the "Talleyrand of the band"—assured his compatriots they would not be arrested, seven of their number were. Conveyed immediately to the courthouse, the seven received three-month sentences for resisting arrest (stemming from Magistrate Ball's earlier attempt to eject the Canadians from Grouse Creek); however, with the exception of one man, all refused to go to jail. Instead, they "warned the constables not to touch any of them, and abused and blackguarded the Commissioner on the Bench!"⁴² The seven told the court "that if they had treated the Commissioner to more champagne &c. they would have won their case."⁴³ Ball left the courtroom, and the Governor requested a parley with Booth. After extracting a promise from Seymour to commute the sentences to forty-eight hours' imprisonment, Booth "*persuaded* his comrades to walk towards the gaol, promising them that they would not be confined three days!"⁴⁴ This concession to the form of law was continued once the redoubtable Canadians arrived at the Richfield jail. There, wrote "Crimea," "they would not allow the doors of the jail to be locked upon them and had free access to all the Court house grounds during the term of their imprisonment."

By all accounts, their experience of prison life must have been very agreeable, for their sympathisers supplied them bountifully with grog; what with games and songs, interspersed occasionally with a derisive hoot at the officials, they were the jolliest convicts ever seen.⁴⁵

When Seymour left Richfield, he left behind conflicting impressions of what he accomplished. The Canadian Company believed they had secured a promise for a new trial, while the *Colonist* and the *Columbian* were convinced that Seymour had merely offered the services of Joseph Trutch, the Chief Commissioner of Lands and Works, as arbitrator. Added to this confusion was yet another round of vitriolic newspaper reports from Victoria, condemning the Governor's actions. Claiming that Governor Sey-

⁴² Anonymous letter to the Editor, dated Williams Creek, 21 August 1867, *British Colonist*, 2 September 1867.

⁴³ Letter to the Editor from "Crimea," dated Richfield, 20 August 1867, *British Colonist*, 9 September 1867.

⁴⁴ Anonymous letter to the Editor, dated Williams Creek, 21 August 1867, *British Colonist*, 2 September 1867.

⁴⁵ Letter to the Editor from "Crimea," dated Richfield, 20 August 1867, *British Colonist*, 9 September 1867.

mour's negotiation legitimized the actions of the Canadian "mob," the *Colonist* predicted an end to the "security of life and property in the country."⁴⁶ The Canadians rejected arbitration, insisting that they would "accept nothing less than the law allows them": a new trial.⁴⁷ Less lofty were Cornelius Booth's sentiments about Trutch's arbitration. "It appears to me passing strange," he wrote,

that a case which has already, through the blundering of incompetent, or possibly interested officials, assumed an unpleasant and dangerous magnitude, should be proposed to be submitted to the decision of an individual in whom the Canadian Co. and the miners of Cariboo in general have no more confidence as to his ability to understand and administer British Law or British Justice than they would have in the ability of a dancing dervish to understand and expound the ten commandments.⁴⁸

Seymour then appointed Joseph Needham, Vancouver Island's Supreme Court judge, as arbitrator. Needham arrived in Richfield in mid-September, prepared to try the Grouse Creek case (as well as other mining appeals) *de novo*.⁴⁹ Noting that every court had the power to suspend its rules if "any technicality arises that might tend to defeat the ends of justice," the judge began hearing evidence in the *Canadian Company v. the Grouse Creek Flume Company* on 17 September. After two weeks of testimony, Needham awarded all of the disputed ground to the Flumites. "I cannot be blind to the fact that much public excitement has existed with regard to this case," he told the court,

but I do hope and believe that all will acquiesce in the decision of this court; I can only say that it has been arrived at after anxious consideration, and a simple desire to administer justice according to the law. I hope, and firmly believe, that armed alone with the authority of the law, a child may execute this judgment, and that no one will here be found whose wish is not to uphold and obey the judicial tribunals of this country — tribunals which have always been regarded by Englishmen as the fountain of justice, and the bulwark of freedom.⁵⁰

⁴⁶ "The Grouse Creek War," *British Colonist*, 29 July 1867; also see "The Grouse Creek Imbroglia," 19 August 1867, and "The Patched Up Peace on Grouse Creek," 23 August 1867.

⁴⁷ Resolution passed by the Canadian Company, at Booth's Saloon, Grouse Creek, 30 August 1867. Reprinted in "Grouse Creek Dispute Again," *Cariboo Sentinel*, 2 September 1867.

⁴⁸ Letter to the Editor from Cornelius Booth, dated Grouse Creek, 31 August 1867, *Cariboo Sentinel*, 2 September 1867.

⁴⁹ *Cariboo Sentinel*, 16 September 1867.

⁵⁰ *Canadian Company v. Grouse Creek Flume Co., Ltd.*, 27 September 1867. Archer Martin, *Reports of Mining Cases*. . . , 8.

With this plea for peace, Needham ended one of the most protracted disputes in the colony's short history, and one which was noted for the bitterness engendered between island and mainland as much as for that between the rival mining factions. It also ended Begbie's stormy tenure as mining appeal court judge. After 1867 the "tyrant Judge" heard few mining cases, leaving them to his less controversial colleagues.⁵¹

* * *

These three cases have been discussed before by David Williams, who called them "*causes célèbres*."⁵² They were certainly that, and more, for *Aurora*, *Borealis*, and *Grouse Creek* illustrate the difficulty of, in Joseph Needham's words, "administering justice according to the law." The Supreme Court judge's distinction is an important one. While the Canadians and the Flumites were of one voice as to the ends of the law and the process of dispute resolution, they disagreed on how best to secure justice through the law. This was because of the variety of meanings the law in a colony as loosely organized as British Columbia. Their various definitions of the law revealed the importance of geography in determining its contours, as well as showing the limits of authority.

Despite their differences, Flumites and Canadians used the same language of laissez-faire capitalism, which linked liberty to the security of property, to frame criticisms and to justify their actions. The *New Westminster Columbian* and the *Victoria Colonist* contrasted "British Law" with the Canadians' "mob rule," and predicted an end to "that security of life and property in the country which has ever been our proud boast." Capital, finding its tenure insecure, will fly to countries where people are made to respect the laws, and where possession of property rests upon a more stable and secure foundation.⁵³

At the same time, the Canadian Company, that "mob" of "footpads" and "filibusters," used the very same language of law and property to predict the same ends if *its* demands were not met. "There are three things the most despotic governments claim," Cornelius Booth told a crowd of 500 gathered at Fulton's saloon, "namely the right to take property, liberty and life."

The first of these have already been taken from the Canadian Co., and there is but one step to the last. I repeat that these men do not wish to be looked

⁵¹ "Tyrant Judge" from "The Tyrant Judge," *British Colonist*, 28 June 1866. For Begbie and mining cases after 1867, see Williams, ". . . *The Man for a New Country*," 80.

⁵² Williams, ". . . *The Man for a New Country*," 68.

⁵³ "The Grouse Creek 'War,'" *British Colonist*, 29 July 1867.

upon as outlaws; they consider they have been unjustly shut out from having a hearing; and would be perfectly satisfied in obtaining one, even if a decision was given against them.⁵⁴

The crowd agreed, as they had done in the wake of the *Borealis v. Watson* and the *Aurora v. Davis* cases, when they informed the colonial government that its laws and Begbie's administration of them were driving "labor, capital and enterprise out of the Colony."⁵⁵ To British Columbians on both sides of the Grouse Creek War, as well as the mining disputes that preceded it, just laws and legitimate authority were defined by their positive effect on economic development. Begbie's Chancery Court was viewed with contempt not only because the laws of chancery appeared capricious, but also, and perhaps more importantly, because of the costly delays associated with its proceedings. Jury trials could not guarantee satisfaction either, as *Aurora v. Davis* showed. Recourse to a jury trial was a poor alternative to Chancery because verdicts could be set aside by an "arbitrary" judge. The "tyranny" of Begbie's court lay in its unpredictability and inefficiency — the two enemies of capitalist enterprise.

Just as they used the same language and agreed on the ends that the law served, British Columbians on both sides of the Grouse Creek war recognized the same process of dispute resolution. The ends sought by those who opposed the government's administration were always to be achieved with the existing structures of formal dispute settlement. In *Borealis v. Watson*, Caribooites criticized the use of the Court of Chancery to resolve mining appeals because its ponderous proceedings were singularly unsuited to mining activity. But what did the miners propose as a solution? The establishment of a Court of Appeal! Similarly, in *Aurora v. Davis*, arbitration was rejected in favour of trial by jury. And in the Grouse Creek war, the Canadian Company did not ask for public sanction of extralegal action (in fact, it did not consider that it was acting in an illegal manner), but for "nothing less than the law allows us": a full hearing of its case.⁵⁶ Indeed, as David Williams noted, both Cornelius Booth and John MacLaren visited Begbie in early July 1867 to ask for his intervention — surely an indication they had not lost faith in the legal options available.⁵⁷ Even after seven company members were arrested in August, the Canadians still demanded

⁵⁴ "Public Meeting," *Cariboo Sentinel*, 15 July 1867.

⁵⁵ "Mass Meeting," *Cariboo Sentinel*, 25 June 1866.

⁵⁶ Emphasis added. Resolution passed at a meeting of the members of the Canadian Mining Company, convened at Booth's Saloon, Grouse Creek, on the evening of the 30th August 1867. "Grouse Creek Dispute Again," *Cariboo Sentinel*, 2 September 1867.

⁵⁷ Williams, "... *The Man for a New Country*," 76.

that the "tyrant Judge" or his island counterpart replace Joseph Trutch as arbitrator.⁵⁸ Clearly, those who took issue with British Columbia's legal administration did not reject the structures of dispute resolution; rather it was to the official framework of English institutions that they looked for relief. In fact, the law might be seen as a kind of social cement holding colonists together.

If Caribooites agreed about the ends of the law and the institutional means of executing it, they took issue with what the law was and how to achieve justice through that law. British Columbians in other parts of the colony considered that a body of rules applied evenly and predictably ensured justice. Reflecting on the *Borealis* and *Aurora* cases, the *Colonist* pointed to Begbie's lack of legal experience as the cause of the trouble. "Unlike Judge Needham," the newspaper reported, Begbie "had no legal experience to recommend him, and it is by no means a matter of surprise that his decisions instead of partaking of that judicial clearness and point which are the universal characteristics of the decisions of English judges, should be generally rambling, disconnected and irrelevant."⁵⁹ Nevertheless, both the *Sentinel* and the Canadians dismissed the Chief Commissioner of Lands and Works, Joseph Trutch, as a suitable adjudicator for the same reasons and called for the intervention of the Supreme Court: "He [Trutch] lacks the legal acumen which is necessary to unravel those knotted points of law that are inseparably involved in the settlement of the dispute in question."

Had either of the judges of the Supreme Court, or even a barrister of good standing, been selected as the arbitrators . . . no reasonable objection could have been urged against the arrangement; but to entrust the settlement of an important case like the present, which requires the exercise of no small amount of legal skill in the hands of a gentleman who has no pretensions to that knowledge, is simply preposterous. . . .⁶⁰

"Legal acumen" was not necessarily specialized knowledge, however. The valued acumen was a knowledge of community standards and local circumstance: what Caribooites wanted was law that was self-evident.

In the wake of *Aurora* and *Borealis*, Caribooites let it be known that "common sense" was the chief hallmark of just laws and just administration. The *Cariboo Sentinel* published a telling editorial emphasizing just

⁵⁸ Letter to the Editor from Cornelius Booth, dated 31 August 1867, *Cariboo Sentinel*, 2 September 1867.

⁵⁹ "British Columbia's Judiciary," *British Colonist*, reprinted in the *Cariboo Sentinel*, 2 July 1866.

⁶⁰ "The Grouse Creek Dispute Again," *Cariboo Sentinel*, 2 September 1867.

this point by contrasting the conduct of Peter O'Reilly (the previous magistrate) with that of his predecessors and his successor, William Cox. Prior to O'Reilly's arrival, the mining court "was virtually, if not nominally, a Court of Conscience."

Then the mining laws consisted of only a few proclamations issued from time to time by the Governor, and the Commissioner supplemented these with his own judgment. Since then extensive mining laws have been passed and partially consolidated. It was not until the administration of Mr. O'Reilly that this Court, by his false pretensions to legal ability, declared itself to be a Court of Equity or Law, or both combined. . . . The policy of Mr. Cox, on the other hand, was quite different: he made no pretensions to legal ability, yet his policy was at once most agreeable to the miners; he converted this Court back once again almost wholly into a Court of Conscience, and presided in it with no little success.

Cox's success, the *Sentinel* concluded, was due to the fact he was guided by "common sense rather than a smattering of law."⁶¹

As the *Sentinel's* editorial revealed, common sense was an important yardstick of the law's legitimacy. Sociologists argue that common sense occupies an important place in human interaction.⁶² The strength and influence of common sense lies in its "taken-for-granted" nature. Common sense is common knowledge; it is a body of truths that does not need explanation (and probably cannot be explained) for it is instantly recognized as self-evident.⁶³ According to sociologist Siegwart Lindenberg, common sense is a "general baseline for human interaction."⁶⁴ It is a frame of reference against which humans gauge events and understand the world as well as a "court of appeal."⁶⁵ "Common sense," argue van Holthoon and Olson, "provided the basis of appeal . . . to criticize and overthrow a more specialized and restrictive world view."⁶⁶ By appealing to a body of self-evident truths, critics attempt to show that the status quo is unnatural and illogical. But the concept could just as easily be used to buttress the existing order of things. Just as often, notes philosopher Herman Parret, "'Use your common sense,'" 'Behave commonsensically' — these mean 'Be conventional,' 'Be conservative.' . . . It is used to stop argument, fantasy and

⁶¹ "The Administration of the Mining Laws," *Cariboo Sentinel*, 15 December 1866.

⁶² Frits van Holthoon and David R. Olson, eds., "Introduction," *Common Sense: The Foundations for Social Sciences* (Lanham, Maryland, 1987); Thomas Luckmann, "Some Thoughts on Common Sense and Science," in van Holthoon and Olson, eds., 179-98; Siegwart Lindenberg, "Common Sense and Social Structure: A Sociological View," in van Holthoon and Olson, eds., 199-216.

⁶³ Van Holthoon and Olson, "Introduction," 3-4.

⁶⁴ Lindenberg, "Common Sense and Social Structure," 202-03.

⁶⁵ *Ibid.*; "court of appeal" from van Holthoon and Olson, "Introduction," 3.

⁶⁶ Van Holthoon and Olson, "Introduction," 3.

originality, and it is often a *deus ex machina*, a rhetorical device to express power."⁶⁷ Given the ambiguous nature of common sense, literary critics argue that it is a powerful rhetorical device, "part of 'the formal language of ideological dispute.'"⁶⁸

Although common sense implied a commonality of experience that cut across political, social and economic divisions — indeed, this is part of its strength — it was rooted in a cultural and social matrix particular to a time and place. Concepts of common sense were tied to particular locales; they were, as anthropologist Clifford Geertz contended, part of "local knowledge."⁶⁹ As such, "the law . . . is not a bounded set of norms, rules, principles and values . . . but part of a distinctive manner of imagining the real."⁷⁰ Thus, when Caribooites appealed to common sense in criticizing the colonial legal administration, their meaning was clear only within their frame of reference. They wanted the law to be self-evident; however, what was common knowledge varied from place to place. Common sense dictated what was just, but because it was bounded by space and by local experience with the law, the concept had different meanings for different people. British Columbia's great distances, thin population and poor systems of communication accentuated the localism of the colony's mining population. The mainland lacked an internal coherence that would have narrowed the variations in common sense. Its communities were uncoupled from each other, as well as the administrative centres of New Westminster and Victoria.⁷¹ In such a geographical context a variety of concepts of law proliferated; the historian's task is to recreate that milieu so that others can appreciate it as "commonsensical."

The *Cariboo Sentinel's* opposition of common sense and conscience on one hand, and law and equity on the other is important. A Court of Equity was another name for a Court of Chancery — not the miners' favourite legal institution, as *Borealis* showed. Initially, cases tried by equity courts had been resolved by applying the "standards of what seems naturally just

⁶⁷ Herman Parret, "Common Sense: From Certainty to Happiness," in van Holthoorn and Olson, eds., 19.

⁶⁸ Van Holthoorn and Olson, eds., "Introduction," 8.

⁶⁹ Clifford Geertz, "Local Knowledge: Fact and Law in Comparative Perspective," in his *Local Knowledge: Further Essays in Interpretive Anthropology*.

⁷⁰ *Ibid.*, 173.

⁷¹ Anthony Giddens discusses the influence of space on the integration of societies. The key to integration is the extension or the "stretching" of experience over time and space (something he calls "time-space distanciation"). When people do not share common understandings of time and space the communities they live in become "uncoupled" from each other and from the central administrative state, thus posing problems for the exercise of power (i.e. the regulation of behaviour by the state). See his *A Contemporary Critique of Historical Materialism* (Oxford, 1981), 65-67.

or right, as contrasted with the application . . . of a rule of law, which might not provide for such circumstances or provide for what seems unreasonable.⁷² By the early nineteenth century, however, the principles of equity had become a body of settled law rather than a personal and arbitrary assessment of fairness.⁷³ Ironically, though equitable jurisdiction evolved as a corrective to the inflexibility of the law, the Court of Chancery acquired a reputation as a morass of legal complexity and delay into which unwitting suitors could fall and never gain a settlement. When Caribooites equated Peter O'Reilly's tenure as Magistrate and Assistant Gold Commissioner with a "Court of Equity or Law," and contrasted it with Cox's "common sense," they revealed that they considered the two kinds of knowledge to be antithetical. The complexities of equity and statute law were far from self-evident truths; in fact, they were "pretensions" that caused unnecessary delays and thwarted justice. Cox's common sense cut through all this. He circumvented legal technicalities by letting "conscience" guide his decisions. In the eyes of Caribooites, Cox's "court of conscience" was the surest route to justice. Yet courts of conscience were, in legal parlance, merely another name for courts of equity or chancery!⁷⁴ Why was Cox's "conscience" — his ability to apply "standards of what seems naturally just or right" — superior to Begbie's? Why, in short, was the magistrate's common sense superior to that of the Supreme Court judge?

Caribooites recognized the magistrate's decisions and actions as expressions of common sense because he was part of their community. Common sense was bounded by locale and rooted in specific constellations of social relations. Keith Wrightson shows that magistrates, constables and jurymen were caught between "different kinds of order" in which the execution of the law had to be balanced against the more tangible pressures of familiarity in the face-to-face communities of seventeenth century England.⁷⁵ Nineteenth-century British Columbia demonstrates the same pattern. Because the colony's magistrates were a part of the communities they administered, they quickly became enmeshed in the politics of familiarity,

⁷² David M. Walker, "Equity," *The Oxford Companion to the Law* (Oxford, 1980), 424.

⁷³ *Ibid.*, "Chancery," 204.

⁷⁴ On courts of chancery and conscience, David Walker notes "The Court of Chancery was sometimes referred to as a court of conscience because its jurisdiction was originally founded on relief granted by the Chancellor, as Keeper of the King's Conscience, in circumstances where equity and justice demanded it." See his *Oxford Companion to the Law*, 272.

⁷⁵ Wrightson, "Two Concepts of Order: justices, constables, and jurymen in seventeenth-century England." In John Brewer and John Styles, eds., *An Ungovernable People: the English and their Law in the Seventeenth and Eighteenth Centuries* (London, 1980).

a situation that both aided and limited their ability to execute the law. William Cox's knowledge of miners and mining won him the admiration and support of 490 of his neighbours, who petitioned against his removal in 1866. "From the very long acquaintance we have had with Mr. Cox, and the intimate knowledge he has acquired of mining in Cariboo, we consider him much better qualified for the office than any other gentleman in this Colony;" they wrote. "Mr. Cox's conduct . . . has been such as to inspire the public with the utmost confidence in his integrity, . . . while his judicial decisions have had the effect of checking litigation."⁷⁶ These judicial decisions were often unconventional: on one occasion the magistrate settled a mining court claim by making the opposing parties race from the steps of the Richfield Court House to the disputed ground — winner take all. On another occasion Cox swore in Chinese witnesses by decapitating a chicken instead of administering the usual and less spectacular oath.⁷⁷

Cox's "intimate knowledge" consisted of a proper understanding of community morals, and it was this empathy that underlay justice in the Cariboo. Community sentiment about what was right and wrong made it impossible to keep the Canadian Company under lock and key. Henry Maynard Ball, whose misfortune it was to preside over the Grouse Creek dispute, failed because "he had but little experience in the mining districts."⁷⁸ Familiarity also limited the ineffectiveness of enforcement. For the most part, policing was done by special constables, sworn in from the local population as the need arose. In the Grouse Creek case the special constables, who as men of capital and business presumably stood to lose from the unrest, were of no use in ejecting their neighbours; nor could the district's jailer incarcerate the Canadians. "The public feeling was rather in favour of the Canadians," complained Frederick Seymour. "At all events no one would come forward to assist the Government in an emergency."⁷⁹

Despite the constraints of familiarity on the execution of the law, British Columbians would have it no other way. The interventions of outsiders in their affairs were considered despotic, even when that intervention was done by a figure as magisterial as a Supreme Court judge. In this context, juries became an important bridge between law and justice. "[T]his community," reported the Richfield Grand Jury,

⁷⁶ Petition dated Williams Creek, B.C., 3 November 1866. Colonial Correspondence. BCARS. GR 1372, reel B-1355, f 1352.

⁷⁷ Both examples from Margaret Ormsby, *British Columbia: a History* (Toronto, 1958), 181.

⁷⁸ Seymour to Buckingham and Chandos, New Westminster, 12 May 1868. CO 60/32. NAC. MG 11, reel B-100, 368.

⁷⁹ Seymour to Buckingham and Chandos, Victoria, 4 September 1867. CO 60/29. NAC. MG 11, reel B-97, 5.

owing to its isolated position, the peculiarity of its interests, and especially its national origin, has a decided preference for local trial by jury, and is extremely jealous of all verdicts by its peers. . . .⁸⁰

The *Cariboo Sentinel* was even more direct, asserting that “a man is wrong when almost every person in the community thinks and says he is wrong.”⁸¹ When Begbie overturned the jury verdict in *Aurora v. Davis*, he not only breached what Caribooites perceived to be established practice, he also burned the only bridge between the law as a set of overarching rules and as a set of social and locally constructed norms. The judge’s cavalier treatment of the jury in this and other cases led many colonists to conclude that Begbie did not consider them qualified to pass judgement on their peers. What these British Columbians objected to was not so much Begbie’s failure to adhere to statute law and common law practice as the fact that he was not guided by the same self-evident truths as they were. He could not have been. The Supreme Court judge was outside their community: he resided in Victoria, visiting the colony’s far-flung communities only once a year. His circuits were metaphors for his status as an outsider. Begbie’s actions and decisions appeared arbitrary, particularly in a colony that lacked the social organization that would support the arbitrariness of paternal authority. Because his decisions were not necessarily commonsensical and because of the important role the law played in establishing some cohesion in the colony, Begbie’s actions and decisions not only threatened the colonists’ economic security but also eroded one of the few bonds tying them together.

Caribooites also considered the Grouse Creek Flume Company an outsider. Not only were the Flumites based in Victoria, headed by one of the city’s largest merchants, but they also represented “big capital” in a region where small, independent entrepreneurs were the norm.⁸² The Canadians styled themselves a “company,” but their Victoria opponents were the real thing. The Grouse Creek Flume Company was a joint stock venture, capitalized to the tune of \$50,000. The Flumites were harbingers of a different kind of resource entrepreneur in British Columbia. By the late 1860s, most of the easily accessible surface gold in the Cariboo was gone. Continued success on the upper country creeks depended on a hydraulic process which required a substantial capital investment to construct the necessary flumes. Such an investment was beyond the means of most independent miners. Part of the support for the Canadians and the wrath directed at Begbie

⁸⁰ “From Cariboo,” *British Colonist*, 4 July 1866.

⁸¹ “The Administration of Justice,” *Cariboo Sentinel*, 30 November 1866.

⁸² Selim Franklin was the president of the Grouse Creek Flume Company, and J. P. Cranford was its treasurer.

likely stemmed from an antipathy toward this form of large corporate enterprise that would eventually dominate resource exploitation and push out the smaller upper country operations.

Conflicting concepts of law were central to the controversies surrounding the administration of British Columbia's mining laws in the colonial period. While recent writing in Canadian legal history has cast a critical eye on the law, revealing its normative nature, few studies deal with the variety of meanings the law could take on.⁸³ As I have discussed, despite its detached nature, the law gained much of its meaning through the very local experiences people had with it. Foremost in placing meaning at the centre of analysis is the work of anthropologist Clifford Geertz.⁸⁴ Eschewing materialist and generalized explanations for behaviour, Geertz concerned himself with recovering meaning "from the native's point-of-view."⁸⁵ A Geertzian perspective on theft, for instance, would involve contextualizing the act in a local frame of reference to understand what the act meant for the people involved, rather than linking it to more generalized phenomena like war and dearth.⁸⁶ Whereas materialist explanations like the latter implicitly accept theft as an objective fact to be counted and cross-tabulated with socioeconomic data, Geertzian analysis, or "thick description," treats "theft," "thief" and "victim" as "essentially contestable" categorizations and seeks to ground them in local circumstance.⁸⁷

⁸³ On gender bias, see Constance Backhouse's work, including "Shifting Patterns of Nineteenth Century Canadian Custody Law," in D. H. Flaherty, ed., *Essays in the History of Canadian Law* (Toronto, 1981), v. 1, 212-48; and "Nineteenth Century Canadian Rape Law, 1800-1892," in Flaherty, ed., *Essays in the History of Canadian Law* (Toronto, 1984), v. 2, 200-247; on class bias in enforcement, see Michael Katz et al., *The Social Organization of Early Industrial Capitalism* (Cambridge, Massachusetts, 1982), Chapter Six and Nancy Kay Parker, "The Capillary Level of Power: Methods and Hypotheses for the Study of Law and Society in Late-Nineteenth Century Victoria, British Columbia," University of Victoria M.A. thesis (history), 1987.

⁸⁴ "Thick Description: Toward an Interpretive Theory of Culture," in Clifford Geertz, *The Interpretation of Cultures* (New York, 1974), Chapter One. For a good overview and criticism which I have drawn from, see Aletta Biersack, "Local Knowledge, Local History: Geertz and Beyond," in Lynn Hunt, ed., *The New Cultural History* (Berkeley, 1988), Chapter Three.

⁸⁵ "From the Natives Point of View": On the Nature of Anthropological Understanding," in his *Local Knowledge: Further Essays in Interpretive Anthropology*, Chapter 3.

⁸⁶ Douglas Hay has done just that. See his "War, Dearth and Theft: the Record of the English Courts," *Past and Present* 95 (1982): 117-60.

⁸⁷ This positivist analysis is best exemplified in the many statistical studies on crime. See for instance, J. M. Beattie, "The Pattern of Crime in England, 1660-1800," *Past and Present* 62 (1974): 47-95 and V. A. C. Gatrell, Bruce Lenman, and Geoffrey Parker, eds., *Crime and the Law in Western Europe since 1500* (London, 1980). "Essentially contestable" from Geertz, cited in Biersack, 95.

Both cultural historian of France Natalie Davis and English historian E. P. Thompson take this anthropological perspective in their work on the charivari and rioting.⁸⁸ Emphasizing the ritualistic aspect of violence, they root concepts of legality in community norms, and see the violation of these norms as motivation for violent action. For both these scholars, meaning is at the crux of understanding behaviour. Many of those who dealt with formal law took the same approach. Focusing on local frames of reference, some English historians of the law explored the social context of crime. For them, legal categories were rife with significance. Forest gleaning and pilfering in the putting-out industries, for instance — activities long sanctioned by custom — became criminalized as poaching and embezzlement.⁸⁹ The criminalization and prosecution of behaviour like this was interpreted as evidence of the growing centrality of private property in the politics and social relations of eighteenth century England.

The Grouse Creek War and the events leading to it demonstrate the importance of geography in creating “local frames of awareness” that shape social meaning.⁹⁰ The law Caribooites wanted had to be self-evident; it had to be commonsensical. Because common sense was *local* knowledge, however, its meaning was spatially limited. This localism was accentuated by the colony’s geography, which effectively precluded the integration of the archipelago of small settlements that was British Columbia. Geographers and sociologists have recognized that space is deeply implicated in social life.⁹¹ Because human relations and the extension of authority are spatially as well as socially constructed, understanding what the law means involves

⁸⁸ Natalie Davis, “The Reasons of Misrule” (on the charivari) and “The Rites of Violence” (on religious riots), both in her *Society and Culture in Early Modern France* (Stanford, 1982), Chapters Four and Six; E. P. Thompson, “The Moral Economy of the English Crowd in the Eighteenth Century,” *Past and Present* 50 (1971): 76-176; and his “‘Rough Music’: le charivari Anglais,” *Annales* 27é (1972): 285-312. On these scholars and these particular examples of their work, see Susan Desan’s analysis and critique, “Crowds, Community and Ritual in the Work of E. P. Thompson and Natalie Davis,” in Hunt, ed., *The New Cultural History*, Chapter Two.

⁸⁹ On poaching, see for example, E. P. Thompson’s *Whigs and Hunters: the Origin of the Black Act* (London, 1975). On other social crimes see Douglas Hay, et. al., *Albion’s Fatal Tree: Crime and Society in Eighteenth Century England* (London, 1975); Peter Linebaugh, “Karl Marx, the Theft of Wood, and Working Class Composition: a contribution to the current debate,” *Crime and Social Justice* 6 (1976): J. Ditton, “Perks, Pilferage, and the Fiddle: the historical structure of invisible wages,” *Historical Journal* 22 (1979): 825-60; and Joanna Innes and John Styles, “The Crime Wave: Recent Writing on Crime and Criminal Justice in Eighteenth-Century Britain,” *Journal of British Studies* 25 (1986): 395-99.

⁹⁰ Geertz, *Local Knowledge*, 61; cited in Biersack, 82.

⁹¹ According to geographers Jennifer Wolch and Michael Dear, space impinges on social practices in three generalized ways: first, social relations are *constituted* through

more than contextualizing behaviour in time. Distant places like the Cariboo were uncoupled from New Westminster and Victoria, the colony's centres of authority.⁹² In this spatial context, law and authority were rooted in specific and local constellations of social relations. For Caribooites, the law was more a collection of community norms than a set of hard-and-fast rules. Face-to-face relations, the politics of the personal and personality loomed large in determining authority. Being recognized as an authority conveyed more power in these localized settings than being *in* authority by virtue of some extra-community sanction.⁹³

Although I have put local knowledge at the crux of understanding behaviour, local frames of reference were not the only ones that influenced the meaning of law. On Grouse Creek, common sense may have gone a long way to shape what the law meant to British Columbians, but clearly the larger framework provided by the structure, institutions, and traditions of the common law itself also played an important role.⁹⁴ Magistrate William Cox's decisions may have been commonsensical, but he and those who came before him still operated within a set of rules and procedures that at least nominally constrained action and provided a standard for measuring legality. As I discussed, British Columbians on both sides of the Grouse Creek War and the disputes that led to it never challenged the authority of the law and its institutions; instead, they took issue with their administration and looked to the existing forms of law for redress. Perhaps more important in shaping the social meaning of the law than its forms were its traditions and the expectations they created. The "rule of law" promised freedom from the dictates of arbitrary sovereigns for all, no matter their condition. The idea of the rule of law became intimately tied to the security of life and property, and became the keystone of English liberty. For British colonists, the law was an important source of unity,

space; they are *constrained* by space; and they are *mediated* by space. For instance, to understand law and authority we must look at how geography influences the construction of legal institutions (the constitutive role of space); how distance hinders or facilitates the imposition and articulation of law and legal institutions (the constraining role of space); and finally how space facilitates the construction of the social meanings of the law (the mediating role of space). See Michael Dear and Jennifer Wolch, "How Territory Shapes Social Life," in Wolch and Dear, eds., *The Power of Geography: How Territory Shapes Social Life* (Boston, 1989), 9.

⁹² Giddens, *A Contemporary Critique of Historical Materialism*, 65-66.

⁹³ Stephen Lukes, "Power and Authority," in Tom Bottomore and Robert Nisbet, eds., *A History of Sociological Thought* (New York, 1978).

⁹⁴ On this theme see Greg Marquis, "Doing Justice to 'British Justice': Law, Ideology and Canadian Historiography," in W. Wesley Pue and Barry Wright, eds., *Canadian Perspectives on Law and Society: Issues in Legal History* (Ottawa, 1988), 43-69.

particularly in the years immediately following settlement. Though differences brought them before a magistrate, the British Columbians who resorted to the law were tied together in a common adversarial process that imposed a degree of structure, organization, and predictability on social relationships in a colony where such characteristics were rare commodities. More broadly, both for those directly involved in litigation and for those who perhaps afterwards discussed and criticized its administration, the law was a link to and a symbol of a common, storied, and secure past that stood in marked contrast to the new and alien environment they found themselves in. The common law conferred citizenship to colonists whose sense of place had been eroded by the experience of migration. Much of the social meaning of the law, then, was provided by the forms and traditions of the law itself — forms and traditions which had their genesis outside the locale that has been the focus of my analysis.

Although they were physically distant from the main centres of population, as well as from the rest of British North America, Caribooites were tied to another frame of reference through extensive webs of credit: the wider world of commercial capitalism. So dominant was economic activity in the collective experience of the colony that the language of *laissez-faire* infused British Columbians' discussions of the law and provided the standard with which they measured political authority. Begbie's actions and decisions provoked the reactions they did because they were the antithesis of what commercial capitalist enterprise demanded and defined as the criteria for legitimate action: efficiency, predictability, and standardization.

Though British Columbians on both sides of the mining disputes demanded these characteristics of the law and conceived of it as an instrument of economic development, there was room for a diversity of opinion because of the spatial context in which the law was administered. Divergent concepts of law became apparent only when the localism of the colony was penetrated by the annual circuits of British Columbia's Supreme Court. Begbie and the Supreme Court represented a different level of law and a different level of social interaction. To Caribooites, the Supreme Court judge was an outsider; his reasoning and decisions were not self-evident because he operated in a world outside the community of local interaction. To be effective, Begbie and his fellow magistrates had to balance the demands of colonial administration with local sentiment. With these conflicting demands, "administering justice according to the law" was a difficult, and sometimes impossible, task. This was Gaggin's "delicate game," and it was one that would be played over and over again amid the western mountains.