

ADAPTING TO MINERS' PRACTICES: *The Development of Gold Mining Law and the 1863 Mining Board*

THOMAS MILLS

IN THE SPRING OF 1858, there was a gold rush to the Fraser River within New Caledonia – an unorganized territory under British sovereignty and part of the Hudson's Bay Company's fur trading empire. Tens of thousands of miners and camp followers travelled to the mainland. Most came by sea, passing through Fort Victoria, whereas others made the trip overland through Washington Territory and across the forty-ninth parallel. Gold seekers came from a variety of places, including Canada, Australia, Britain, and China, but – especially during this early gold rush – most travelled from California and had participated in the California gold rush.

During the California gold rush (1849), there had been an absence of formal law and order on the frontier. In response, miners organized spontaneously, using popular assemblies to create informal mining law and to govern mining districts. These assemblies, known as miners' meetings, made decisions by simple majority vote – a system that produced enough social stability for gold mining to take place. Over time, customary mining law and certain mining practices became ingrained in mining culture. As a result, when experienced Californian miners travelled to the Fraser River almost a decade later, they brought their culture, including miners' meetings, with them.¹

¹ John Phillip Reid has suggested the miners' meeting is North American in origin. He points out that, during western expansion, settlers recreated approximations of judicial practices as ways of dealing with crime in legally ambiguous territory. See John Phillip Reid, "Prosecuting the Elephant: Trials and Judicial Behavior on the Overland Trail," *Brigham Young University Law Review* 2, 3 (1977): 327-50. Miners' meetings became so prominent as a method of local government during the California gold rush, partially because, when the gold rush began, a civil government had not yet been established and military officials were unable to control the situation. See Donald J. Pisani, "I Am Resolved Not to Interfere But Permit All to Work Freely: The Gold Rush and American Resource Law," *California History* 77, 4 (1998-99): 123-48. For a social contract theory that seeks to explain the spontaneous creation of local law in California, see John R. Umbeck, *A Theory of Property Rights with Application to the California Gold Rush* (Ames: Iowa State University Press, 1981). For a social history on

For the British Colonial Office and James Douglas, governor of Vancouver Island and head of Hudson's Bay Company (HBC) operations in New Caledonia, tens of thousands of gold miners travelling to the Fraser River – overwhelmingly from the United States – raised memories of the Oregon Treaty and concerns about further loss of control over the mainland territory.² So, in an attempt to secure British territorial claims, on the eve of the gold rush, Douglas proclaimed formal gold mining law for the mainland. But proclaiming law and applying it were two different things. The latter was not without its difficulty because of the great distance between Victoria and the goldfields, Douglas had few reliable officers to administer his goldfields law, and the mining community already had established mining practices and customary law.

This situation has led historians to ask: Why did miners, accustomed to their own mining practices and customary law, accept a British administration and its formal mining law? Or, in other words, why did thousands of well-armed miners, working on the frontier with their own customary legal traditions, willingly accept British rule? In the literature, the explanation tends to centre on the *Gold Fields Act, 1859*, replacing miners' customary practices.³ This interpretation was first put by F.W. Howay, W.N. Sage, and H.F. Angus. For them, the "Californian practice" of creating local law with assemblies of miners was cut short by the *Gold Fields Act, 1859*, which created the office of gold commissioner, the institution of the Mining Board, and contributed to the mines being free from "lawlessness."⁴

Others saw miners' ability to influence the formal mining law as playing a part in their acceptance of British rule. Willard E. Ireland suggested that the "mob violence" found in California was not found in British Columbia because Douglas allowed miners' practices to influence

the California gold rush that shows how white anglophone miners used miners' meetings to exclude Chinese people from gold-producing regions, see Susan Lee Johnson, *Roaring Camp: The Social World of the California Gold Rush* (New York: W.W. Norton and Company, 2000).

² The Oregon Treaty, 1846, established the forty-ninth parallel as the international boundary. For events leading to the signing of the treaty, see Jean Barman, *The West beyond the West: A History of British Columbia* (Toronto: University of Toronto Press, 1991), 32-52; F.W. Howay, W.N. Sage, and H.F. Angus, *British Columbia and the United States: The North Pacific Slope from the Fur Trade to Aviation* (Toronto: Ryerson Press, 1942), 120-37; and Margaret A. Ormsby, *British Columbia: A History* (Vancouver: Macmillan, 1958), 51-89. For concerns about the loss of control of the mainland, see Ormsby, *British Columbia*, 145-46.

³ *Gold Fields Act, 1859*, 31 August 1859, in British Columbia, *List of proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864* [also 1865] [British Columbia: s.n., 1866?], http://eco.canadiana.ca/view/oocihm.9_03462.

⁴ Howay, Sage, and Angus, *British Columbia and the United States*, 157-59, 176-77.

colonial law and local Mining Boards to improve mining conditions.⁵ Rodman W. Paul recognized the influence of Mining Boards over local mining rules and suggested that miners submitted to British rule because they preferred “law and order” to frontier lawlessness.⁶

Margaret A. Ormsby took the view that miners’ law had been recognized and adapted by Governor Douglas into formal law but saw Mining Boards as later replacing local miners’ law.⁷ Similarly, David R. Williams thought that local miners’ customary law didn’t become established because of Mining Boards and their ability to create bylaws.⁸ For Tina Loo, the *Gold Fields Act, 1859*, in the form of gold commissioners and the Mining Board – an institution meant to develop business and mining – replaced local miners’ law.⁹

Some took the position that Mining Boards were the key mechanism in the reduction of tensions between miners and the colonial administration. For Barry M. Gough, Mining Boards provided a “vent for miners’ complaints” and thereby helped the British in their administration of the population.¹⁰ This position was, later, supported by David R. Williams who proposed that Mining Boards “took some of the steam out of objection to colonial mining policies.”¹¹ Hamar Foster identified Mining Boards as a “workable compromise” between confrontation with the mining population, as seen in the example of the Australian gold rush, and the abdication of governmental authority, as seen in the California gold rush.¹²

Taken as a whole, the literature gives the impression that miners’ meetings and customary mining law were replaced by the *Gold Fields Act, 1859*; acknowledges that miners had some influence over the

⁵ Willard E. Ireland, “British Columbia’s American Heritage,” *Report of the Annual Meeting of the Canadian Historical Association* 27, 1 (1948): 70–71.

⁶ Rodman W. Paul, “Old Californians’ in British Gold Fields,” *Huntington Library Quarterly* 17, 1 (1953): 169–71.

⁷ Ormsby, *British Columbia*, 161.

⁸ David Ricardo Williams, *The Man for a New Country: Sir Matthew Baillie Begbie* (Sydney, BC: Gray’s Publishing, 1977), 150.

⁹ Tina Loo, *Making Law, Order, and Authority in British Columbia, 1821–1871* (Toronto: University of Toronto Press, 1994), 61.

¹⁰ Barry M. Gough, “The Character of the British Columbia Frontier,” in *British Columbia: Historical Readings*, ed. W. Peter Ward and Robert A.J. McDonald (Vancouver: Douglas and McIntyre, 1981), 238.

¹¹ David Ricardo Williams, “The Administration of Criminal and Civil Justice in the Mining Camps and Frontier Communities of British Columbia,” in *Law and Justice in a New Land: Essays in Western Canadian Legal History*, ed. Louis A. Knafla (Toronto: Carswell, 1986), 215, 222–23, 231.

¹² Hamar Foster, “Law Enforcement in Nineteenth-Century British Columbia: A Brief and Comparative Overview,” *BC Studies* 63 (Autumn 1984): 11.

formal mining law; and identifies Mining Boards as a key factor in the reduction of tensions between the mining population and the British administration. But this interpretation obscures important differences between Mining Boards and miners' meetings; it leaves the impression that the British administration imposed formal mining law on the mining population; and it suggests that miners' meetings and customary mining law did not continue after the creation of the *Gold Fields Act, 1859*.

In this article I examine the early development of the formal mining law. I then turn to a discussion on changes in mining practices and the 1863 Cariboo East Mining Board's influence on the *Gold Fields Act, 1864*. In doing so I aim to show that the British administration was unable to impose its legal will across the colony in a uniform manner and that miners' meetings and customary mining law persisted after the passing of the *Gold Fields Act, 1859*. I hold that British formal mining law in colonial British Columbia was applied unevenly, partly due to the colony's geography – some regions, especially along the prospecting frontier, fell outside of the British administration's reach.¹³ I also examine the important differences between, on one hand, miners' meetings and the customary mining law produced by those bodies (which were concerned with law for individual miners using simple methods) and, on the other hand, the 1863 Cariboo East Mining Board and the formal law it produced in collaboration with the Legislative Council (which was intent on refining existing formal law with a focus on encouraging larger-scale mining operations).¹⁴ Finally, contrary to the literature, I argue that – instead of one particular act, office, or institution – tensions between the mining community and the colonial government were resolved as a result of the British administration's gradual and consistent adaptation of the formal law to miners' practices – an adaptation that began well before the *Gold Fields Act, 1859*, was issued and that continued up until the *Gold Fields Act, 1864*, received assent. By giving formal sanction to

¹³ This approach is influenced by Lauren Benton's analysis of the relationship between law and geography in European empire. See Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (New York: Cambridge University Press, 2010).

¹⁴ The general approach taken in this article, this comparative legal analysis exploring the relationship between customary mining law and the development of the formal mining law, is inspired by Peter Karsten, *Between Law and Custom: "High" and "Low" Legal Cultures in the Lands of the British Diaspora – the United States, Canada, Australia, and New Zealand, 1600-1900* (New York: Cambridge University Press, 2002) as well as Thomas Stone, *Miners' Justice: Migration, Law and Order on the Alaska-Yukon Frontier, 1873-1902* (New York: Peter Lang, 1988).

miners' practices, the British administration was able to secure its territorial claims while developing the colonial economy.¹⁵

ADAPTING EARLY LAW TO MINERS' PRACTICES

Early formal mining law was comprised of a British claim to the mainland gold deposits and a few rudimentary mining guidelines. This law was then elaborated upon and gradually adapted to miners' practices. In colonial British Columbia, miners' meetings were generally concerned with creating law for individual miners using simple placer mining methods. The British administration created formal mining law but was unable to impose that law in a uniform manner; instead, it gradually and consistently adapted the formal law to miners' practices. When the law was formally revised, in the form of the *Gold Fields Act, 1859*, it carried over influences from miners' law. Built into that formal law was a mechanism that would allow further adaptation to miners' practices.

In December 1857, anticipating the gold rush, Governor Douglas proclaimed that gold in the mainland "Quâatlan, Couteau, and Shuswap countries ... belonged to the Crown" and that anyone removing gold without permission would be prosecuted. Regulations required miners to purchase a licence in Victoria, at the cost of ten shillings a month, to "dig, search for or remove gold." Further regulations, regarding claim size and other matters, were to be decided once a commissioner was appointed.¹⁶

Douglas's efforts to secure legal claim to the mainland gold deposits were partially motivated by fear that an influx of American miners and settlers to New Caledonia could lead to their annexation of the mainland – not unlike what had taken place in the Oregon Territory.¹⁷ But Douglas's proclamation and regulations had no constitutional authority – they had no legal basis.¹⁸ In fact, the mainland fell under

¹⁵ This article is adapted from Thomas Mills, "Miners' Meetings and Mining Boards: The Development of Mining Law in Colonial British Columbia, 1858-1867" (MA thesis, Concordia University, 2016). Research that produced this article was supported by the Social Sciences and Humanities Research Council of Canada.

¹⁶ "Proclamation by Douglas, 28 December 1857," and "Regulations governing the issuance of gold licenses for the region outlined in the above proclamation, signed by Douglas, 29 December 1857," in Douglas to Labouchere, 29 December 1857, National Archives of the UK, 2084, CO 305/8, in *The Colonial Despatches of Vancouver Island and British Columbia, 1846-1871*, ed. James Hendrickson and the Colonial Despatches project (Victoria: University of Victoria) available at: <http://bcgenesis.uvic.ca/getDoc.htm?id=V57035.scx>.

¹⁷ Ormsby, *British Columbia*, 145-47.

¹⁸ That being said, there was precedent for Douglas's actions. In 1853, he had proclaimed formal gold mining law for the Queen Charlotte Islands, today referred to as Haida Gwaii, in the midst of excitement over those islands' gold resources. See Barman, *West beyond the West*, 63.

the sovereignty of the British Parliament and, according to the *Canada Jurisdiction Act, 1803*, and the *Regulation of the Fur Trade Act, 1821*, crimes were to be tried in Upper Canada.¹⁹

Nevertheless, with the Fraser River gold rush under way in the spring of 1858, Douglas published additional mining regulations in the press. They required miners to carry a licence and to produce a copy upon demand – it could not be sold or transferred. Mining operations could not interfere with the maintenance of roads or access to stores. And miners were required to observe Sunday as the Sabbath. An individual mining claim was defined as measuring 13.4 square metres (144 square feet). A party of two miners could claim 26.75 square metres, a party of three could claim 40 square metres, and a party of four could claim 53.5 square metres.²⁰

Despite the existence of this formal gold mining law, miners simply created their own law by assembly and popular vote at miners' meetings. These laws were focused on the needs of individual placer miners. For example, at Hill's Bar, just below Yale, miners decided that individual claims measured 7.6 metres (25 feet) wide and extended lengthwise between the river and the river bank's high-water mark. Protections were put in place against monopoly: miners could own a limited number of claims – they could pre-empt one and purchase another. They were also required to work their claim every three days or it could be taken, or "jumped," by another miner. Also at this meeting, simple criminal laws were established. Thieves were to be expelled, if caught, and anyone "interfering with or molesting any Indian" would be punished.²¹

Upstream, at Fort Yale, different laws were created by miners at a popular assembly. Claims would measure 7.6 metres wide and would extend lengthwise between the river and its high-water mark. Protections against monopoly were strict – miners at Fort Yale could only hold

For the influence of proclamations and regulations that had originally been meant for Haida Gwaii on Douglas's December 1857 proclamation and regulations, see Robert Galois, "Gold on Haida Gwaii: The First Prospects, 1849-53," *BC Studies* 196 (Winter 2017/18): 17-44.

¹⁹ Hamar Foster, "Long Distance Justice: The Criminal Jurisdiction of Canadian Courts West of the Canadas," *American Journal of Legal History* 31 (1990): 43-45; Tina Loo, "'Club Law' and Order in British Columbia's Fur Trade," in *Making Law, Order, and Authority in British Columbia, 1821-1871*, 18-33 (Toronto: University of Toronto Press, 1994).

²⁰ "Enclosure 1 in No. 6," in Great Britain, *Papers Relative to the Affairs of British Columbia, part 1, Presented to both Houses of Parliament by Command of Her Majesty, 18 February 1859* (London: George Edward Eyre and William Spottiswoode, 1859), 20-21; "Miners' Licenses," *Victoria Gazette*, 30 June 1858; Kinahan Cornwallis, *The New El Dorado; or British Columbia* (London: Thomas Cautley Newby, Publisher, 1858), 401-2.

²¹ "Mining Laws," *Daily Alta California*, 8 July 1858. See also Lewis J. Swindle, *The Fraser River Gold Rush of 1858: As Reported by the California Newspapers of 1858* (Victoria: Trafford, 2001), 92-93.

one claim – but maintenance of possession was less demanding than downriver: Fort Yale miners were only required to work their claim once every five days. The rudiments of a civil administration were also established. The office of “Recorder” was created, comprising a person tasked with maintaining mining claim records, which were made freely available for public inspection. The cost to record a claim was fifty cents.²²

Despite Douglas’s formal regulations, many miners simply did not purchase a mining licence. In an effort to coerce miners to do so, Douglas proclaimed it illegal for boats to enter the Fraser River without a licence from the HBC and tasked the HMS *Satellite* with enforcement. He then contracted the United States Pacific Mail Steamship Company to provide transportation between Victoria and “the Falls” – a place 209 kilometres (130 miles) inland from the mouth of the Fraser River – on condition that the company only transport licensed miners.²³

After putting these measures in place, Douglas travelled to the mainland.²⁴ While visiting areas where gold mining was taking place, he nominated three people from the mining population to serve as officials. George Perrier was appointed justice of the peace at Hill’s Bar, Richard Hicks as revenue officer at Yale, and O. Travaillot as revenue officer at Lytton. Notably, during his visit, Douglas accepted the miners’ practice of measuring mining claims 7.6 metres wide along the river rather than attempting to impose the regulations he had previously created.²⁵

Back in Victoria, Douglas created new mining regulations that provided a legal framework for developing quartz mines. But these regulations also increased placer claim sizes, from the former 2.3 square metres to 7.6 metres frontage along a creek or ravine – a change that brought the formal law in line with miners’ practices. Claims not bordering creeks or ravines were to measure 2.3 square metres. Also, like the miners’ law, these new regulations established a work requirement to maintain possession of a claim: a miner had to work a claim within ten days of registration in order to maintain possession. Furthermore, these regulations stipulated that those found working claims without

²² Cornwallis, *New El Dorado*, 402–3.

²³ Douglas to Stanley, 19 May 1858, National Archives of the UK, 6667, CO 305/9, <http://bcgenesis.uvic.ca/getDoc.htm?id=V58023.scx>. This attempt to limit passage on the river was later disallowed. “The Falls” was located between Yale and Spuzzum.

²⁴ When Douglas left Victoria in May, it was reported to the *Sacramento Daily Union* by a correspondent. See “From Victoria,” *Sacramento Daily Union*, 11 June 1858.

²⁵ Douglas to Stanley, 10 June 1858, National Archives of the UK, 7828, CO 60/1, <http://bcgenesis.uvic.ca/getDoc.htm?id=V58024.scx>; Douglas to Stanley, 15 June 1858, National Archives of the UK, 7830, CO 60/1, <http://bcgenesis.uvic.ca/getDoc.htm?id=V58026.scx>; Douglas to Stanley, 26 July 1858, National Archives of the UK, 9253, CO 305/9, <http://bcgenesis.uvic.ca/getDoc.htm?id=V58031.scx>.

having purchased a miner's licence were required to pay double the cost of the licence in order to obtain one.²⁶

With a handful of newly nominated officials on the mainland who had no formal legal training and a tenuous administrative capacity, Douglas defined the role of the assistant gold commissioner. He sent guidelines to the newly nominated representatives on the mainland and a copy was sent to Sir Edward Bulwer-Lytton at the Colonial Office for approval.²⁷ Lytton approved of Douglas's approach but, sensitive to the delicate situation created by a large number of foreign nationals in territory claimed by the Crown, cautioned him against compelling miners to take out licences by force.²⁸

Shortly thereafter, the mainland Colony of British Columbia was created by an act of the British Parliament on 2 August 1858 and proclaimed by Governor James Douglas on 19 November 1858 with a brief ceremony at Fort Langley.²⁹ Measures were then taken to set the formal gold mining law on a better foundation. The *Licenses Act, 1859*, declared that the gold mining proclamation and regulations previously issued by Douglas were to have no effect as of 31 August 1859.³⁰ On that day, the *Gold Fields Act, 1859*, came into effect.³¹

The *Gold Fields Act, 1859*, dealt primarily with the rights and responsibilities of free and registered miners, the jurisdiction of gold commissioners, and the powers of Mining Boards. A "free miner" was a person who had purchased a "free miner's certificate," which entitled that person to mine on Crown land. By registering a claim, lease, or water privilege, a free miner became a "registered free miner" with sole right to the soil and gold in his claim. Gold commissioners were a combination of goldfields administrator and justice of the peace, with broad jurisdiction over gold mining matters. All mining disputes were to be decided by the gold commissioner, without a limit in value. The gold commissioner could

²⁶ "General Regulations for Gold District," Fort Langley, 13 July 1858, in Great Britain, *Papers Relative ...* These regulations can also be found in "New Mining Regulations on Fraser River," *Daily Victoria Gazette*, 5 August 1858.

²⁷ "Instructions to Assistant Gold Commissioners," 1 July 1858, in Douglas to Lytton, 30 August 1858, National Archives of the UK, 10344, CO 60/1, <http://bcgenesis.uvic.ca/getDoc.htm?id=V58037.scx>.

²⁸ Lytton to Douglas, 1 July 1858, National Archives of the UK, CO 410/1, <http://bcgenesis.uvic.ca/getDoc.htm?id=V587202.scx>. In his reply, Douglas acknowledges that he should not compel miners to take out licences. See Douglas to Lytton, 9 September 1858, National Archives of the UK, 12177, CO 60/1, <http://bcgenesis.uvic.ca/getDoc.htm?id=V58039.scx>.

²⁹ Great Britain, *An Act to Provide for the Government of British Columbia: 2 August 1858* (London: Printed by G.E. Eyre and W. Spottiswoode, 1858), enclosed in Proclamation, 19 November 1858, in British Columbia, *List of Proclamations*.

³⁰ *Licenses Act, 1859*, 10 August 1859, British Columbia, *List of Proclamations*.

³¹ For the creation of the *Gold Fields Act, 1859*, see Williams, *Man for a New Country*, 150-52.

decide on questions of law and fact, and he could compel individuals and witnesses to attend proceedings. The last part of the act dealt with Mining Boards, which were representative institutions with limited powers over formal mining law. Creation required 101 registered free miners in a district to submit a petition to the local gold commissioner. If approved, the governor allowed the gold commissioner to constitute a mining board to be chosen by free election. A mining board could pass bylaws, changing the formal mining laws for a given district, subject to the oversight of the gold commissioner and the approval of the governor.³²

The *Gold Fields Act, 1859*, was followed by the “Rules and Regulations under Gold Fields Act,” which showed the influence of miners’ customary mining laws in operation on the lower Fraser River. For example, the regulations stated that the line differentiating bar and dry diggings was the high-water mark, and bar diggings were defined as 2.3 square metres wide from the high-water mark to the river. A miner had to work, or “represent,” his claim once every seventy-two hours or else it was considered abandoned. Furthermore, like miners’ customary laws, the formal regulations privileged – were conceived on the scale of – the individual miner; the distribution of land in the act and regulations was based on individual miners pre-empting individual claims.³³

THE 1863 MINING BOARD AND THE *GOLD FIELDS ACT, 1864*

When the Fraser River gold rush ended, many left the country. But some pushed the prospecting frontier further into the interior, beyond the reach of the British administration. Many prospectors followed the Fraser River north, to the “upper country,” in search of the source of downstream

³² While broad, the powers of gold commissioners were limited. Disputes involving partners were to be dealt with by the Supreme Court unless the joint stock of the partnership totalled less than two hundred pounds. In cases in which the gold commissioner heard a dispute between partners, and the value of the combined stock was less than two hundred pounds, the gold commissioner could not dissolve the partnership, sell the assets, evaluate the value of assets, or divide the partnership’s stock. In addition, any convicted person who was imprisoned for more than thirty days or who was required to pay a fine greater than twenty pounds, in addition to costs, as well as a party involved in a civil dispute over a value greater than twenty pounds could appeal to the Supreme Court. See *Gold Fields Act, 1859*, British Columbia, *List of Proclamations...*

³³ “Rules and Regulations for the Working of Gold Mines. Issued in Conformity with the Gold Fields Act, 1859,” 7 September 1859, British Columbia, List of Proclamations ... Later Rules and Regulations set a limit on the number of claims that could be registered in one miners’ name, showing further influence of miners’ customary mining laws that had been used to prevent monopoly. See “Rules and Regulations for the Working of Gold Mines. Issued in Conformity with the *Gold Fields Act, 1859*,” 6 January 1860, British Columbia, *List of Proclamations...*

gold deposits. During this time, despite the existence of a comprehensive formal mining law, the government and its officers were still unable to apply the formal law in a uniform fashion, especially on the prospecting frontier. In these regions, where there was little government oversight, miners fell back on custom. But mining methods were changing to adapt to the new mining geography, bringing practice and the formal law further out of step. As a result, prior to the Cariboo gold rush, there were calls from within the mining community to revise the formal law. The project was addressed in 1863 by the Cariboo East Mining Board and found a receptive audience in the Legislative Council and governor.

By 1859, there were reports of gold discoveries in the upper country on the Quesnel River near Fort Alexandria.³⁴ A man named Underhill wrote that approximately twenty-five hundred men had been working during the spring in the area around Fort Alexandria. In his view, the prospects for the area were very good. Only wet diggings – or placer deposits – had been found, which supported the theory that the source of downstream deposits was yet undiscovered.³⁵

That fall, Thomas Elwyn, the closest gold commissioner, although stationed over 100 miles (160 kilometres) to the south in Cayoosh (Lillooet) District, took it upon himself to make the trip to the upper country. He left Cayoosh with Captain Franklyn on 31 August and arrived at Fort Alexandria on 7 September. After speaking with miners along the Quesnel River, he was left with the impression that it was very rich in gold. And while many miners were doing well, Elwyn thought that, because of a lack of provisions, many would travel south to work on the lower Fraser during the winter.³⁶

Having returned to Cayoosh District, Elwyn reported local miners' dissatisfaction with the formal mining laws to the acting colonial secretary. As he explained, miners in his district felt that claim sizes allowed by the law were much too small. Miners complained that claims measuring twenty-five feet square in the district were not remunerative because of the shallow depth of the diggings (i.e., there was not a

³⁴ "The Discoveries above Fort Alexander," *Victoria Gazette*, 16 July 1859; "The Fort Alexander Diggings," *Weekly Victoria Gazette*, 27 August 1859.

³⁵ "The Quesnel River Diggings," *Victoria Gazette*, 6 September 1859.

³⁶ Elwyn to Colonial Secretary, 20 September 1859, British Columbia Archives (BCA), GR 1372, F524. It was later reported that over a quarter million pounds of provisions had been packed to the upper country. See "Letter from Yale," *Victoria Gazette*, 15 October 1859. It was also reported that miners wintered on the Quesnel River and on creeks adjacent to Cariboo Lake. See "Arrival of the Otter: Encouraging Mining News," *British Colonist*, 26 October 1860; Ormsby, *British Columbia*, 182. The "Cayoosh Flat" marks the point where the Douglas Road intersects with the Fraser River. The town of Lillooet was incorporated here in 1860.

sufficient amount of workable soil within a twenty-five-foot-square claim because the bedrock was close to the surface of the ground). They complained that small claim sizes meant it wasn't worth building either a cabin to live in or sluice boxes to wash tailings.³⁷ Elwyn was concerned that this situation would lead miners to disregard the law:

I fear that the size of claims will tend to render the law in-operative; many even prefer to work fifty feet on the chance of not being disturbed, to taking out a certificate and being reduced to twenty-five. Every person, without exception, to whom I have shown the "Rules and Regulations for the working of Gold Mines" has grumbled at the size of claims on Bar and Dry diggings.³⁸

Elwyn's concerns were shared by the government, which was eager to bring existing practices within the framework of the formal law. Within months, Douglas issued new mining regulations that made accommodation for a specific landscape feature: "high level benches." The rules defined a new type of claim called "bench diggings." In addition, gold commissioners were given discretion to register different types of claims based on the geography of the region: either a one hundred-foot-square claim or a twenty-five-foot-wide claim bounded by two parallel lines reaching to the cliff at the edge of a level bench. They were given discretion to define the limits of benches and, on narrow benches, even the limits of claims. Furthermore, the gold commissioner was permitted to allow a free miner to register two claims "where the pay dirt is thin or claims [were] in small demand."³⁹

The following mining season, 1860, there was news of violence near Fort Alexandria. Remarkably, one year after miners had been working in the upper country, no gold commissioner or government officer had been stationed to the area. In Cayoosh, Elwyn heard reports that a man named Learry had been shot and mortally wounded by a man named Simmons. In response, Elwyn sent a constable north with a warrant to arrest Learry. He then wrote to the colonial secretary, explaining that he had received reports that, in the upper country, Americans were in the majority and were making laws in their own interests.⁴⁰

³⁷ Elwyn to Young, 1 November 1859, BCA, GR 1372, F524.

³⁸ Ibid.

³⁹ "Rules and Regulations for the Working of Gold Mines. Issued in Conformity with the *Gold Fields Act, 1859*," 6 January 1860, British Columbia, *List of Proclamations ...*

⁴⁰ Elwyn to Colonial Secretary, 2 July 1860, BCA, GR 1372, F524. Shortly thereafter, it was reported that the residents of Alexandria caught the accused, but, not knowing what to do with him, they eventually let him go. Elwyn to Colonial Secretary, 28 July 1860, BCA, GR 1372, F524.

Later that summer, Douglas appointed Philip Henry Nind as assistant gold commissioner for the upper country. Tasked with establishing a police station at Alexandria, “for the maintenance of peace and order,”⁴¹ Nind travelled north with Constable William Pinchbeck during the fall of 1860, but, instead of Alexandria, he chose to station himself roughly forty-eight kilometres to the south, at Williams Lake, because it lay at the intersection of pack trails from the Fraser and Thompson canyons.⁴²

Once established at Williams Lake, Nind and Pinchbeck toured the upper country, travelling north along the Alexandria Trail to Mud Lake and then turning northeast. In Quesnel Forks, at the junction of two branches of the Quesnel River, they found a small settlement – seventeen inhabited houses and three or four tents.⁴³ At Keithley Creek, Nind was impressed with the miners’ works: they had made “waterwheels, pumps, flumes, and other machinery ... lying in the natural bed of the stream.” Wing dams directed and confined the creek, tunnels ran perpendicular into hillsides, and streams had been diverted to wash hillsides of gravel.⁴⁴

Back in Williams Lake, Nind made his report to the colonial secretary. Based on his recent travels, he found that miners commonly did not understand that they had to take out a free miner’s certificate and register their claim in order to be protected under the law. Furthermore, he noted that many claims in the Quesnel and Cariboo area were larger than allowed for by the law. However, rather than try to enforce the formal law and reduce claim sizes, Nind recommended that the government allow for larger claims.⁴⁵

That winter, there was a gold rush to Antler Creek – to the north of Keithley Creek. Because there were many disputes over land, Nind travelled to Antler Creek in the spring of 1861. He stayed for six days to settle disputes and, according to his report, met with no resistance to his authority. He reasoned that miners were obedient because they didn’t want to be involved in a conflict with the law and potentially lose their chance at earning a fortune.⁴⁶

During his trip to Antler, Nind took notice of an important new mining practice: tunnel mining, “which promise[d] a more lasting employment of labour than ha[d] hitherto existed.” He immediately

⁴¹ Douglas to Newcastle, 16 August 1860, National Archives of the UK, 9596, CO 60/8, <http://bcgenesis.uvic.ca/getDoc.htm?id=B60076.scx>.

⁴² Nind to Colonial Secretary, 17 October 1860, BCA, GR 216, vol. 9.

⁴³ Nind to Colonial Secretary, 9 November 1860, BCA, GR 216, vol. 9.

⁴⁴ *Ibid.*

⁴⁵ This is not unlike the solution that Douglas had arrived at during the summer of 1858. Nind to Colonial Secretary, 5 February 1861, BCA, GR 216, vol. 9.

⁴⁶ Nind to Colonial Secretary, 27 March 1861, BCA, GR 1372, F1255.

recognized that the formal mining law would have to be revised and suggested a mining board be formed to adapt the law, a task best left to miners since they were intimately acquainted with mining in the upper country. After all, when discussing a matter that affects its common interest, the mining community is “just and impartial in matters of fact and clear headed in abstract questions.”⁴⁷

While the Antler discovery generated a lot of excitement, there were other discoveries being made in the Cariboo. There were rumours and speculation that a particularly large discovery had been made on Williams Creek, a tributary of the Willow River, which flows into the Fraser. By the autumn of 1861, the entire creek was staked with mining claims: the rumours had been confirmed.⁴⁸

Because of a lack of provisions in the north, many Cariboo miners spent the winter on the coast, primarily in Victoria. It was here that a miners’ meeting was held – not to create customary law but to air Cariboo miners’ grievances about the formal law. Meeting organizers called attention to the absence of formal laws on the subject of drift mining and tunnels in the *Gold Fields Act, 1859*. They were also concerned about the security of their claims and the administration of justice, or lack thereof, in the upper country.⁴⁹ Miners expressed frustration that Victoria functioned as the centre of government for the Cariboo because of the great distance between the two places and because officials in Victoria lacked sufficient knowledge of mining to create mining law. Resolute in their criticism of the government, the assembled miners invoked the Mining Board clauses in the *Gold Fields Act, 1859*, and stated their intention to work with the gold commissioner to create mining laws for the Cariboo.⁵⁰

⁴⁷ Ibid.

⁴⁸ Great discoveries had reportedly been made on Antler, Cunningham, and Williams creeks. See “Letter from Cariboo,” *British Colonist*, 24 June 1861. Further reports that gold discoveries had been made on Williams Creek can be found in “Letter from Antler Creek,” *British Colonist*, 19 August 1861. It was later confirmed that the entirety of Williams Creek had been staked with claims. See “Letter from Cariboo,” *British Colonist*, 25 September 1861. Gold discoveries in Cariboo were later published in Californian newspapers. See “From Cariboo,” *Daily Alta California*, 8 October 1861; “Late from the North,” *Sacramento Daily Union*, 4 November 1861.

⁴⁹ The Cariboo miners’ urgent request to create formal mining law to secure their interests on the eve of a gold rush is not unlike Douglas’s similar impulse during December of 1857. See “The Mining Laws,” *Daily Press*, 10 February 1862; “The Mining Laws of British Columbia,” *Daily Press*, 14 February 1862.

⁵⁰ “The Cariboo Miners’ Meeting,” *British Colonist*, 14 February 1862; “Miners’ Meeting,” *Daily Press*, 14 February 1862; “The Cariboo Meeting – From Major Downie,” *Daily Press*, 14 February 1862; “Coyoting in Cariboo,” *British Columbian*, 20 February 1862. “Coyoting” was a despised practice whereby a miner used a tunnel to mine underneath a neighbour’s claim. Note that, while miners complained that Victoria functioned as the centre of government for the Cariboo, the capital of the Colony of British Columbia was New Westminster.

As many had anticipated, news of gold discoveries on Williams Creek sparked a large-scale gold rush to the Cariboo in the spring of 1862. It is estimated that upwards of four thousand people made the trip north to the Cariboo diggings that spring.⁵¹ In reaction, the colonial government sent two gold commissioners to the region: Thomas Elwyn for Cariboo East and Peter O'Reilly for Cariboo West.⁵² Elwyn, upon arrival, reported there were between five hundred and six hundred men on Williams Creek, divided between six companies. He pointed out that almost every single claim on Lightning Creek, the busiest creek, was disputed. And when asked by the colonial secretary to enforce limits on claim sizes, like Nind before him, Elwyn explained that he simply lacked the ability to enforce the law.⁵³

Acting to address the gap between mining practices and the law, the colonial government enacted a number of new gold mining regulations. Significantly, these measures increased the size of certain types of claims – bar diggings and dry diggings – by a factor of three. The allowable size of quartz claims was also enlarged. Rules for tunnels were introduced, responding directly to the Cariboo miners' demands. The size of tunnel claims was established and other rules about tunnel claims were set down in law.⁵⁴ O'Reilly reported the following season that the miners “almost universally approved” of the new regulations, especially those about tunnel claims.⁵⁵

Notwithstanding these revisions, the miners of Cariboo wanted a mechanism to facilitate further changes to the formal mining law

⁵¹ Robin Skelton, *They Call It the Cariboo* (Victoria: Sono Nis Press, 1980), 58. Ormsby, *British Columbia*, 186.

⁵² Initially, Elwyn was stationed at Williams Creek. O'Reilly was stationed at Quesnel. Nind took a medical leave from his duties in December of 1861.

⁵³ Elwyn to Colonial Secretary, 15 June 1862, in Douglas to Newcastle, 16 July 1862, National Archives of the UK, 8653, CO 60/13, http://bcgenesis.uvic.ca/getDoc.htm?id=B62030SQ_scx; Elwyn to Colonial Secretary, 3 August 1862, BCA, GR 1372, F525. See also Marie Elliott, *Gold and Grand Dreams* (Victoria: Horsdal and Schubert, 2000), 8.

⁵⁴ In terms of tunnel laws, during the prospecting phase, specific boundaries framing the tunnel were to be respected; after gold in “paying quantities” had been discovered, one hundred square feet was to be marked off ahead of the discovery. The regulations also touched on special circumstances: for example, if two tunnels came into contact or if there were a dispute between two neighbouring parties. In addition to these tunnel laws, the rights of miners in their claims were clarified; a miner's right to extract the gold on the claim was reaffirmed but the regulations made clear that any other surface rights – for example, exclusive ditch and water privileges – had to be applied for and granted. Finally, the regulations increased the cost of recording a claim. See “Rules & Regulations, Issued in Conformity with the *Gold Fields Act, 1859*,” 24 February 1863, British Columbia, *List of Proclamations* ...

⁵⁵ O'Reilly to Young, 11 July 1863, BCA, GR 1372, F1282.

as required. Hence, they submitted a petition to O'Reilly during the summer of 1863 seeking the creation of a mining board. The petitioners wanted to change the way "claims may be registered, worked, held, and forfeited." They wanted to change the law on subjects such as claim sizes, the working of claims, and hydraulic mining. In addition, they wanted to revise laws about bedrock flumes, tailings, water, and debris.⁵⁶ The Richfield Grand Jury supported the demand for a mining board, calling for changes to the law governing creek claims. It also proposed remodelling the Gold Escort, changing the system of recording claims, and allowing for the holding of two claims by purchase.⁵⁷ Noting that the miners were generally satisfied with the formal mining laws, O'Reilly expressed the opinion that they could be improved in order to accelerate the development of the district.⁵⁸

The proposal to elect a Cariboo East mining board was approved by Douglas. Forty-two people ran as candidates and the election took place on 8 September 1863. Seven hundred and twenty-three people voted. O'Reilly reported that "great interest was taken in the result by all the miners, but everything passed off with the utmost good feeling." Ten individuals were elected.⁵⁹

With the election of the Cariboo East Mining Board, there were demands to change the formal mining law in new and different ways. There were calls to support mining companies and remove restrictions for capital investment. On this subject, a correspondent from Richfield wrote to the *Colonist*: "We want practical legislation, not theoretical ... A defective state of the law, with regard to the mining interests of this colony, has this season impeded its progress. Fortunately this is remedied, and with the election of a good mining board we may expect to see the capitalist invited to take advantage of the many opportunities for further enriching himself, which this country, above all others, offers."⁶⁰

The editor of the *Colonist* suggested that miners were in favour of removing restrictions on possessing multiple claims – a measure that had traditionally been put in place to prevent movement towards monopoly:

⁵⁶ Ibid.

⁵⁷ "Cariboo," *British Colonist*, 20 July 1863. The Gold Escort was a service by which gold could be transported to the coast in a secure manner, under armed guard.

⁵⁸ O'Reilly to Young, 25 August 1863, BCA, GR 1372, F1282.

⁵⁹ Those elected to the Mining Board were: "Sweeney, Kurtz, Duff, Cunningham, Black, Morehead, Heseltine, Black, Orr, and Grier." See O'Reilly to Young, 10 September 1863, BCA, GR 1372, F1282. Cunningham was a prominent miner after whom Cunningham Creek, south and east of Williams Creek, had been named. In addition to serving on the Mining Board, Mr. Black and Mr. Orr served on the first Legislative Council for the Colony of British Columbia.

⁶⁰ "Later from Cariboo: Williams Creek," *British Colonist*, 17 September 1863.

“there is a strong feeling amongst many of the miners on Williams Creek in favor of allowing a free miner to hold any number of claims he may please by purchase, provided he works all claims which he holds; and we know that this feeling is participated in by many if not all members of the board.” It was then argued that the particular geography of the mines necessitated removing restrictions on holding multiple claims:

With respect to holding more than two claims it is a regulation which has an opposite effect upon placer or shallow diggings, and deep shafts and drifts such as are the present mines on Williams Creek, it is very desirable that the rights of poor miners should be protected, and in as much as the restriction operated against monopoly in claims, we believe that it works well in all poor man’s diggings ... But where mining operations cannot be successfully carried on except at great expense; it is certainly most desirable that capitalists should not be restricted in their space.⁶¹

From the perspective of some in the mining community, the formal mining law was not equipped to deal with conditions in the Cariboo. It had been conceived for the individual placer miner who pre-empted a claim and used simple, inexpensive technology and methods. The formal law had not been designed with large companies in mind – nor had it allowed for individuals or companies to leverage their assets – and some aspects of the law were seen as obstructing larger interests. The problem was that, in the Cariboo, gold deposits were often found deep under surface gravel in ancient stream beds or in hillsides. Extracting gold from these places required more complex and expensive mining techniques, vertical shafts, drift mining, hydraulic mining, and bedrock flumes. High water tables in mountain valleys further complicated matters, causing tunnels to flood or cave in. The solution was to construct large drains under the ground, referred to as bedrock drains, to lower the water table, but these drains were expensive and the existing law provided no framework for them.

Meeting on a regular basis between September and November 1863, the Cariboo East Mining Board set about drafting proposals to change the formal law. Its business varied from meeting to meeting, but, generally, it passed resolutions and produced draft bills on community concerns, the role and powers of the gold commissioner, the autonomy of the Mining

⁶¹ “The Mining Board,” *Daily British Colonist*, 29 September 1863.

Board, practical aspects of mining, laws governing mining companies and claim possession, and, finally, bedrock flumes.⁶²

Overall, the activity of the Mining Board met with approval. Governor Douglas informed Colonial Secretary Newcastle that the board had “entered upon its duties with great spirit, and alacrity, holding daily sessions for the Despatch of business, and [that he] anticipate[d] much advantage from the labours of this useful body.”⁶³ The press also approved. The *Colonist* opined that the creation of a bedrock flume, an initiative the board had been working to support, was necessary to ensure the future prosperity of the mining district. The *Colonist*’s editor urged the Legislative Council to consider the recommendations of the Mining Board – even above other business.⁶⁴

The Legislative Council for the colony began sitting in New Westminster in early 1864. As council member for the Cariboo, Peter O’Reilly introduced a bill based on the Mining Board’s recommendations. It was read by the council, two members of which also happened to be members of the Mining Board, and received the governor’s assent on 26 February. The *Gold Fields Act, 1864*, turned many of the Mining Board’s recommendations into formal law, showing a continued adaptation to miners’ practices. Specific aspects of this act were part of a shift in the law – from a formal mining law based on the individual (showing the influence of customary practices) to a formal mining law that encouraged larger companies and more complex methods (a concern with assets, leverage, and liability) – and were a reflection of changes in mining practices already under way.⁶⁵

⁶² According to the available records, the 1863 Cariboo East Mining Board met on eight occasions during the fall of 1863. It produced a number of individual resolutions and some draft acts. For the available records, see “Mining Board Resolutions 1863,” British Columbia Attorney General, BCA GR 673, box 2, file 2. The influence of these resolutions and draft acts on the *Gold Fields Act, 1864*, is remarkable. See *Gold Fields Act, 1864*, 26 February 1864, British Columbia, *Ordinances passed by the Legislative Council of British Columbia, during the session from February to December, 1864* (New Westminster: Government Printing Office, 1864).

⁶³ Douglas to Newcastle, 13 November 1863, National Archives of the UK, 12536, CO 60/16, <http://bcgenesis.uvic.ca/getDoc.htm?id=B63070SP.scx>. As early as 5 January 1864, the attorney general was sending draft leases for the Antler Creek Bed Rock Flume Company and the Williams Creek Bed Rock Drain Company – initiatives supported by the Mining Board – to the colonial secretary. Cover letters can be found in the attorney general’s correspondence, but the draft acts are not enclosed. See Attorney General to Colonial Secretary, 5 January 1864, BCA, GR 1372, F63.

⁶⁴ “Editorial,” *British Colonist*, 8 January 1864.

⁶⁵ *Gold Fields Act, 1864*, 26 February 1864, British Columbia, *Ordinances passed by the Legislative Council ...* Two other acts passed in the same time period were similar in nature to the *Gold Fields Act, 1864* and were also a part of this shift: *The Mining Drains Act, 1864*, 1 February 1864, and the *Mining Joint Stock Companies Ordinance, 1864*, 4 May 1864, British Columbia, *Ordinances passed by the Legislative Council ...*

During its meetings in the fall of 1863, the Mining Board had recommended *An Act in Relation to Mining Copartnerships* that clarified any given company's legal rights and responsibilities and stipulated that all copartnerships without a legal agreement already in place would fall under this act.⁶⁶ All the major sections of this proposed bill were incorporated into the *Gold Fields Act, 1864*, with some additions. In terms of management, the final act made clear that decision making would rest with the majority of the partners as long as the claims were managed according to the law. Furthermore, the foreman, or local manager, was given power to sign contracts with and sue other parties. Finally, the act required that all partnerships be registered with the gold commissioner. Reflecting on these topics, Attorney General Henry Pering Pellew Crease noted: "Clauses 29 to 35 provide for the regulation of mining copartnerships, where no deed of partnership exists; allowing mining partners to contract, sue and be sued, in a simple manner, with a sufficient approach to corporate powers, it is conceived, for all purposes at present required."⁶⁷

The Mining Board had also recommended a change to the law that would allow any free miner to hold one claim by pre-emption and multiple claims by "preemption, purchase, or transfer."⁶⁸ This much-anticipated recommendation, which had been urged as necessary to encourage development of the deep Cariboo diggings,⁶⁹ was accepted by the Legislative Council and incorporated into the act. As a result, a free miner was permitted to hold two claims by pre-emption – one quartz claim and one other claim – as well as "any number or amount of claims or interests therein" by purchase. Furthermore, any adult miner was granted the right to "mortgage, transmit, or dispose of any number of claims." Commenting on this change, Crease wrote: "it will allow mining claims to be sold mortgaged and dealt with as a limited and conditional ... interest."⁷⁰

In addition, the Mining Board had submitted *An Act in Regard to Hill and Bank Claims*, which created mining regulations to allow for

⁶⁶ By default, copartnerships would last for one year and their business was limited to mining. The majority of partners could make decisions about mining operations, the raising of funds, and the selection of a foreman to represent the company. See *An Act in Relation to Mining Copartnerships*, "Mining Board Resolutions 1863," 21 September 1863, BCA, GR 673, box 2, file 2. See also O'Reilly to Young, 7 December 1863, BCA, GR 1372, F1282. The Mining Board later recommended that the governor pass a general *Act of Incorporation*. See "Mining Board Resolutions 1863," 22 and 28 September 1863, BCA, GR 673, box 2, file 2.

⁶⁷ Attorney General to Colonial Secretary, 16 February 1864, BCA, GR 1372, F63.

⁶⁸ "Mining Board Resolutions 1863," 22 and 28 September 1863, BCA, GR 673, box 2, file 2.

⁶⁹ "The Mining Board," *Daily British Colonist*, 29 September 1863.

⁷⁰ Attorney General to Colonial Secretary, 16 February 1864, BCA, GR 1372, F63.

hydraulic mining. It defined the dimensions of such claims and granted owners the right to pass tailings and debris over neighbouring claims. Owners were also granted access to any natural water stream, even if it was inside another's claim, but were liable for damages caused to drains and culverts.⁷¹ But this proposed act on hill and bank claims received a mixed reaction. The method of establishing the baseline for claims was accepted, although with a caveat stipulating that the gold commissioner could refuse to record a claim if it came within two hundred feet of any "gulch or tributary."⁷² The proposal that there would be no limit to the depth of the claim was not adopted. Nor were the clauses allowing claim owners to pass debris and tailings through adjacent claims and allowing access to natural water courses (this was because they had already been permitted by a previous set of regulations).⁷³

Finally, the Mining Board submitted the general *Act to Authorize and Encourage the Construction of Bed Rock Flumes*, which laid out the powers, rights, and limitations of bedrock flume companies. The bill paid particular attention to how bedrock flume companies interacted with neighbouring mining claims, defining where the rights of the flume company started and ended.⁷⁴ Remarkably, this entire bill was incorporated into the *Gold Fields Act, 1864*, as clauses ten through twenty-five. The result, as noted by Crease, was that "[the act] regulated bed rock flumes for the systematic ... and extended drainage of mining ground."⁷⁵

⁷¹ The proposed act defined the baseline and side lines of hill and bank claims, allowing favourable claim dimensions for hydraulic mining. Claim owners were then granted the right to pass debris and tailings over any claim situated in the bed of the stream or gulch as well as the right to use "any natural channel, stream, ravine or other water course" for drainage. See *An act in regard to hill and bank claims* in "Mining Board Resolutions 1863," 30 September 1863, BCA, GR 673, box 2, file 2.

⁷² Clause 6 and Clause 7 in *Gold Fields Act, 1864*, 26 February 1864, British Columbia, *Ordinances passed by the Legislative Council of British Columbia...*

⁷³ Clause 19 in "Rules and Regulations for the Working of Gold Mines. Issued in Conformity with the Gold Fields Act, 1859," 7 September 1859, British Columbia, *List of Proclamations ...*

⁷⁴ *An Act to Authorize and Encourage the Construction of Bed Rock Flumes*, in "Mining Board Resolutions 1863," 29 September 1863 and 30 September 1863, BCA, GR 673, box 2, file 2. Bedrock flumes were generally constructed in the bed of an already existing creek. By confining the creek to the flume, the creek's rate of flow could be increased and the surrounding area's water table was lowered. This was practical because the flume could be used to wash tailings and, by lowering the water table, the surrounding area was easier to mine with shaft and drift mining. These flumes could also be used for hydraulic mining. See also Atholl Sutherland Brown and Chris H. Ash, "Great Mining Camps of Canada 3: The History and Geology of the Cariboo Goldfield, Barkerville and Wells, BC," *Geoscience Canada* 36, 1 (2009), available at <https://journals.lib.unb.ca/index.php/GC/article/view/12434/13334>.

⁷⁵ Attorney General to Colonial Secretary, 16 February 1864, BCA, GR 1372, F63.

The *Gold Fields Act, 1864*, marked a shift in the development of formal gold mining law in British Columbia. Recognizing its significance, Douglas stated in a dispatch to Newcastle:

The field has heretofore been almost exclusively occupied by a class depending solely on their industry, and without means or credit of any kind, and their achievements amidst extraordinary difficulties, and numberless hardships and privations have been such as have deservedly won the gratitude of the Colony; yet it is easy to conceive that the work of development would have been greatly accelerated by the employment of Capital.⁷⁶

As a result of this act, by the spring of 1864, it was possible for an individual who had never set foot in the upper country to purchase shares in joint-stock companies like the Antler Creek Bed Rock Flume Company Limited and the Artesian Gold Mining Company Limited.⁷⁷ Things had changed: whereas, previously, the formal gold mining law had been built around the individual free miner, the new law established legal structures encouraging the creation of companies and facilitating their access to capital. These measures were taken to encourage complex and expensive mining operations. Overall, the goal was to stimulate the development of the economy by encouraging population growth, expanding settlement, and enticing foreign capital to invest in the colony.⁷⁸

CONCLUDING REMARKS

BC historiography has framed a problem about the mining and settlement community's acceptance of British authority. This was, perhaps, best articulated by Hamar Foster: "one of the paradoxes of the era is that the 'Old Californians' who dominated the gold fields both technologically and economically nonetheless submitted [to the British] both legally and politically."⁷⁹ As an explanation, the literature suggests that the *Gold Fields Act, 1859*, which created the office of gold commissioner and allowed for Mining Boards, replaced miners' meetings and customary mining laws. It also identifies Mining Boards as having played a role

⁷⁶ Douglas to Newcastle, 13 November 1863, National Archives of the UK, 12536, CO 60/16, <http://bcgenesis.uvic.ca/getDoc.htm?id=B63070SP.scx>.

⁷⁷ "Antler Bed Rock Flume Co. Limited," *Daily British Colonist*, 12 March 1864; "Artesian Gold Mining Co. Ltd.," *Daily British Colonist*, 26 March 1864.

⁷⁸ Opening Address of Governor Douglas to the Legislative Council, 21 January 1864, British Columbia, *Journals Colonial Legislatures VI and BC 1851 to 1871*, vol. 4, *Councils, 1864 to 1871*, ed. James E. Hendrickson (Victoria: Provincial Archives of British Columbia, 1980), 179-82.

⁷⁹ Foster, "Law Enforcement in Nineteenth-Century British Columbia," 15.

in the reduction of tension between the colonial government and the mining community.

But this interpretation is thrown into question when it is recognized that the British administration had limited reach: it was unable to apply the formal law in a uniform manner across the colony. During the Fraser River gold rush, in 1858, Governor Douglas had difficulty enforcing regulations requiring miners to purchase mining licences, and, because the British administration's claim to the mainland gold deposits was tenuous, the Colonial Office discouraged him from attempting to compel miners to take out licences. After the Fraser River gold rush ended, in Cayoosh (Lillooet) District, Gold Commissioner Elwyn knew that the miners were frustrated with the results produced when the formal mining laws were applied to the local geography. Further north, in the upper country, there was no resident government officer, despite its being well known that many miners were working there. In fact, it was reported to Elwyn in 1860 that American miners were making their own laws in that area. After Commissioner Nind had been stationed in the upper country, he recognized that mining practices were out of step with the law. But he did not recommend the law be applied rigidly; instead, he argued that it be adapted. During the Cariboo gold rush, the same problem arose, practices were still out of step with the law, and, in response to a request that he enforce limits on claim sizes, Elwyn maintained that he could not.

The replacement of miners' meetings with Mining Boards is also thrown into question by the notable differences between miners' law and the law created by the Cariboo East Mining Board in 1863. On the lower Fraser, miners' meetings created law by popular assembly using direct democracy. These popular bodies were concerned with establishing basic standards for placer mining – social stability on the frontier. Miners created laws about claim sizes and standards for dividing bar and dry diggings. They created work requirements needed to maintain claim possession, clarifying when a claim could be overtaken by another miner, as well as limits on the number of claims a miner could hold, a measure meant to discourage monopoly.

On the other hand, the 1863 Cariboo East Mining Board was a representative institution, charged with a mandate by the community: it performed a different function from that of the lower Fraser miners' meetings. It was concerned with refining already existing formal law. Instead of working with miners on the frontier to establish basic mining laws for individuals, the 1863 Mining Board worked with the Legislative

Council of the colony to change the formal law in order to make it easier to form mining companies and easier for those companies to gain access to financing. It removed legal impediments to larger interests (i.e., restrictions on the number of claims one could hold) and created laws that would allow for specific types of joint-stock companies, such as the Antler Creek Bed Rock Flume Company and the Artesian Mining Company. Changes such as this in some cases may have reduced opportunities for individual miners and small companies who didn't have access to significant financing. In fact, when the two are compared, the law produced by miners' meetings and the law created by the 1863 Mining Board reflect different ideological orientations. Thus, the changes introduced by the *Gold Fields Act, 1864*, allowing for the establishment of larger mining interests in the Cariboo, could very well have opened the possibility for new types of conflicts along class lines.⁸⁰

Rather than one particular act, office, or institution replacing miners' meetings and customary law, there was a gradual and consistent adaptation of the formal law to mining practices. Legal standards established by miners on the lower Fraser, such as claim sizes, work requirements, and limitations on the holding of multiple claims, found their way into formal mining law. Concerns raised by miners working in Cayoosh District about small claim sizes met with a prompt response by the colonial government in the form of changes to the formal law directly addressing their concerns. Finally, prior to the Cariboo gold rush, miners from the upper country, wintering in Victoria, raised concerns at a miners' meeting about the lack of formal tunnel laws in the *Gold Fields Act, 1859*. These concerns led to changes defining standards for tunnel claims and guidance on how disputes between competing tunnel claims should be resolved.

Overall, a review of the development of the formal mining law between 1857 and 1864 reveals the light-handed policy the colonial government and its officers adopted towards the mining population. When the government's officers observed that miners were not obeying the law, they did not attempt to compel them to observe it; instead, efforts were made to adapt the law, whenever possible, to miners' practices – pre-emptively defusing a situation that could have, potentially, led to confrontation. This analysis of the formal mining law therefore throws into question portrayals of the colony as a rationalizing force that imposed its will

⁸⁰ For the analysis of a legal conflict in the Cariboo along class lines that took place after the *Gold Fields Act, 1864*, was issued see Tina Loo "A Delicate Game": The Meaning of Law on Grouse Creek," *BC Studies* 96 (1992): 41-65.

on subject populations. Rather than a “top-down” process, the formal mining law was produced, in part, through gradual adaptation to miners’ practices “on the ground.” It shows how the colonial government had limited administrative reach over the mining population and, consequently, was willing to partner with and be influenced by elements within that population in order to achieve its ends.