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The Struggle for Order:  
Self-Government, Good-Humor  
and Violence in the Mines

The State, then, was triumphantly created out of the very midst of the troubles of the interregnum, and in the excitements of the first golden days. But the busy scenes of early California life give us, as we follow their events, little time for quiet enjoyment of the results of even the best social undertakings. The proclamation of the sovereign state itself is only as the sound of a trumpet, signaling the beginning of the real social battle. Anarchy is a thing of degrees, and its lesser degrees often coexist even with the constitutions that are well-conceived and popular. The California pioneers had now to deal with forces, both within themselves and in the world beyond, that produced an exciting and not bloodless struggle for order, some of whose events, as they took place in the mines, in the interior cities, in the course of the state politics, and in San Francisco, we must try to describe, selecting what will best illustrate the problems of the time from the great mass of occurrences, and returning, where it is necessary, to the relation of some events that were antecedent to those last described. Of the romantic and heroic we shall have something to tell, as we go on; but much of our story will concern matters that only the sternest and least romantic realism can properly represent.

[Reprinted from Cal, pp. 271-376.]
I The Philosophy of California History During the Golden Days

Two very familiar errors exist concerning the California of the years between 1848 and 1856, both misconceptions of the era of the struggle for order. One of these errors will have it that, on the whole, there was no struggle; while the other affirms that, on the whole, there was no order. In fact there were both, and their union is incomprehensible, save as an historical progress from lower to higher social conditions. Both the mentioned errors find support, not in authoritative pioneer evidence, but in some of the more irresponsible reminiscences of forgetful pioneers, reminiscences that express little save a desire to boast, either of the marvelous probity, or of the phenomenal wickedness, of their fellows in the early days. Many pioneers¹ seem to assume that, save their own anecdotes, no sound records of the early days are extant. Yet the fact is that, valuable as the honest man’s memory must be, to retain and convey the coloring of the minds and moods of individuals and parties, this individual memory cannot be trusted, in general, either for the details of any complex transaction, or for an account of the whole state of any large and mixed community. And one finds this especially true when one reads some of these personal reminiscences of the more forgetful California pioneers. In one mood, or with one sort of experience, the pioneer can remember little but the ardor, the high aims, the generosity, the honor, and the good order of the California community. A few gamblers, a few foreign convicts, a few “greasers” there were, who threw shadows into the glorious picture. But they could not obscure it. On the other hand, however, another equally boastful memory revels in scenes of sanguinary freedom, of lawless popular frenzy, of fraud, of drunkenness, of gaming, and of murder. According to this memory nothing shall have remained pure: most ministers who happened to be present gambled, society was ruled by courtesans, nobody looked twice at a freshly murdered man, everybody gayly joined in lynching any supposed thief, and all alike rejoiced in raptures of vicious liberty. These are the two extreme views. You can find numbers of similarly incomplete intermediate views. The kaleidoscopic effect of a series of them can be judged by reading the conflicting state-

¹ E.g., the writer who calls himself William Grey, in his Pioneer Times, San Francisco, 1881.
ments that, with a rather unnecessary liberality, Mr. Shinn has added to his own much more sober, rational, and well-founded views, in some of the less authoritative citations in chapters xi. and xii. of his "Mining Camps."

But these impressions are, as individual impressions, once for all doomed to be unhistorical. The experience of one man could never reveal the social process, of which his life formed but one least element. This process, however, was after all a very simple though widely extended moral process, the struggle of society to impress the true dignity and majesty of its claims on wayward and blind individuals, and the struggle of the individual man, meanwhile, to escape, like a fool, from his moral obligations to society. This struggle is an old one, and old societies do not avoid it; for every man without exception is born to the illusion that the moral world is his oyster. But in older societies each man is conquered for himself, and is forced in his own time to give up his fool's longings for liberty, and to do a man's work as he may, while in a new society, especially in one made up largely of men who have left homes and families, who have fled from before the word of the Lord, and have sought safety from their old vexatious duties in a golden paradise, this struggle being begun afresh by all comes to the surface of things. California was full of Jonahs, whose modest and possibly unprophetic duties had lain in their various quiet paths at home. They had found out how to escape all these duties, at least for the moment, by fleeing over seas and deserts. Strange to say, the ships laden with these fugitives sank not, but bore them safely to the new land. And in the deserts the wanderers by land found an almost miraculous safety. The snares of the god were, however, none the less well laid for that, and these hasty feet were soon to trip. Whoever sought a fool's liberty here (as which of us has not at some time sought it somewhere?) was soon to find all of man's due bondage prepared for him, and doubtless much more. For nowhere and at no time are social duties in the end more painful or exacting than in the tumultuous days of new countries; just as it is harder to work for months on a Vigilance Committee than once in a lifetime to sit on a legal jury in a quiet town.

What we have here to do is to understand what forces worked for and against order in this community of irresponsible strangers, and how in time, for their lonely freedom, was substituted the long and wearisome toil that has caused nearly all the men of that pioneer community to die before their due season, or to live even today, when they do live at all, the life of poverty and disappointment. Let us name at the outset these forces of order and of disorder.

The great cause of the growth of order in California is usually said to be the undoubtedly marvelous political talent of our race and nation. And yet, important as that cause was, we must not exaggerate it. The very ease with which the State on paper could be made lulled to sleep the political conscience of the ordinary man, and from the outset gave too much self-confidence to the community. The truly significant social order, which requires not only natural political instinct, but also voluntary and loyal devotion to society, was often rather retarded than hastened in its coming by the political facility of the people. What helped still more than instinct was the courage, the moral elasticity, the teachableness, of the people. Their greatest calamities they learned to laugh at, their greatest blunders they soon recovered from; and even while they boasted of their prowess, and denied their sins, they would quietly go on to correct their past grievous errors, good-humored and self-confident as ever. A people such as this are in the long run favored of heaven, although outwardly they show little proper humility or contrition. For in time they learn the hardest lessons, by dint of obstinate cheerfulness in enduring their bitter experiences, and of wisdom in tacitly avoiding their past blunders.

Against order, however, worked especially two tendencies in early California: one this aforementioned general sense of irresponsibility, and the other a diseased local exaggeration of our common national feeling towards foreigners, an exaggeration for which the circumstances of the moment were partly responsible. The first tendency pioneers admit, though not in all its true magnitude; the second they seldom recognize at all, charging to the foreigners themselves whatever trouble was due to our brutal ill-treatment of them.

As for the first tendency, it is the great key to the problem of the worst troubles of early California. The new-comers, viewed
as a mass, were homeless. They sought wealth, and not a social order. They were, for the most part, as Americans, decently trained in the duties of a citizen; and as to courage and energy they were picked men, capable, when their time should come for showing true manhood, of sacrificing their vain hopes, and enduring everything. But their early quest was at all events an unmoral one; and when they neglected their duties as freemen, as citizens, and as brethren among brethren, their quest became not merely immoral, but positively sinful. And never did the journeying pillar, of cloud by day and of fire by night, teach to the legendary wanderers in the desert more unmistakably by signs and wonders the eternal law, than did the fortunes of these early Californians display to them, through the very accidents of daily life, the majesty of the same law of order and of loyalty to society. In the air, as it were, the invisible divine net of social duties hung, and descending, enmeshed irresistibly all these gay and careless fortune-hunters even while they boasted of their freedom. Every piece of neglected social work they had to do over again, with many times the toil. Every slighted duty avenged itself relentlessly on the community that had despised it.

However, in the early days, there was also that other agency at work for disorder, whose influence is to blame for much, although not for all, nor even for most, of the degradation that the new State passed through. This was a brutal tendency, and yet it was very natural, and, like all natural brutality, it was often, in any individual man, a childishly innocent tendency. It was a hearty American contempt for things and institutions and people that were stubbornly foreign, and that would not conform themselves to American customs and wishes. Representatives of their nation these gold-seeking Californian Americans were; yet it remains true, and is, under the circumstances, a very natural result, that the American had nowhere else, save perhaps as conqueror in Mexico itself, shown so blindly and brutally as he often showed in early California, his innate intolerance for whatever is stubbornly foreign. No American of sense can be proud when he reflects upon these doings of his countrymen, both towards the real foreigners and towards those who were usually confounded with such, namely, the native Californians. Least of all can a native American Californian, like the author, rejoice to remember how the community from which he sprang treated both their fellow-
intruders in the land, and his own fellows, the born citizens of this dear soil, themselves. All this tale is one of disgrace to our people. But it is none the less true, and none the less profitable to know. For this hatred of foreigners, this blind nativism, are we not all alike born to it? And what but reflection, and our chance measure of cultivation, checks it in any of us?

If we leave out the unprovoked violence frequently offered to foreigners, we may then say that the well known crises and tragedies of violent popular justice during the struggle for order were frequently neither directly and in themselves crimes of the community, as conservative people have often considered them, nor yet merely expressions of righteous indignation on the part of an innocent and outraged society; but they were simply the outward symptoms in each case of the past popular crimes of disloyalty to the social order; they were social penalties, borne by the community itself, even more than by the rogues, for the treason of carelessness.

II The Evolution of Disorder

In the mines, to be sure, naked fortune was a more prominent agent than in the cities or on the coast. Plainly the first business of a new placer mining community was not to save itself socially, since only fortune could detain for even a week its roving members, but to get gold in the most peaceful and rapid way possible. Yet this general absolution from arduous social duties could not be considered as continuing indefinitely. The time must come when, if the nature of the place permitted steady work, men must prepare to dwell together in numbers, and for a long period. Then began the genuine social problems. Everybody who came without family, as a fortune-hunter whose social interests were elsewhere, felt a selfish interest here in shirking serious obligations; and among such men everybody hoped, for his own person, soon to escape from the place. And yet, if this social laziness remained general, the effect was simply inevitable. There was then no longer any divine indulgence for the indolent. The social sins avenged themselves, the little community rotted till its rottenness could no longer be endured; and the struggle for order began in earnest, and ended either with the triumph of order, and the securing of permanent peace, or else only when fortune sent all the inhabitants
elsewhere, much sadder men, but sometimes, alas, greater fools than ever, to try the same hopeless social experiment elsewhere.

The social institutions of early days in California have recently been studied in Mr. Shinn's ably conceived book on "Mining Camps." Mr. Shinn has examined only certain aspects of the social life; he has in fact considered the camps mainly in their first and most satisfactory aspect, as immediate expressions of the orderly instincts of American miners. That this view of the mining life is correct, so far as it goes, I doubt not, and I am glad to find it so well and carefully stated as Mr. Shinn has stated it. Any one can verify it at his pleasure by a reference to the early newspapers. But, after all, one who thus studies the matter knows the mining camp, so to speak, only in its first intention, as it was in its early months, in the flush of childish hopes, or under simpler conditions. The impression that Mr. Shinn leaves upon us gives us, therefore, too gentle a view of the discipline to which the gods persistently subject all men. What good sense, clear wit, and a well-meaning and peaceable spirit, could accomplish in establishing a simple but very unstable order, any community of American miners did indeed quickly accomplish, at the very beginning of the life of the mining camp. When they met on any spot to mine, they were accustomed, as Mr. Shinn shows us, in the evidence that he has so enthusiastically collected, to organize very quickly their own rude and yet temporarily effective government. An alcalde or a council, or, in the simplest case, merely the called meeting of miners, decided disputes; and the whole power of the camp was ready to support such decisions. Two or three of the simplest crimes, such as murder and theft, were recognized in the brief code of laws that the miners' meeting often drew up, and these crimes, once proved against any man, met with the swiftest punishment,—petty theft with flogging and banishment, graver crimes with death; although every accused man was given, in all the more orderly camps, the right of a trial, and usually of a jury trial, in the presence of the assembled miners. In brief, the new mining camp was a little republic, practically independent for a time of the regular State officers, often very unwilling to submit to outside interference even with its criminal justice, and well able to keep its own simple order temporarily intact. Its general peacefulness well exhibited the native Anglo-Saxon spirit of compromise, as well as our most familiar American national trait,
namely, that already mentioned formal public good-humor, which you can observe amongst us in any crowded theatre lobby or street-car, and which, while indicating nothing as to the private individual characters of the men who publicly and formally show it, is still of great use in checking or averting public disturbances, and is also of some material harm, in disposing us, as a nation, to submit to numerous manifest public annoyances, impositions, and frauds. Most useful this quality is in a community made up of mutual strangers; and one finds it best developed in our far western communities.

These two qualities then, the willingness to compromise matters in dispute, and the desire to be in public on pleasant terms with everybody, worked in new camps wonders for good order. We read, on good authority, of gold left in plain sight, unguarded and unmolested, for days together; of grave disputes, involving vast wealth, decided by calm arbitration; of weeks and months during which many camps lived almost free from secret theft, and quite free from open violence. We find pioneers gloomily lamenting those days, when social order was so cheap, so secure, and so profitable. And all these things give us a high idea of the native race instinct that could thus express itself *impromptu* even for a brief period.

But we must still insist: all this view of the mining life is one-sided, because this good order, widely spread as it often undoubtedly was, was still in its nature unstable, since it had not been won as a prize of social devotion, but only attained by a sudden feat of instinctive cleverness. The social order is, however, something that instinct must make in its essential elements, by a sort of first intention, but that only voluntary devotion can secure against corruption. Secured, however, against the worst corruption the mining camp life was not, so long as it rested in this first stage.

For this is what we see when we turn to the other, still more familiar, picture. Violence leaves a deeper impression than peace; and that may explain very readily why some boasting pioneers, and many professional story-tellers, have combined to describe to us the mining camp as a place where blood was cheaper than gold, where nearly all gambled, where most men had shot somebody, where the most disorderly lynching was the only justice, and where, in short, disorder was supreme. Such scenes were of course
never as a fact universal, and nowhere did they endure long. That we must once for all bear in mind. Yet when we turn away from the exaggerations and absurdities of the mere story-tellers and the boasters, and when we look at the contemporary records, we find, never indeed so bad a general state of things throughout the mines as the one just described, but at all events at certain times a great deal of serious and violent disorder in many camps. To what was all this due? The first answer is suggested by a chronological consideration. The camps of 1848 began with orderly and friendly life, but in some cases degenerated before the season was done. The camps of 1849 are described, by those who best knew them, as on the whole remarkably orderly. By the middle of 1850 we meet with a few great disturbances, like those in Sonora. By the beginning of 1851 complaints are general and quickly lead up to violence; one looks back to 1849 as to the golden age of good order, and one even laments the coming of the state government, which has brought the semblance, but not the substance of law. In the older camps, 1851 thus marks the culmination of the first phase of the struggle for order, while newer camps are of course still in their first love. This paroxysm of social rebirth passes, and a more stable order seems for a time to succeed, in many parts of the mines; yet, according to the age and the population of individual camps, similar struggles are repeated, all through the early years. This simple chronological consideration, which we hardly need confirm by detailed references just here, since it is well known, and will sufficiently appear in the following, shows that disorder was not the initial stage of the mining camps, but was a corrupt stage, through which they were apt to pass. The nature and the causes of the disorder must appear from what we can learn of the details in the newspapers and other records of the time.

III Pan and Cradle as Social Agents: Mining Society in the Summer of 1848

To understand these records, however, one must remember the general facts about the origin, the growth, and the aspects, physical and social, of any mining camp. A camp, at first an irregular collection of tents about some spot where gold had been discovered, assumed form, in time, by the laying out of streets; and if
its life continued, for its tents were substituted, first "cloth houses," and then wooden buildings, among which, a little later, fire-proof structures would begin to appear. While some camps grew upon "flats," the situations of the early camps were generally in the deep ravines, close under the vast frowning cliffs that rise on each side of the narrow cañons of the larger Sierra rivers. Those in the lowest foot-hills were, however, sometimes surrounded only by gentler slopes, or by bluffs of moderate height. The bars of the larger rivers, the gravel in the tributary ravines, and a few gravel deposits that were far enough from water to be called "dry diggings," were at first the chief accessible sources of the gold.

Moral growth is everywhere impossible without favorable physical conditions. It has seldom been noticed by later writers that the social condition of the camps was, in the successive years and despite all good intentions, largely and almost irresistibly determined by the various successively predominant methods of mining. To understand this fact we need only to follow some of the early accounts of these methods, associated as many of them are with descriptions of the local habits and customs of the moment. To the most of the new-comers all mining was novel, and they describe the mysteries of the art with enthusiastic detail. Let us begin in 1848 with Walter Colton. "I went among the golddiggers," he says, "found half a dozen at the bottom of the ravine, tearing up the bogs, and up to their knees in mud. Beneath these bogs lay a bed of clay, sprinkled in spots with gold. These deposits, and the earth mixed with them, were shovelled into bowls, taken to a pool near by, and washed out. The bowl, in working, is held in both hands, whirled violently back and forth through half a circle, and pitched this way and that sufficiently to throw off the earth and water, while the gold settles to the bottom. The process is extremely laborious, and taxes the entire muscles of the frame. In its effect it is more like swinging a scythe than any work I ever attempted." This "pan" work was at first

2 The seventh letter of "Shirley," in Ewer's Pioneer, vol. ii, p. 91, gives vivid impressions of the scenery and situation of Indian Bar, on the Feather. The letter was written in October. "At present," she says, "the sun does not condescend to shine upon Indian Bar at all." So it was all through the winter. No one who has had a glimpse of the Sierras will fail to remember such places along the cañons.

3 Three Years in California, p. 274.
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very general, although miners did not usually work in just such places as this. It has retained its place in the prospector’s life, and in mining in new placers, ever since, although the handling of the pan may be made less laborious than it was to Colton’s muscles. A little more practice, and the use of a current of water, such as usually could be found at hand, or reached by carrying the earth down from “dry diggings,” helped to make the pan-washing itself no very hard toil for strong arms. The digging, however, no practice could improve, or render anything but the most wearisome of tasks. In washing with the pan, in a running stream, one began each washing by holding the pan, half full of dirt, a little under the current of water. Shaking, or even sometimes stirring the contents, and throwing out with the hand the larger stones, one gradually raised the pan out of the current, as the earth dissolved away and was carried off in the stream. At last the motion and the flow of water carried off the whole mass, save a little black sand mingled with the gold particles. After drying this, one could get rid of the sand by blowing, or, as was customary in later times, by clearing away iron particles with a magnet.  

At best, however, pan-mining was, in proportion to the amount of gravel washed, a slow and tedious process. Even the richest diggings were thus apt to prove disappointing, and, socially regarded, the pan, if it had remained long the predominating instrument of mining work, would have precluded any rapid or secure progress in the organized life of the camps. In 1848, while the larger and more accessible camps rapidly began the use of “machines,” newer camps were still constantly being formed by men who wished to seek their fortunes through the independent use of their pans. And the easily learned art of pan-mining was a very demoralizing one, so long as a great proportion of the miners could still hope to get rich by it. Colton, whose experiences lay where “machines” were less used, and pans the rule, describes to us men mining in numbers near together, sometimes within sound of numberless querulous “prairie-wolves,” who had not yet been

4 For an account of the very simple process of “panning,” see Hittell’s Resources of California, 6th ed. p. 314. For the use of the pan in 1848, see further Foster’s Gold Regions of California, p. 20 (Larkin’s letter). Also see Brooks, Four Months among the Gold-Finders (London and New York, 1849), pp. 36, 37, 41.

5 Colton, p. 279. The “prairie-wolf” is of course identical with the “coyote.”
thinned out, or driven to be as shy as the surviving ones now are in California hills; but the men he makes as wandering, and often as discontented, as the wolves; independent of their fellow laborers; quite capable, of course, of ready and unexactingly simple camp organizations; but not led to undertake any very serious social duties. Where each man toiled with his pan, he hardly needed to speak to his next neighbor, who was mainly an object of curiosity or of envy, in case he either showed symptoms of having made some discovery, or proved his greater luck by the gold he could display. The means of getting supplies from the coast, in these less accessible camps, were subject to all sorts of uncertainties; and, so long as the pan was very largely used among implements of mining, affairs must remain so. For pan-mining left it doubtful where one's market would be, almost from day to day, a thing that no dealer could safely long tolerate. Hence the enormous prices, the untrustworthy markets, and the occasional approaches to starvation in the newer mines.

The pan as sole instrument for gold-washing was, then, socio-logically and morally, as well as economically considered, a great evil for the mining life; and one can be glad that its time of more extended use was so short. Already in 1848 many men, and some whole camps, were desiring and using "machines," as they are at first rather vaguely called in the accounts, e.g., as Larkin calls them; and Larkin himself had one of them made for a native

6 See also Mr. Shinn's Mining Camps, chaps. ix and x.

7 The local predominance of the pan over the cradle is shown by Colton when (p. 281) after describing the cradle, he adds: "Most of the diggers use a bowl or pan; its lightness never embarrasses their roving habits; and it can be put in motion wherever they may find a stream or spring. It can be purchased now in the mines for five or six dollars; a few months since it cost an ounce." This evidence of course holds only for the camps seen by Colton. The fall in price may have been due to the increasing use of the cradles; but it must be remembered that Indian willow-baskets, or any other possible and easily portable substitutes for bowls, were then eagerly accepted. The restlessness of these pan-miners exceeded the well-known uneasiness of the later mining communities, just because there was lacking for them every motive to permanency in any camp save actual and continuous great success, while the rudeness of the pan as an instrument made great success almost always transient. See instances of sudden migrations and restlessness, and remarks upon the fact in Colton, pp. 293, 302, 314. "As for mutual aid and sympathy," he says, "Samson's foxes had as much of it, turned tail to, with firebrands tied between." This is of course a little Coltonian.

8 See his letter above cited, p. 19 of Foster's Gold Regions of California.
miner, at the latter’s order, in Monterey: “a log dug out, with a riddle and sieve made of willow boughs on it,” costing, he tells us, one hundred and twenty dollars, “payable in gold dust at fourteen dollars an ounce.” Mason, according to his report of August 17, had found on July 5 the greater part of the miners at the Mormon or lower diggings already using the cradle: “a rude machine,” “on rockers, six or eight feet long, open at the foot, and, at its head, a coarse grate or sieve; the bottom is rounded, with small cleats nailed across. Four men are required to work this machine: one digs the ground in the bank close by the stream; another carries it to the cradle, and empties it on the grate; a third gives a violent rocking motion to the machine; while a fourth dashes on water from the stream itself.”—“The sieve keeps the coarse stones from entering the cradle, the current of water washes off the earthy matter, and the gravel is gradually carried out at the foot of the machine, leaving the gold mixed with a heavy fine black sand above the first cleats. The sand and gold mixed together are then drawn off through auger holes into a pan below, are dried in the sun, and afterwards separated by blowing off the sand.” Essential to the success of the cradle was of course its inclined position. In the form described, it has remained in occasional use without change of principle ever since, although it is less rudely made; but in large, permanent, and steadily productive diggings it is not useful. Its position soon became a very subordinate one, and later it became a rare sight.

For the time, however, the cradle was a step in advance, physically and morally. Gravels that the pan-miner contemptuously abandoned were well worth working on this plan. Camps that would have been deserted remained, and were prosperous. The great thing, however, from the sociological point of view, was that men now had voluntarily, and in an organized way, to work together. The miner’s partnership, which grew up in this second stage of mining life, soon became one of the closest of California relationships, and, as such, has been widely and not unjustly celebrated in song and story. This accidentally primitive society had passed from a state of “nature,” in the old sense of the word (this state of “nature” being indeed here a state of unstable peace, not of general war), and had become a collection of mutually more or less independent, but inwardly united Bands. Rapidly as the suc-

\[9\] I quote here again from Foster, p. 10.
cessive stages of this growth passed by, they still left their mark on the social order, as we shall soon see.

The summary of the situation in the small community of the early golden days is, then, that the first established and more crowded camps quickly passed into the second stage of mining life, substituting for the pan the cradle, while numerous dissatisfied gold-seekers were constantly hunting for new diggings, and founding new camps, using meanwhile for the most part the pan. The resulting total of social condition is hard to describe, for lack of good evidence. Mr. Shinn's account above cited, although well told, and founded in large measure on a fair sort of pioneer evidence, is still one-sided, and is too optimistic. I have more confidence in a direct use, as far as it goes, of the very frank and unassuming contemporary story of Dr. Brooks, also already cited. J. Tyrwhitt Brooks, an English physician, just then from Oregon, visited the gold region in the midst of the first excitement, in an improvised company from the coast-region, consisting at first of six white men and one Indian, and later considerably larger. The party, in the various stages of its life, contained both Englishmen and Americans, and included one Californian gentleman of some position. These partners were nearly all mutually quite new acquaintances; one was supposed to be a deserting sailor; none knew anything at the start about mining. For some time they had good luck; in the end they lost nearly all their gains; their fortunes were on the whole characteristic. The account of Dr. Brooks, as published, contains numerous misprinted dates, since the volume, which comprises the Doctor's diary of the expedition, with some remarks, was sent home as a bundle of MS. for the private use of his friends, and was thereupon printed without the author's supervision. Allowing for the plain misprints, the chronology of the account nevertheless agrees well enough with that of events otherwise known from the Mason and Larkin letters; and Brooks seems to be a perfectly trustworthy observer.

At the Mormon diggings, Brooks "stirred" his first "pailful" of earth. He found (loc. cit., p. 36) many of the diggers there washing with "pots," others, as would seem, even washing directly from their spades, using these as very rough pans. Many, however, used cradles, and Brooks and his companions, quickly wearying of pan-work, made their own cradles out of rough boards in a day or two, and worked together. The habit of employing companies
of Indians to do the mining for some one white adventurer was common enough; but the mass of the miners worked either singly, or in the small cradle-parties. The miners of the Mormon diggings were all conscious, even at this time, of a controlling customary law, quickly formed, as it seemed to them, but at all events derived from no one discoverable present source. Thus (p. 46) it was generally understood that a lump of gold more than half an ounce in weight, if picked up from the freshly dug earth by a member of a party mining in partnership, "before the earth was thrown into the cradle," belonged to the finder personally, and not to the party. As for society, that at the Mormon diggings was quickly under the sway of a few native Californian families, of respectable and sociable character, who appeared under the protection of their heads, well-to-do native citizens, who had chosen to seek gold in good company. The wives of these men were waited on by Indian servants; they gave their usual Californian attention to bright dress and good-fellowship, and held very delightful dancing parties in the evenings "on the green, before some of the tents" (p. 47). The friendly and well-disposed camp joined largely in these parties, and found it very naturally "quite a treat after a hard day's work, to go at nightfall to one of these fandangos." Brooks gives us no impression that he ever found these entertainments at that place and time in any wise of suspicious character, although he thinks that the gentlemen sometimes drank a little more than was proper, so that the merriment was occasionally "animated and imposing" (p. 48). Of the ladies, the wives and daughters of the Californians, he had nothing but good to say.

With regret Brooks and his fellows bade farewell to these fair entertainers of society at the Mormon diggings, and on the first of July left the now overcrowed place for the North Fork, having first sold their two cradles at auction for three hundred and seventy-five dollars in gold dust at fourteen dollars to the ounce. At the site of Coloma, they found Marshall mining with a company of Indians, and they spent a day or two near this place themselves, working in dry diggings, and carrying the earth down to the stream to wash. Thence they went on, to Weber's Creek, passing on the way Sinclair, at work with his Indians. Reaching a new camp here, whose members were scattered over the stream-bed and up the neighboring ravines, they made for themselves new cradles by hollowing out logs, and began to employ Indians to
help them (p. 57). Here they were when Colonel Mason visited the mines. But these diggings also were quickly overcrowded by wandering miners, of whom “about half work together in companies—the other half shift each for himself” (p. 59). The lonely men were evidently pan-miners. The Indians also crowded the place in hundreds, worked for bright clothing and whiskey, and staggered about drunk. The miners of Brooks’s party grew discontented. There was doubtless plenty of gold on Bear River; a trapper told about the region, and consented to guide the party thither for “sixty-five dollars and his food.” The Brooks party had much trouble in getting provisions enough for their journey, as everything was “inordinately dear,” so that they had to content themselves with bacon, dried beef, and coffee (p. 61). They at this time received and accepted offers from three or four strangers to join their company, which was thus strengthened against Indians. Hard toil, under good guidance, but through a very rough country, brought them over the hills to Bear River Valley, where, after finding rich gravels, they began once more to make cradles, and to build a large, roughly fortified shanty, for protection against the Indians. They made a stricter division of labor than before, and toiled fruitfully for some time. The life was at best a hard one, and Brooks found himself very lonesome, and homesick. At night, around the camp-fire, the trapper-guide told great tales of the deserts beyond the Sierras, and of the horrible dangers of the unknown expanse of the Great Salt Lake, on to whose “dark turbid waters,” as he declared, “no living being has yet been found daring enough to venture far,” owing to a mysterious whirlpool there said to exist. The country about them was rugged, and still little visited; and was as romantic and bewildering to them as were the trapper’s nightly yarns. Their diggings, however, proved very rich.

At this point trouble began. First some “horsethief” Indians appeared, and succeeded in galloping off with several of their horses. In a brush with these Indians one of the Brooks party was killed. Next, as the time grew near when the season would force them to forsake the lonely golden valley, sickness appeared in the camp, provisions ran low, and the mass of gold-dust now accumulated in their cabin began to seem to them, after the Indian fight, a perilous wealth. For Indians too by this time desired gold to exchange for fire-water. While the trapper, with one man, accord-
ingly set out for Sutter's Fort, to get provisions, three of the party, including the Californian gentleman, were deputed to carry the gold-dust to San Francisco, while the others were to toil out the season, and divide gains with those sent away. Success, however, had already engendered jealousy and suspicion. The party were very near an open quarrel (p. 78) over the choice of the men to be intrusted with the gold, and one of the three actually sent, a friend of Brooks, who had accompanied him from Oregon, was intended by Brooks and some others to watch his fellow-messengers.

On the way with the gold, the three messengers were suddenly attacked by mounted robbers, who lassoed and badly injured this third man, and escaped with his horse and saddle-bags, the latter containing the bulk of the gold itself. The unjust suspicions of which Brooks frankly makes confession, by causing this man to be the carrier of most of the treasure, had resulted in the loss of nearly the whole outcome of the long toil. The robbers were native Californians and Indians; and one of them, who was killed in the fight, was, Brooks declares, on the report given by miners who recognized him, "one of the disbanded soldiers of the late Californian army, by name Tomas Maria Carrillo; a man of the very worst character, who had connected himself with a small band of depredators, whose occupation was to lay [sic] in wait at convenient spots along the roads in the neighborhood of the seacoast, and from thence to pounce upon and plunder any unfortunate merchant or ranchero that might be passing unprotected that way. The gang had now evidently abandoned the coast to try their fortunes in the neighborhood of the mines; and, judging from the accounts which one of the miners gave of the number of robberies that had recently taken place thereabouts, their mission had been eminently successful" (p. 82).10

This characteristic event, the outcome of the scattered condition of society at the moment, and of the demoralizing old days of the conquest, led Brooks to learn of several equally characteristic occurrences of other sorts in neighboring mines. The companions of the wounded man were possibly aided in repulsing the robbers by the approach of a band of mounted miners, who opportunely appeared just after the assailants had fled. The newcomers, how-

10 Of this Tomas M. Carrillo, Mr. H. H. Bancroft’s list of pioneers knows only this one fact, as told by Brooks.
ever, declined to take any trouble to help the wounded man, but, as the messengers related to Brooks, "coolly turned their horses' heads round, and left us alone with our dying friend, not deigning further to notice our appeals." Every man looked out for himself in those days, as one sees; and when the two messengers, after at last getting, by their begging a little, help, managed to bring their friend—not dying, indeed, but badly hurt—to a near camp, they could only return alone and disheartened to the old spot on the Bear River, and tell their strange tale to the rest. The whole party thereupon spent a night about the camp-fire in sullen silence, broken only by occasional bitter or suspicious speeches, until the dawn found them weary, haggard, and disgusted. What gold was left they quarreled over during the morning, and having at last weighed it out in parcels, they separated finally into two parties, of which one, with Brooks, set off to the camp where the wounded man had been left. On the way they met the trapper, who, with his one companion, had previously gone to Sutter's Fort for supplies. These two also had had their adventures, which they now proceeded to tell. The trapper and his comrade found flour as much as eighty-five dollars a barrel at Sutter's Fort. On the way back, their pack-horses were stolen, one night, with their packs of provisions. When they appealed to the miners of a neighboring camp for help in finding the thieves, they were only treated with rudeness and suspicion, and one of the miners drove them off with his rifle (p. 86). He later proved to be what his friends called a peaceably-disposed man, whose brusqueness of manner was the result of the large quantity of gold-dust that fortune had given him, and of the fact that he consequently demanded proper introduction of people who came to call on him. To be sure, his desire to be alone had already led him to feel it his duty to shoot and kill two men, so that some of his neighbors called him a "terror"; but, as appears from p. 89, others justified him, on the ground that he had shot only people who needed shooting. Such an assertion, under such circumstances, admitted of no proper verification; but, at all events, his manners lacked delicacy, and the two Brooks party men felt aggrieved at the imperfect public spirit in this whole camp, near which their pack-horses had so mysteriously disappeared. The two had yet other sad things to tell Brooks of the state of society at this little camp; for some men there had their arms in slings, and others said that such injuries were common in those diggings after people had chanced to differ in opinion.
Brooks and his party from Bear River exchanged their own little tale of disaster with the one thus confided to them by the trapper and his comrade, and then went on to hunt for the wounded friend. Him they found slowly recovering from his injuries and lying in a shanty. But the camp where he was staying was sickly. "Fever was prevalent, and I found," says Brooks, "that more than two thirds of the people at this settlement were unable to move out of their tents. The other third were too selfish to render them any assistance" (p. 87). It was even hard to find a burial-place when one was dead; for these miners "denied the poor corpses of their former friends a few feet of earth for a grave, and left the bodies exposed for the wolf to prey upon." The season, in fact, was nearly done, and men were now frantic for the gold.

All this was surely an unpleasant state of affairs; though 1848 is the season that Mr. Henry Degroot, as quoted by Mr. Shinn, seems to look back upon as containing "all that was staid and primitive in or about the mines of California." But we have already seen, in Dr. Brooks's account of the happy fandangoes "on the green" at the Mormon diggings, how capable he was of picturing the pleasant side of this seemingly so irresponsible and accidental life, and how different the view of a man in another camp at the same time might have been. One also sees, however, the impossibility of doubting that, in these pan-mining days, with only about half of a camp using the rocker, and with no miners connected in any form of close personal organization, save such as the rocker-parties implied, irresponsibility meant almost universal selfishness beyond the limits of one's own party, and selfishness, in the long run, meant disorder and occasional violence, with a very bad social outlook ahead, despite the readiness wherewith rough camp organizations could always be made for the momentary repression of more intolerable crime or for the settlement of greater disputes.

At all events, in these last days of the season of 1848 Brooks found everybody talking of disorder and insecurity. His friend was, indeed, safe enough, and was well cared for by a "kind Californian nurse and her husband," whose "kind treatment of my poor friend offered a striking contrast to the callous selfishness around." But, when Brooks himself set out towards Sutter's Fort, he heard reports of trouble all about him. Nobody left his gold in

11 Mining Camps, p. 122. It is proper to add that Mr. Degroot, as appears by his article in the Overland Monthly for April, 1874, arrived in 1849, and knew of 1848 only by hearsay.
his tent; everybody carried it on his own person; and the number of missing men "whose own friends had not thought it worth while to go in search of them" was considerable. One or two dead bodies were found floating in the river, "which circumstance was looked upon as indicative of foul play;" as a gold-digger who was drowned by accident ought, people said, to have enough gold about him to keep his body under water. The characteristic fact that nobody was known by Brooks to have taken any trouble to look closely at these dead bodies, to verify or disprove, by examining for direct signs of foul play, this \textit{a priori} reasoning, is only indirectly indicated by our author. "Open attempts at robbery," he adds, "were rare; it was in the stealthy night-time that thieves prowled about, and, entering the little tents, occupied by not more than perhaps a couple of miners, neither of whom, in all probability, felt inclined to keep a weary watch," stole what could be found. Going further on his way, Brooks came to the ill-humored camp near which the trapper had lost the provisions. Here he saw a group of miners drinking brandy "at a dollar a dram." As the greater part of them were "suffering from fever," the doctor himself seriously disapproved of their course, on professional as well as on economic grounds. Nevertheless, he found time to learn a few facts in favor of the much maligned inhabitants. They were selfish and dissipated, but they meant well in their way.

Weary of such things, he reached Sacramento, and then went on to Monterey, where he joined in a fruitless pursuit into the Tulare region of a robber-band, who were reported to be identical with the assailants of the gold-bearing messengers. The result of the pursuit was only more weariness, and a sight of prairie, thicket, and hill. In sullen silence the pursuers at last rode back to Monterey, sick at heart. As for those who still remained together of the original party, there was nothing to do but to part. The resolution to do so "was not come to without something like a pang—a pang which I sincerely felt, and which I believe was more or less experienced by us all. We had lived for four months in constant companionship, and a friendship, more vivid than can well be imagined in civilized lands to have been the growth of so short a period, had sprung up betwixt us. There had been a few petty bickerings between us, and some unjust suspicions on my part; but these were all forgotten." The remaining gold was divided, and "the same night we had a supper, at which a melancholy jovi-
ality was in the ascendant, and the next day shook hands and parted." "On waking the next morning," says Brooks, "I found that I was alone."

In this account there is one thing to be noted; namely, that Brooks is uncommonly objective in his fashions of speech. He has no discoverable aim save to tell a plain story, and often tells things to his own disadvantage. Hence one may have a reasonable confidence in his accuracy. His own summary is especially noteworthy, as given in his introductory letter to a relative, written after the diary. Of the country itself he speaks well: "I assure you it is hardly possible for any accounts of the gold-mines to be exaggerated. The El Dorado has really been discovered" (p. 13). But of the social condition he has only a gloomy account to give: "I have worked hard and undergone some hardships; and, thanks to the now almost lawless state of the country, I have been deprived of the mass of my savings, and must, when the dry season comes round again, set to work almost new. . . . My own case is that of many others. As the number of diggers and miners augmented, robberies and violence became frequent. At first, when we arrived at the Mormon diggings, for example, everything was tranquil. Every man worked for himself, without disturbing his neighbor. Now the scene is widely changed indeed." Allowing for a little momentary depression, we may still regard the account given by Brooks, and confirmed by the details of his story, as a fair one, on the whole, so far as his own experience could guide him, and his experience is plainly no insignificant one.

How shall we reconcile this tale of transient peacefulness, followed by weary selfishness, bickering, and violence, with the much brighter picture of 1848, given on the basis of his own pioneer evidence, by Mr. Shinn? The method of reconciliation seems to me clear enough. The quickly organized and, at the first, peaceful camp of 1848 was an easily cultivated and soon withering flower, which could not well live to the end of the California dry season. There was no unity of interest to preserve its simple forms from degeneracy. The camp consisted of a perfectly transient group of utterly restless and disconnected men, who had not the slightest notion of staying where they were more than a few weeks. When a country-side was full of such groups, disorder, before many months should pass, was simply inevitable. Skill in improvising organizations could not avert the result. More-
over, the life in small partnerships involved, despite the idyllic character of the relations of “pards,” almost every possible temptation that could act to make a good-humored man quarrelsome. Rough camp-life, among novices, is almost always as full of bickering as of good-fellowship. Good-humor in public meetings, or in the camp at large, with private petty quarrels going on meanwhile—this was the common condition. The affray in the Donner party has already, in an earlier chapter, suggested this really very trite reflection to us, and we need not dwell on it here. The practiced camper recovers his even temper, but the novice is long subject to bearishness. The matter is largely physical. The civilized man becomes soon peevish, with the irregular meals and the monotony of camp-life, and may show, even to his best friend, an hitherto unsuspected brutality of mood and behavior.

What public spirit there was in 1848 showed itself best, as Mr. Shinn has pointed out, in the regulation of the miner’s temporary land-tenure and in the settlement of disputes about mining rights. But the life, on the whole, was seriously demoralizing to all concerned in it, and must remain so until more elaborate methods of mining should be introduced.

IV Mining Society in 1849 and 1850, and the Beginning of Sluice-Mining

The small partnership and cradle system of mining was also, as we know, the common system of 1849, and of the early part of 1850. In a noted, but now, at least in the herein cited first edition, quite rare pamphlet,12 one finds the experience of 1848 and of the early summer of 1849, summed up in a way that is very instructive for our present purpose. On page 34, the new-comer receives advice as to his needs. First of all he is told to carry little baggage; as “it will always impede his free movement, if he should want to go from place to place. He should have absolutely nothing more than what he can carry on a beast, if he be able to have one; or, if not, what he can shoulder himself. The less one brings to the mines, the better prospect of success he may have.” A change of clothing, a

12 California as it is, and as it may be, or a Guide to the Gold Region. By F. P. Wierzbicki, M. D. First ed. San Francisco: Printed by Washington Bartlett, 1849, p. 60. The preface is dated September 30, 1849. The book is the first English volume printed in California.
pair of blankets, a pickaxe, a spade (a winding-sheet is not mentioned), a crowbar, a pan, a sheath-knife, a trowel; such is the outfit for the single miner. "A washing-machine," however, "is used when there are two or more working in partnership." This machine is then described in its simpler form very much as above, and one recently imported improvement, the "Burke Rocker," a sort of transition to the later "Long Tom," is praised. All other devices so far known to Wierzbicki are condemned, especially, of course, those numberless and useless washers that new-comers brought, and so promptly left in the rubbish heaps of San Francisco. The result as to the value and limits of mining partnerships is very simply and practically stated (p. 36): "However, according to circumstances, these partnerships are formed, it can only be said that there is no occasion for more than four persons in a company, and frequently three or two do better than four. For protection and occasional service that one may require from another, it is always better to be in partnership with a suitable person or persons." On page 45 and page 46, Wierzbicki mentions meanwhile in a casual way, and as an understood fact, the general good order and peace of the mines. But he shows us also on what changing stuff this good order depended. The "silent consent of all" generally is enough to insure a miner his rights to his "claim"; lynch law has been sometimes needed and used for murderers and robbers; but improvised judges and juries have seen the thing carefully done. The miners easily settle their own disputes about the use of land; their justice is prompt and efficacious. The population, however, "is constantly fluctuating;" and so any permanent jurisdictions seem to the writer incapable of establishment at present. One sees the outcome of all this. The miners rove about in what seems on the whole peace; there is no seriously exacting government in Israel; every man does what is right in his own eyes, subject to a simple and easily improvised popular justice. Large partnerships and extended social alliances are, however, entangling and useless. Responsibilities must be avoided by one who wants success.

The immediate result of this system, as applied in 1849, was, however, on the whole, remarkably free from serious public mishap. Many causes combined to postpone this year the evil results. The great numbers and high character of the new-comers are in part responsible for this. The great numbers led to vast
extensions of the field of work, and rendered the risks of inter­communication among the various camps less noticeable than in the previous year. By virtue of sheer mass, the community meanwhile forced upon itself a degree of hastily improvised organization that was intended by no one individual, but that was necessary for the purpose of feeding and otherwise supplying so many people. The numerous new commercial towns that sprang up in the valley regions, offered fresh chances to disappointed miners, and checked both their discontent, and their desire to wander off alone. Thus the whole life was, for the time, far healthier than the life that Brooks saw. 13

Bayard Taylor, who traveled through the country as “Tribune” correspondent in 1849, 14 and who saw much of the mines, is an observer sufficiently optimistic to suit the most enthusiastic. He came at just the moment of his life to appreciate the young community. He was himself young, ardent, and in love; he had come to California to see great things, and he certainly saw them. There is no question of his general accuracy in telling what he really saw, and he has the power that so few of our unimaginative nation have, to describe scenes, people, and things, instead of itemized and arbitrary abstractions of a numerical or technical character. Still, we must understand his mood; he saw whatever illustrated life, hope, vigor, courage, prosperity. It was not his business to see sorrow or misery. He saw, for instance, but one drunken man in all the mines. 16 Others at the same time had a less cheerful experience in this respect. Mr. Theodore T. Johnson, for in-

13 A suggestion as to the chronology of the early settlements belongs here. The American, the Cosumnes, and the Moquelumne Rivers were the sites of the early mining settlements of 1848, and here the greatest activity of 1849 also went on. By 1850 the large camps had extended northward as far as the North Fork of the Feather, and into Mariposa County on the South. The next year saw much activity as far north as Shasta. Prospectors were of course always in advance of the larger camps.

14 Bayard Taylor left San Francisco, to return to the East, just after the fire of December 24, 1849. See El Dorado (Household edition), p. 316.

15 See his Biography, by Mrs. Taylor and Mr. H. E. Scudder (Boston, 1885), vol. i. chap. vii.

16 El Dorado, p. 312. People drink far too much, thinks Taylor, but somehow they do not get drunk in California. This was a not uncommon boast of early Californians; but nobody makes it in California now.
stance,\textsuperscript{17} who was of a more melancholy turn of mind, “frequently saw miners lying in the dust helpless with intoxication,” and we need no such evidence to convince us of what we well know \textit{a priori}. Taylor’s optimism, however, is not without its high value for us; for he shows us what the better spirit of 1849 really was, despite all its so fatal carelessness. “In all the large digging districts,” we learn (p. 101), “there were established regulations, which were faithfully observed. . . . There was as much security to life and property as in any part of the Union, and as small a proportion of crime.” This he knew partly from hearsay; although as to hearsay evidence, he was indeed a little uncritical, since, just after narrating on such evidence the attempted expulsion by Americans of the “ten thousand” Sonoran miners at work in the southern mines,—an attempted expulsion that he supposed to have been fairly successful, though it was not,—he goes on at once to assure us (p. 103), that “abundance of gold does not always beget a grasping and avaricious spirit,” and even adds that “the principles of hospitality were as faithfully observed in the rude tents of the diggers, as they could be by the thrifty farmers of the North and West,” and, finally, that “the cosmopolitan cast of society in California, resulting from the commingling of so many races and the primitive mode of life, gave a character of good-fellowship to all its members.” All this he tells us, not by way of irony about the recent hospitality and good-fellowship shown to the ten thousand Sonorans, but because he could “safely say,” as he expresses it, “that I never met with such unvarying kindness from comparative strangers.”

But, allowing for all the youthful optimism, Taylor’s testimony is good evidence for the peace and hospitality that he directly experienced or heard of from trustworthy people, and his experience was large and varied. He found, at the beginning of winter (p. 263) the camps in the “dry diggings” well organized, each one with “an alcalde chosen, and regulations established as near as possible in accordance with the existing laws of the country.” The alcaldes had very great powers, but were well obeyed. “Nothing in California seemed more miraculous to me than this spontaneous evolution of social order from the worst elements of anarchy. It

\textsuperscript{17} See his \textit{Sights in the Gold Region, and Scenes by the Way}, New York 1849, p. 182.
was a lesson worth even more than the gold." In his general summary (in chapter xxx) of the social condition of California, Taylor finds gambling and extravagance very prevalent, and, together with the excessive drinking of those people who never got drunk, he considers these the great evils of the land. But the simpler virtues seemed to him cheap and easy in California. Generosity, hospitality, democratic freedom from all social prejudices, energy, ardor, mirthfulness, industry: all he found alike prevalent. As he saw the easy work of the constitutional convention, and took part in the preparations for the subsequent election, public spirit also seemed to him a common virtue of Californians. The signs of the too general lack of it came near to the surface of his experience sometimes; but those he never saw. On page 252 he tells us of the scene on the Lower Bar of the Moquelande, at the first state election, in November, 1849. "The election day dawned wet and cheerlessly." Until noon the miners lay dozing idly in their tents, unable to work, and very careless about the dignity of the occasion. At last the voting began in the largest of the tents, "the inspectors being seated behind the counter, in close proximity to the glasses and bottles, the calls for which were quite as frequent as the votes." This was indeed harmless enough for the moment, and the ignorance of most of the miners about the men voted for was natural. But more characteristic was the spirit in which men voted. One of the candidates lost twenty-three votes for having been seen recently electioneering in the mines in a high-crowned silk hat. Some people voted only for known candidates. But many chose otherwise, a representative man of them saying, in justification: "When I left home, I was determined to go it blind. I went it blind in coming to California, and I'm not going to stop now. I voted for the constitution, and I've never seen the constitution. I voted for all the candidates, and I don't know a damned one of them. I'm going it blind all through, I am." This fellow was only too decidedly a type of a large class. And such was the birthday of the new State in the mountains.

In short, 1849 was a year of successful impromptu camp-organizations, and of general external peace; but it was as full of the elements of future confusion as it was of the strength and courage that would in time conquer this confusion. The roving habits of that year long remained injurious elements in the more exacting civilization of later years. And even the memory of the easy social
successes of those days often proved demoralizing to the later communities, by begetting an impatience of all legal delays and mistakes. If we want, however, really to understand the forces of early California life, we must study the year 1851, a year which, despite the traditions of the pioneers, is of far more historical interest than 1849. The latter is the year of the making of the constitution, and that is its great historical merit; but, for the mass of the population, it is also the year of vague airy hopes, of noble but untried social and moral promises, of blindness, of absurd blunders, and in general of fatal self-confidence and selfishness. Its one poetical aspect, the fervor of innocent, youthful, romantic hope and aspiration among its better men, is something as brief as the "posy of a ring." 1849 is, in short, the boyish year of California. 1851, on the contrary, is the manly year, the year of clearer self-consciousness, of lost illusions, of bitter struggles, of tried heroism, of great crimes and blunders indeed, and of great calamities, but also of the salvation of the new State. It saw the truly sad and significant days of our early life, and we should honor it accordingly.

A series of changes in the methods of work, a series which began already in 1849, which continued through 1850, and which reached a first culmination early in 1851, was destined to render far more stable and responsible this roving mining life of 1849. The work done by the rocker might be made more effective by enlarged appliances, and especially by increasing the amount of water used in washing. Thus, after several improved rockers had been tried with varying success, the Long Tom (widely used in 1850), and, a little later, that finely simple invention, the board sluice, separately and together first modified, and then revolutionized, the whole business of placer-mining.18 Elaborate descriptions

18 The first number of the *Sacramento Transcript* that appeared as a steamer edition on April 26, 1850 (see 2d vol. of Harvard College Library Transcript file), contains on a single page an interesting series of letters from the various mining districts, which furnish a survey of the state of work at the moment. The *tom* is mentioned as in use at Auburn, but is not otherwise mentioned. During the summer it became more common. The second steamer *Transcript*, May 29, 1850, discusses mining "machinery" at length, mentioning only the various improvements of the rocker, with devices for the use of quicksilver. As late as the *Daily Transcript* of October 19, 1850, I find the rocker the chief instrument mentioned in reports from the mines, although the *tom* is known. Not until May 2, 1851, however, do I find in this paper an account of "sluice-washing" as a new and profitable process. It then
belong not here. In its typical form, however, a sluice is a very long shallow box, which may extend to many hundreds of feet, so inclined as to give a stream of water flowing through it a very good headway in the box, especially perhaps in the upper end. Along the bottom of the sluice, as it originally was made, were fastened low cleats of wood or “riffles,” “at long intervals” (so runs the description in the “Transcript,” loc. cit.). Later the riffles were better arranged with special regard for durability and for convenience in removing them to “clean up.” The gold particles will be caught and will settle just above the riffles. To the sluice a constant and swift stream of water must be supplied through an artificial channel, from a reservoir, or from some point where it is convenient to tap a natural stream. This free supply of running water is the essential element of sluice-mining. The sluice thus provided by one’s side, one shovels the paying-gravels into it from one’s claim, and so the earth is carried down to the “tailings,” an assistant removing the larger stones meanwhile. One continues this process steadily for days, or even weeks, and then upon “cleaning up” one expects to find the gold particles, mingled with a little black sand, collected above the riffles. As for the “tom,” in its earlier forms, it was simply a kind of very short sluice, provided with a strainer for catching large stones, and supplied with water by hand.

The introduction of the sluice, with its various auxiliaries, not only secured the productiveness of California placer mines for many years, but it acted indirectly on society, as a check to the confusion and disorder that began to grow among the miners in 1850 and 1851. Although the early camps were more orderly than those of 1851, they were so, as we shall see, only because the demoralizing influences of a roving and hazardous, irresponsible life had not yet begun to work their full effects. The disorders of 1851 and later years could be checked, and were checked, because they occurred in communities that now had vested interests. As so often happens in social matters, the effects here began to show rapidly grew in favor, and the tom became an auxiliary or wholly subordinate instrument. The northern mines took up new devices more rapidly than the southern.

19 It is impossible to give any extended list of authorities on this topic, and needless to. Cf. Hittel’s Resources, p. 307 (6th ed.); Capron, California (Boston, 1854), p. 208; Auger, Voyage en Californie, p. 107, for views of various periods.
themselves when the causes were already in decline; and some
of the camps of 1851 reaped the whirlwind that the wanderers
of 1849 had sown. But sluice-mining meant serious responsibilities
of many sorts, and so, in the end, good order. For, in the first place,
men now had to work less independently, and more in large com-
panies. And water became a thing that could no longer be taken as
it came, but that must be brought in a steady stream to the right
place, often by much labor; and thus it acquired a market value, so
much per "miner's inch." To supply it in the dry Sierra valleys
became a distinct branch of industry. It might be needed to wash
gravels found high up on hill-sides; and, in order to get it there,
men must build great wooden aqueducts, or "flumes," from far
up the mountain streams, so as to let the water run, of its own
impulse, to the needed place. The flumes often crossed wide val-
leys; they were themselves the outcome of months of labor, and
employed in time many millions of capital. In various improved
shapes they have remained essential to the mining industry ever
since.

Nor was this the only direction in which gravel-mining in-
creased its organization, and proved its power to make a possible
basis for the social life of a civilized community. River-bed mining,
undertaken on a small scale early, and on a large scale but with
general disaster in 1850, was, in 1851 and later, a great and fruitful
industry.20 It constituted one of the boldest and most dramatic of
the miner's great fights with fortune. He had to organize his little
army of laborers, to risk everything, to toil nearly through the
summer for the hope of a few weeks at most of hard-earned harvest
at the end; and then, at the very moment when victory seemed
nearest, an early rain swept everything away, and left absolutely
no return. In this type of mining, whose operations have been very
frequently described, the object was to turn the course of some
one of the greater mountain-streams, by means of a dam and a
channel or flume. The bed would thus be left bare, perhaps for miles,
while the flume carried along the whole body of the stream, whose

20 The vast river-bed operations of 1850, both in the northern and in the
southern mines, are reviewed in the newspapers of that autumn. See in par-
ticular, for the early undertakings of 1849, Wierzbicki, p. 41 and p. 46; and,
for the operations of 1850, the Sacramento Transcript of September 30 and
October 8, 1850. The causes of failure in 1850 were inexperience in doing
the mechanical work, a frequent bad choice of situations, and the early,
though light rains of that autumn. In 1851 the dry weather continued till
nearly the end of the year and success was very general.
impulse was meanwhile used to turn water wheels in the flume, and so to pump from the stream-bed the surplus water that still interfered with active operations.\textsuperscript{21}

To get all this ready was a slow and difficult operation. The mountain torrent, winding, cliff-bound and swift, was no easy prey to catch and tame. One had first to wait long for its fall before beginning work. When, after months of toil, the thing was done, nobody knew what was to be found in the river-gravels until mining had gone on for some time. Meanwhile nothing is more whimsical than the beginning of the California rainy season. The first great black clouds, and the first steady, warm south-wester, may come already in September, although then the showers are apt to pass by in a night. November is yet more likely to hear the moaning of the first long autumn storm. But there are years that pass away altogether before the serious work of winter begins, and so leave to the following January and February the honors of the first “clouds and flowers,” and keep even through December still the weariness of the “dust and sky.” This uncertainty, which in later years has so embittered the lives of farmers, was in the early days significant, although with a difference, for the river-bed miners. The great rains would at last fall, and, unless good warning had been given and taken, not only the dams would burst (as for that matter they must then in any case soon burst), but the flumes, with all their works, would go plunging in fragments down the newly-born brown torrents. And so these last weeks of gold-harvesting and of danger to all the capital invested were weeks of feverish toil and anxiety. Yet on such food some of the wealthiest camps for a time subsisted. And the work taxed all the energies of hundreds of men.

Without giving further space to descriptions of mining by sinking shafts (or “coyote-holes,” as the miners of 1850 and 1851 called them), and without dwelling upon the beginnings of quartz mining and of hydraulic mining, we must return to our main topic. It was necessary for us thus to examine a little the physical side of the mining industry in order to appreciate the growth of the social life. The passage from lonely pan washing to the vast

\textsuperscript{21} Borthwick’s \textit{Three Years in California}, contains in a plate, opposite p. 208, an original sketch of an early river-bed mining scene. Numerous others may be found in California books. Dredging the rivers was early dreamed of, but of course never succeeded in producing gold.
operations of the flume companies, of the river-bed miners, and later of the hydraulic miners and of the quartz mining companies, did not remove from mining its dangerous character, either considered as an investment for capital, or viewed as a basis for a sound social order. But, at all events, men found in the advance of the industry to its more complex forms, in the formation of the necessary great partnerships, and in the organization of labor, the thing that all men need, namely, something to give a sense of mutual duties, and of common risks. The irresponsible freedom of the gay youth who had crowded the ships from the Eastern States must in all this toil be sadly limited. They had condemned themselves to one of the hardest and often bitterest of lives. But, at all events, they were now bound to build a society. Even while they organized their private schemes their camp became a town, and themselves townsmen.

V The Spirit of the Miners' Justice of 1851 and 1852: The Miners on Their Own Law

We have seen how the mining camp, from the first moments of its existence, was easily organized so as to seem a rudely but for some time effectively governed little state. The business of government, as we have also seen, was limited to keeping the public peace from grosser disturbances, to punishing theft and murder, and to settling disputes about the use of land for mining purposes. The miners meanwhile commonly had a feeling that purely "private disputes," that is, those that did not violently and directly assail the public peace in a general way, were not properly the concern of the community.22 This was, to be sure, a fatally mistaken notion, and could not be consistently carried out. But the effort to carry it out, by ignoring so far as possible processes for debt, and by paying little attention to gamblers' quarrels, and to like displays of violence, must soon demoralize any growing community.

However, we have to consider the young mining town as it was, and to ask what was the consciousness that, after the first months of entirely primitive good order, isolation, and effective self-government had passed away, the miners themselves had retained, while they still continued to apply to criminals this rude and primitive camp code. Did they suppose themselves to be

22 Cf. Mr. Shinn's Mining Camps, p. 126.
still really and justly free from any immediate external authority? Were they conscious of their camp as of a properly independent community, having a right to its own laws? Did they retain this consciousness after submission to the state courts was possible? Or did they, on the contrary, feel their improvised code to be simply lynch law, the assertion of an unauthorized independence, and so an actual rebellion against the established and properly sovereign laws of the land, a rebellion only excused by the necessity of the moment? This question, comparatively insignificant in 1848 and 1849, becomes of much greater interest as soon as the new State was born.

To this question Mr. Shinn has answered, in his "Mining Camps," on the basis of his various authorities, that the miners' organization was normally not only efficient for its purposes, but also wholly in earnest in its work (p. 175), and that the miners' justice, notwithstanding its occasional lapses, was "in every important particular" sharply contrasted with lynch law (p. 230). Mr. Shinn draws at some length the contrast between miners' law and lynch law. Lynch law, as we now know it, through certain too familiar newspaper items from a number of rural districts in our South and West, is sudden in its action, creates no true precedents, keeps no records, shuns the light, conceals the names of its ministers, is generally carried out in the night by a perfectly transient mob, expresses only popular passion, and is in fine essentially disorderly. Miners' law was open in its methods, liked regularity of procedure, gave the accused a fair chance to defend himself, was carried out in broad daylight, and by men publicly chosen; and when state and county organizations were sufficiently developed to take its place, it gladly resigned its sceptre to the regular officers of the law.

This is the strongest possible statement on the side of those who maintain the satisfactory character of the miners' code for the simple social purposes that it undertook to attain. I am very anxious to do this view proper justice. That, for awhile, in new and orderly camps, the law of the miners' meetings was in spirit as effective in its way as a regular code, and that those who supported it hoped in time to bring it into due subordination to the state law, I readily admit. But unfortunately, camps were many, their primitive mood of perfect good order was brief, and the typical mining town of 1851 and later years had passed into a transition stage, where it
was nominally in connection with organized state authorities, and was actually desirous of managing its own affairs in its own old way. To this state of affairs, Mr. Shinn's account applies with great difficulty. After 1849, all camps were nominally under the state government. New camps were still often for a little time practically quite isolated, but ere long state organization would, at least in name, overtake them. According to Mr. Shinn, the miners' meeting, or the council, or the alcalde, or whatever governed the new camp, would be a conscious preparation for this coming of the regular law. As soon as the organized legal machinery became in any sense more than a name, the orderly instinct of the miners would counsel immediate submission, and they would voluntarily abandon or subordinate their organization in its old forms to these new ones. Until the state organization came, the miners, however, would be conscious of their rightful independence. But, much as this theory of Mr. Shinn's impressed me on a first reading, the direct evidence shows that after 1849 the miners, even in newly-organized districts, were apt to regard their camp law, especially the criminal part of it, as a necessary but lawless device for forcing a general peace. Their contemporary accounts of it differ from their accounts of their land-laws. These latter they regard as furnishing the only just and truly legal method of dealing with mining rights. They resist strenuously any legislative interference with their local self-government in these matters. They insist absolutely upon the autonomy of the miners' district, as regards the land; and for years, against all legislative schemes at home, and all congressional propositions at Washington, they actually maintained this autonomy. But their independence in matters of criminal law was brief, and, so far as I know, was seldom, almost never, defended at the time on any such theoretical grounds as Mr. Shinn's; but was defended solely as being the last resort of isolated communities, and was confessedly, in a strict sense, lynch law.

For this reason, after concrete cases of violent popular justice in the mines, we find the community, in speaking of the affair, generally more or less on the defensive. To 1849 this statement applies in but very small measure, since the camps of 1849 were, on the whole, free from any very notable general disturbances of which any contemporary record is known to me; and were in any case out of relation to higher authority. But in 1850, and still more in 1851, when the popular justice of the mines is dealing with
really serious complications, one finds this feeling of the need of special justification of each such act, as a lawless but inevitable deed, very prevalent. Of the sharp line of demarcation between lynch law and miners’ law the miners themselves are thus seen to be, at the time, largely unconscious.

It would be easy to show all this clearly enough by means of citations from those contemporary books of travel whose authors are not seriously hostile to the miners’ justice. But on travelers’ accounts, or on other books, we need not depend. The newspaper of the time is the best source of information about the spirit of the people. The California newspapers of 1850, 1851, and 1852 generally defend miners’ justice; but they show us two things, first that the miners’ justice was not usually sharply distinguished from mob law, even in the minds of those concerned in it; and secondly that, in the concrete instances of the use of miners’ justice, we can discover all possible gradations, from the most formal, calm, and judicial behavior of a healthy young camp, driven by momentary necessity to defend itself against outrage, down to the most abominable exhibitions of brutal popular passion, or even of private vengeance.

Specimen contemporary newspaper comments on the popular tribunals are not hard to find; and in tone they very fairly agree. The acts of these popular tribunals, when not outrageously unjust, are generally defended; but almost always without any consciousness that they stand for a definite stage of normal legal development, or are the “friends and forerunners” of the regular law; and solely on the ground that the extreme need justifies the outbreak, and that miners’ justice is a lamentable necessity. Thus, in the “Sacramento Transcript” of February 12, 1851, after a description of a very common sort of miners’ trial at Bridgport, a town on Deer Creek, where a defaulting partner had been overtaken and brought back by his fellows, tried by an improvised court, convicted, and sentenced to a severe whipping, I find these com-

23 See in particular Capron, History of California, Boston, 1854, p. 228; Delano, Life on the Plains, etc., chapter xxv.; Borthwick, Three Years in California, p. 223, sqq.

24 I use this qualification because of a single case where the Sacramento Transcript, as we shall later see, speaks of miners’ justice without regret, and as utterly opposed to lynch law. But this exception has a reason. No doubt other cases exist, though seldom.
ments: "This is the only sure means of administering justice, and although we may regret, and deem lynch law objectionable, yet the present unsafe sort of prisons we have, and the lenity shown offenders, are such as to induce us to regard such an exercise of power" (concludes the editor) with comparative lenity. Just before this issue, the editor had been repeatedly complaining of the general insecurity of prisons. A considerable study of the files of this paper leads me to think this expression of opinion a fair representative of the editorial views. Nor do I find any defender of popular justice in the news columns or correspondence of this paper saying anything more definite in defense of miners' lynching than this. On the contrary, I find such defenders almost always recognizing a conflict between regular law and miners' law. In practice, as appears from this evidence, the miners demanded of the regular courts more than that they should be known to exist. The miners demanded that these courts should be judged efficient by the very men who, as citizens, created them under the constitution, before the citizens could be called upon to surrender any authority to them. And if miners chose to declare a court inefficient, they felt at any time free to supersede it by their own *imromptu* tribunals. And then they defended these tribunals, not as normal means of punishing crime, but as abnormal necessities.

Thus, in a letter dated Coloma, May 7, and published in the "Transcript" of May 12, 1851, persons who sign themselves "The Miners" give an "authentic statement" of a recent outburst of popular indignation near that place. An honest citizen, as it seems, had lost from his wagon some packages of flour and butter, and the goods were traced, apparently by scattered flour, "from near the wagon to the cabin of Jones and partners" and identified by the owner. When these facts were made known, the "company present" chose a "jury of twelve men, together with one presiding officer, who coolly and deliberately proceeded to investigate the facts of the case," giving "Jones and his partners" a fair chance. The prisoners were found guilty by the jury, and the "company present, numbering about 33," concurred by unanimous vote in the verdict. Then they considered what to do. The district was the oldest in the mines, since it was in that district that Marshall had first found gold; and the courts were well established. Many of the crowd were disposed accordingly to hand over

25 Cf. the editorial of January 14, 1851.
the prisoners to the officers at Coloma. But ere they had set out for the town, other voices were heard. "To deliver the prisoners to the civil authorities would be tantamount to an acquittal of them, and would do no good, further than to help fill the pockets of officers and lawyers." So it was said, and they "resolved to settle the matter without delay." The prisoners were hereupon treated very leniently, being ordered to refund the value of the property stolen, and to leave the district before the next morning, or else to be whipped and then banished, in case they sought to stay. Lenient the offer was, though not strictly in accordance with the Bill of Rights. The prisoners, being given the choice, elected to leave un-whipped, or at least said so. But, possibly remembering the Bill of Rights, they concluded upon reflection to go about their business as usual, and "neglected to leave." Whereupon twenty or twenty-five persons, hearing of this contempt of court, hunted up Jones the next day, "and were proceeding to a suitable place to inflict the punishment, when the sheriff and his subs interfered in behalf of the law," promised to keep the prisoner safe, and "induced" the mob to give him up. "He was accordingly committed to jail, and tried next day before Justice Brooks. And notwithstanding the plain, pointed, irresistible, and unquestionable evidence of the guilt of the prisoner, he was informed by the court that the charges against him were not sufficient for conviction; and no doubt Mr. Jones now thinks that he is at perfect liberty to steal any and everything he can, provided he can be tried by the so termed courts of justice." Such is the "authentic statement" of the miners. But their comments are interesting, because they illustrate just the sense of a conflict between miners' justice and the regular law which was so common in those days. "Would it be less," continue the signers of the letter, "than the deserts of such officers as these, if they had to receive the dues of Jones as their own, in every case where they let the guilty go unpunished? We have the following to say in reference to our position in this neighborhood, as it regards lynch law: we are to a man opposed to any such law, and we believe there is no part of California in which the citizens would be more submissive to the civil authorities than ourselves, could the laws as designed by our legislature be executed faithfully. But when we call on the civil authorities for redress, we are repulsed. Indeed, sirs, we would not be surprised if the present administrators of the law in this part
of the country should make the whole community a mob. . . . So long as this evil exists to the extent that it now does, we will find our citizens looking to themselves for protection.”

But we need not depend on any one newspaper. In the “San Francisco Herald” for April 4, 1852, is a letter from a “special correspondent,” plainly a resident, at Moquelumne Hill, a prominent camp in the southern mines. A Vigilance Committee had been formed there for about two months. Since its formation there had occurred but one murder. “The strong current of crime” which had theretofore swept “everything before it,” and which the regular courts had never checked, had been checked by the committee, and order had begun to reign on the Hill. Some weeks had passed without disturbance, “and it was supposed that the committee were no longer on the lookout.” But alas! this tale of prosperous peace was a short one.

“A number of robberies have, within the last ten days, been committed.” “Scarcely a night has passed for some time but something has been stolen, or some man robbed.” At last, after one Perkins had been robbed of forty-five ounces, a Sonoran, by name of Carlos, was found on a tent floor, apparently drunk. The tent, as was seen, had just been cut open, Carlos had no business there, and seemed too drunk to explain his errand. He staggered off, but was soon discovered to be sober enough indeed, was arrested by the committee, was found to have gold specimens in his possession that Perkins could identify as a part of the lately stolen gold, and was at last induced to confess himself one of the recent thieves. So “the committee deliberated what should be done with him. It was thought that if he was handed over to the city authorities, he might perhaps be committed to Jackson jail; where, if he remained twenty-four hours, it would be because he liked the accommodations, and had no fear of being convicted.” To flog and release him was thought equally useless, since the committee knew his previous reputation, and despaired of reforming him. “If hung, there would be one thief less,” and one warning more. So the committee resolved to hang him. Carlos made no objection, but asked only for a good supper, a priest, and a glass of brandy. The committee cheerfully complied with his requests, and, after having received such religious and other consolation as his poor

26 Harvard College Library file.
soul desired, Carlos slept well all night, walked coolly to his gallows the next morning, and cheerfully helped about his own execution. So much for the case.27 The comments are thoroughly characteristic.

“It is much to be deplored,” says the correspondent, “that necessity should exist for such extreme measures. This execution will doubtless be condemned by many in California, and by more in the old States. The sickly sentimentalist will hold up his hands in horror; the officers of the law will be found loud in their indignation at what they will call a ruthless, illegal deed; the ermined judge who sits secure in his seat at a salary of thousands per year will be indignant that the people should presume to take any measures to protect their own life and property and punish offenders without their [sic] aid and sanction; but those who live in well-ordered communities, where they have officers who know their duty and dare do it, can have no idea of the situation in which we are placed. Whose fault is it?

“The truth is, it has been absolutely and imperatively necessary for us to protect ourselves, and, law or no law, it will be done. We have a Committee of Vigilance who are determined that, until a different state of things exist, they will not disband, but will punish in the most exemplary manner all and every high-handed offense against life and property.”

Any reader is struck by the force of this plea, and he fully agrees that, like “Jones and partners” at Coloma, Carlos may have been as verily a dog as the report makes him. But with Jones and Carlos, in these cases, we have little concern. Our interest is chiefly with the honest men themselves, and with their unhappy state. The reader must have observed the curiously external point of view that the writers of the two letters just cited adopt, as they discuss their own society. “People cannot understand our woes,” they pathetically insist. “We have lawyers, judges, sheriffs, prisons, but, alas! no justice, unless we fight for it ourselves, treating our own law-officers as aliens, and becoming a mob. Oh, the depravity of those courts and of those lawyers!” But, as we are tempted to retort: Whose gold, now hoarded by the pound in insecure tents, the prey of every vagabond, might have contributed to build a strong jail at Coloma or at Jackson? Or, perhaps, was it not of a

27 The main facts are confirmed by the account in the San Francisco Alta, for April 5, 1852, steamer edition.
The Struggle for Order

truth felt unnecessary to build a strong jail—unnecessary just because one chose in one's heart, meanwhile, to think ropes a little cheaper than bricks, and, for the purpose, just as strong? Nay, is all the "sickly sentimentalism," or all the cant, on one side in this matter? Who whines perpetually and tediously, all through these early days, about "necessity," and "the first law of nature," and the defects of the social order, and all his gloomy social afflictions; even while, in fact, his whole purpose is to store his gold dust, to enjoy his private fun, and then to shake off the viler dust of the country from his feet as soon as possible? Who but the poor outraged miner himself, whom necessity, if not manhood, will ultimately compel to apply himself to his duty and to stop his whining?

Nothing is capable of clearer demonstration from contemporary documents than the color of the sentiments of a community, in case one can find the very words of a representative people. The details of transactions it is harder to state accurately. In passing from the motives of the miners' popular justice to its methods and more characteristic incidents, we shall be much at the mercy of our witnesses. Yet of this the reader may be assured. What we have here further to narrate about miners' justice will rest, as far as possible, like the foregoing, on contemporary evidence. For what a pioneer can say, after many years, about the incidents of a given affair is worth little or nothing in comparison with any fairly objective contemporary evidence, unless, indeed, the pioneer in question was himself directly concerned in the very incidents that he relates. And for our purposes just here, no vague generalizations about the early justice will serve such as are so familiar in the later books and essays, by romancers and pioneers, on those early days. We must go afresh to the sources.

VI Miners' Justice in Action.—Characteristic Scenes and Incidents

All gradations, we have said, can be found in the popular justice of the mines, from the most orderly and wisely conducted expression of outraged popular sentiment which is in any way possible outside of the forms of law, down to the most brutal and disgraceful outbursts of mob fury. I wish that the latter class of incidents had been rarer than one actually finds them. But the day for either
vindicating or condemning by a labored argument the pioneer life as a whole has long since passed. The true vindication of those days—their only possible vindication—is the great and progressive State that grew up upon that soil, and that thenceforth was destined to do for our land a very real service. But, after all, neither to vindicate nor to condemn the whole community is our desire; we want, for the sake of our own instruction in political duties, to study the various individual events and tendencies that determined social life, and to let our praise or our blame fall upon them.

The more regular and orderly popular justice of the mines took place especially in the newer and more isolated camps, although circumstances might bring it to pass almost anywhere in the mines. We find it expressing itself often in very quaint forms, using, generally, considerable severity, but keeping up a show of good-temper throughout. Where it was thus free from passion, its verdicts seem, at all events, to have been generally in accordance with the facts, whatever we may say of the wisdom of its sentences.

A study of the lynching affairs thus directly from the sources seems to me to throw a wholly new light upon the character of which they were the too frequent expression. Many of the popular legends about lynching that have influenced the more modern and romantic tales of the early days distort very curiously the true motives of the miners. A mining camp is presented to us in such stories as a community that always especially delighted in its lynching parties, and that went about them with all the jovial ferocity of young tigers at play. But when the lynching affair was once begun, then, as the story-tellers will have it, the popular court was easily moved by purely sentimental considerations. A timely offer of drinks, a good joke, or, far better still, an ingenious display of ruggedly pathetic eloquence, might suffice to turn the court aside from its dangerous undertakings. The whole affair was a kind of great and grim joke, and sentimentalism could always take the place of the joking mood, and, if it did so, might save the prisoner. In the dramatic presentation of such scenes many writers have amused themselves. Thus the lynching affair, even if tragic in outcome, is, throughout, enlivened, according to these accounts, by absurdly conventional humor; and often, when the outcome is to be less terrible, the tragedy is averted by conventional eloquence. To take a very recent instance of such story-telling, I read, not long since, in the "Overland Monthly," a pretended
sketch of an early lynching scene, in which the prisoner’s life is at length saved by the ingenuity of his volunteer defender, an old man whose reputation for veracity stands very high in the camp where this scene is supposed to take place. This veracious defender, namely, who has never before seen the prisoner, concludes to save the latter’s life by making an exception in his favor, and lying about him. The prisoner’s face is pock-marked, and the defender accordingly makes up, on the spur of the moment, a long story about how this poor wretch once nursed a very unfriendly man, well known to the defender himself, through an attack of smallpox, and so caught the infection. The defender’s tale is made as harrowing as possible. Its effect is electric. The prisoner stands accused of a very serious crime and the evidence against him is strong; but all is forthwith forgotten. Judge Lynch offers him tobacco, gives him a drink, and sets him at liberty, on the ground that so saintly a man as one who volunteers to be a small-pox nurse under very harrowing circumstances is at liberty to do a little occasional mischief in those diggings without question.

Now, such sentimentalism as this is utterly foreign to the typical miners’ lynching affair, whether orderly or not. The typical lynching occurred, indeed, in a community of Americans, where everybody was by habit disposed to joke in public and seem as cheerful as he could, and to listen to all sorts of eloquence; but the affair itself was no expression of this formal joviality, nor yet of this submissiveness to oratorical leadership. It proceeded from a mood of utter revulsion against the accustomed good-humor of the camp. It was regarded as a matter of stern, merciless, business necessity. It was unconscious of any jocular character. Disorderly lynching affairs in some few cases, do, indeed, appear to have been mere drunken frolics. But nearly all, even of the disorderly affairs, and that, too, where their cruelty was most manifest, had in them no element of the merely jocular. They expressed an often barbarous fury; but they pretended to be deeds of necessity, and a sentimental speech in a prisoner’s favor would have done nothing save, possibly, to endanger the prisoner’s life yet more, or even to endanger that of his advocate. No one understands the genuine lynching who does not see in it a stern laying aside of all these characteristic American traits of good-humor and of oratorical sentimentalism themselves, for the sake of satisfying a momentary popular passion, aroused against the forces of disorder. Just be-
cause the miner was accustomed to be so tolerant and easy-going, these moments of the outburst of popular fury found him, whether orderly or not, in all typical cases, merciless, deaf to all pathetic appeals, unconscious of anything save the immediate public necessity. What element of comedy remained in some of these affairs was generally an unconscious element.

And so, while not all the lynching scenes are equally tragic, a large class of them is doubtless well typified by the following very gloomy tragedy, which suggests, if one wants to reflect upon it, a world of horror behind the scenes. This is, namely, a trial for murder, occurring in 1851, at Shasta, then the centre of a newer mining region. I use the report communicated from Shasta to the "Sacramento Transcript" of April 3, 1851, and give the details at some length just because the affair is so characteristic.

At Oak Bottom, about ten miles from Shasta, there lived, in March of that year, two partners,28 Easterbrook and Price, who had come from the lower mining region together, a few months before, leaving on their way a third partner, disabled by poison oak, at Grass Valley. The two had left families at home in the East, and were come to California to win fortunes for them, Easterbrook, in particular, expecting, like so many others, to raise the mortgage from his farm. Nobody seems to have questioned their respectability, or their mutual friendship. One evening in March, the two went together to the "residence of Mr. Isaac Roop," as it is called in the report. This was next door, in fact, to their own tent, and was a "residence" where one drank "ardent spirits," as the report in its exact way calls the drink there found, where one also played cards, and where one had to pay a bill at the end of the evening. As the hours went by, Easterbrook, whom nobody seems to have accused afterwards of being an habitual drunkard, grew a little excited and quarrelsome, and after some minor difficulty with a third person, he found himself refused more liquor by the cautious Mr. Isaac Roop. Thereupon Easterbrook called for his bill, and began to quarrel over the amount of it. Price, meanwhile, had gone to their tent near by, and had lain down on his blanket, whether drunken himself or no, does not appear. At all events, hearing Easterbrook's voice, he called out, as Easterbrook at last proceeded to pay his score: "Don't be paying

28 I give real names only to guaranty the accuracy of my report. After so many years there is little danger that the persons will be recognized.
out other people's money.” Easterbrook started at the insult, rushed back to the tent in fury, cursing, and told his partner to prepare for death. Price had been only joking, and was not moved by the threat. “Lay down,” he was heard to say quietly, “lay down and go to sleep.” An eye-witness saw, by whatever dim light there was, that Easterbrook dragged out a gun from under some baggage. In an instant one heard a report, and Easterbrook himself was fleeing from the tent into the night. When the bystanders, who at once pursued, had caught him in a little time, he said, apparently with the air of one waking: “Have I shot Price?” And when they said that he had, he replied: “Do as you please with me; it was an accident, and I was drunk.” Price lay gasping; he never spoke again, and died in about an hour.

The next day Easterbrook was brought, guarded, down to Shasta, over the ten miles of new miners’ road. There, just after midday dinner, a meeting of the citizens was called. Perfect decorum prevailed; a ghastly air of ordinary and business-like propriety pervades the stiffly written report. There were doubtless lawyers present. The assembled people first chose a chairman and secretary, and then a committee of three, to select a trial jury of twelve men “to try the cause before the people.” They also passed a resolution summoning the witnesses, and guarantying to the accused a fair and impartial trial; and they then appointed an officer “to carry into effect the verdict of the jury, and summons to his aid as many persons as might be necessary to release or execute the prisoner.” The chairman swore in the jury, and called the witnesses; and now at length the story of the homicide was heard. The prisoner was thereafter asked what he had to say in defense. He replied briefly, but not without some natural and terrible pathos. He had been in the mines only since the 29th of the last July. Never, before this one time, had he in all his life “had words” with any man. Never had he “done anything to cause a blush.” Standing now as one on the verge of the grave, he could declare in God’s name that he felt in his mind “guiltless of any premeditated intention to kill Mr. Price.” (“Mr.” has its sadly formal ring as applied to the dead partner at this moment.) Mr. Price was a “good man.” The prisoner had never had any feeling against him. And Price had left “a wife, and a daughter who is now married.” But, as for the prisoner himself, “I have a wife and three children. The eldest is nine years of age. My circumstances
are such, that, should I leave the world, my wife and children will be penniless. I have a farm which is incumbered, and without my return will be sacrificed. It is not for myself, but my wife and children that I plead. Taking my life would not bring to life Mr. Price. It would only make one more widow, and three more orphans, and on their account only do I plead for mercy, as any of you would, were you in the same unfortunate condition.”

This defense seems to have been noted down by the secretary of the meeting, for the newspaper report is very formally worded, and is called official. There were no other arguments heard on either side, the jury feeling no need of further advice. Shasta was not a place for tears, nor for pity; and the jury, after a brief consultation, brought in a written verdict, signed by each one, declaring Easterbrook guilty of murder in the first degree, and sentencing him to “be punished immediately by hanging by the neck until he is dead.” The meeting had convened at two o’clock. It was now after four. The prisoner was given about an hour to set his affairs in order, and was hanged between five and six.—The “Transcript” editor regards this as a truly wonderful case, finds in it a fine spirit of law and order, and calls it “an exhibition of the power of the American mind over that which we have heretofore known as mob law.” The reason for this exceptional and benevolent mood on the editor’s part is a recent occurrence in Sacramento itself, the “Roe” lynching, which had for the moment made popular justice seem to him of vast importance. Usually, as we have seen, he was less enthusiastic.

I know not whether the story of the “Outcasts of Poker Flat” was founded, as report has declared, upon some oral tradition that reached the author years later, of a real incident of early times. If so, then the real incident itself may have been the expulsion from this same town of Shasta, in August, 1851, of all the so-called “suspicious” characters of the town, “seven men and two women.” A “hay yard” had been burned down, and report made the act the work of an incendiary. All suspicious characters were at once ordered out of town; “they complied,” and passed down towards a brook called “Whiskey Creek.” Now as these nine went by the way, they met, oddly enough, coming down from Oak Bottom, our friend Mr. Isaac Roop himself, at whose “resi-

29 Alta California of August 20, 1851.
dence” the two partners had passed the fatal evening some five months before. I know not what general disgust with respectable gentlemen who had “residences” to leave when out for their airings, or what feeling of recklessness it was, that moved these nine; but one of them hereupon shot at Mr. Roop. Were this only a book of fiction, they would have killed him, by way of ending the story well. But this is history, and one is bound to say that, according to the report here cited, they missed Mr. Roop altogether, who went his way, probably with more than his accustomed quickness, into Shasta, and told what they had done. Whereupon the miners of that town sent out an armed party, who very firmly and leniently escorted the nine southward to the border of the county, with the intent of sending them thence into banishment; and of their fate, and of Mr. Roop’s, in subsequent days, I know nothing. This then must suffice as concerning the justice of the people of Shasta in 1851.—Here, at least, there was no trace of the sentimental or the jocular.

Our next case is less gloomy than Easterbrook’s, and takes place later, and in a less severely primitive locality. It is a case of larceny this time. In the “San Francisco Herald” of March 22, 1852, I find a report, apparently officially furnished by mail to this and other papers, of a miners’ meeting at Johnson’s Bar, where one “Dr. Bardt,” whose title is very considerately preserved throughout the report, was arraigned for theft.30

The meeting having been called to order, Mr. Campbell was appointed chairman, and Cyrus Hurd, Jr., secretary.

On motion, it was resolved, that Dr. A. Bardt be whipped for the said thefts.

On motion, it was resolved that Dr. Bardt should receive thirty-nine lashes on the bare back and leave the mines in three days.

It was moved and seconded that Dr. Bardt should be cropped. The motion, on being put, was negatived unanimously.

On motion, it was resolved that Dr. Bardt be whipped by the constable, Mr. Thompson, with a rope.

On motion, it was resolved that the constable should proceed immediately to the discharge of his duty.

On motion it was resolved that the secretary be requested to furnish a copy of the proceedings to be published in the California papers.

The punishment having been inflicted, it was, on motion, resolved that the meeting do adjourn sine die.

30 The comedy of this scene, be it noticed, lies not in the conscious behavior of the miners, who were as business-like and merciless as the judges of Easterbrook, but in our point of view as spectators.
Since the thefts are spoken of as the "said thefts," one is disposed to compare this case to the above cited Coloma case of "Jones and partners," and to suppose that "Dr. Bardt" had tried to set a previous verdict at naught.

Severe, unsentimental, and in the sharpest contrast to their daily joviality, was the mood of the lynching miners as we have so far examined it. The cause of this contrast we have also begun to see. The miners' justice, however, even where the evidence was clear, and the trial orderly, was often not merely severe, but atrociously cruel. In the "Transcript" for January 30, 1851, one finds the record of a trial at Mississippi Bar, where a thief, "in consideration of his youth," was not hanged, but was given one hundred and fifty lashes, and a brand "R" on the left arm, after having his head shaved on one side. One is surprised to find how people who at home, in those philanthropic days, would very likely have been under the sway of sentimentalists, and would have shuddered at severe penalties of all sorts, now behaved when they were away from home. For the change their own sense of irresponsibility is largely to blame, the same sense of irresponsibility that led them to tolerate the causes which led to these social disasters.

The two punishments, flogging and death, as penalties for theft, have invited much comment from critics of early California mining life. It is too obvious to need much special discussion here, that to flog and banish a thief from a given camp was to do worse than nothing for the good order of the mines at large. The thief went out into the mountains a very poor, desperate, and revengeful man. He had, meanwhile, all the vague chances ahead that were offered to him by a possible entrance as a stranger into some new camp. Hope in any cheerful sense these chances would hardly give him; but, in his despair, they would promise him that, in the new place, he might possibly avenge, on the people who did not know him, the blows that he had suffered from those who had found him out. Or again, the sight of the lonely mountain roads might offer to his despair the proper suggestion for a new life of crime. In any case, the camp that banished him had only, as Capron's informants put it,"let loose a fiend." And the friendly interchange of their respective fiends among the various camps was obviously the whole outcome of this prevailing system of flogging and banishment.

31 Capron's History, loc. cit.
Those miners who chose to hang the notorious thieves of their camps were therefore, so far as the direct effectiveness of their work was concerned, wiser, since they got rid of at least one rogue. A dead thief steals no more; and as we have above shown, this book has no sort of sentimentalism to expend over dead thieves, although, for other reasons, this plan of lynching thieves was a bad one. Where the miners' courts were orderly, careful, sensible in examining evidence, and certain of the habitual and intolerable roguery of the thief before them, it was far better, under the circumstances, to hang than to flog and banish him, and less cruel, also. Nevertheless, the real objection to the habitual hanging of the thieves by the people, as practiced in those days, is none the less cogent. We have already suggested where this true objection lay. The thief himself, as an individual, was indeed often enough a worthless hound, and deserved all that he got. As against the interests of society at large, his interests were naught. But it was precisely the interest of society that was in the long run most injured by the habit of hanging the thieves in these rude, irregular miners' courts. For the popular conscience was debased by the physical brutality of the business, and so soon as the lynching habit was once established, this conscience was put to sleep by a false self-confidence, engendered of the ease wherewith justice seemed in such cases to be vindicated. And society, which, with all its fancied honesty, was, in its own way, an obvious accomplice of the thief himself, was prevented for a while from appreciating the enormity of its offenses. For it was society that encouraged these rogues, and that, with every month, made them worse rogues than ever. By its careless spirit, by its patronage of gambling saloons, by its jolly toleration of all private quarrels that did not go so far as once for all to enrage the public, by its willful determination to spend no time on self-discipline, and no money on so costly a thing as a stable public order, and, above all, by its persistently wicked neglect to choose good public officers, the mining society made itself the friend and upholder of the very roguery that it flogged and hanged. Its habitual good-humor insured the necessity of occasional fury and brutality. And, so long as it flogged and hanged in this rude popular way, it could not be convinced of its errors, but ever and anon, after one of these popular outbursts of vengeance, it raised its blood-stained hands in holy horror at crime, lamenting the fate that would doubtless force it
still in future to continue its old business of encouraging this bloodshed. All this criticism of mine may be merely moral commonplace; but I am sure that I should never fill these pages with such platitudes, were it not for the outrageous effrontery with which the average mining community of those days used to defend itself, in the fashion cited above. The single act was indeed often in itself defensible. It was the habit of risking such emergencies that was intolerable.

So far did this trust in hanging as a cure for theft go, that in the second legislature, that of 1851, an act was passed making hanging for grand larceny a penalty to be thenceforth regularly imposed at the pleasure of the convicting jury. So easy is it for men to sanction their blunders by the help of a little printers' ink, used for the publication of a statute.

The familiar reply of the pioneers to all these criticisms is, that if the miners' justice reformed nobody, it at least effectually intimidated every rascal. And much nonsense has been repeated by writers on those early days concerning the terrible magnitude and swiftness, the certainty, the simplicity, and the consequent deterring effect of lynch law. But one who repeats this nonsense forgets first of all that axiom of criminal justice according to which the magnitude and the frightfulness of a penalty are of but the smallest deterring power in comparison with the certainty of the penalty; and such an one also forgets that mob law can never be certain. While a vigilance committee in the mines was in full course of vengeance, crime would indeed be terrified. But at the

32 I am somewhat perplexed to find Mr. Shinn, *Mining Camps*, p. 228, *note*, referring this law to the first year of the life of the State, and to the legislature of 1850. The matter is one of plain record, and is of some importance, because it shows that the law did not first encourage the lynchers, but that only after the extravagances of popular justice had for some time flourished, it was found possible to load the statute book with an entirely useless and demoralizing penalty, useless because its uncertainty made it of no deterring power, and demoralizing because all useless and obsolete penalties are mere opportunities for whimsical popular vengeance, not expressions of the dignity of the social order. The best possible comment on this law is a case where a thief was tried under it at Monterey, as reported in the *San Francisco Herald* for June 26, 1852. The jury brought in a verdict finding the prisoner guilty as charged, sentencing him to death, *but recommending him to the mercy of the court*. The court was puzzled; but as the prisoner was a native Californian, the jury got the benefit of the doubt, and the prisoner was formally sentenced to death.
very instant the committee relaxed its vigilance, the carelessly open tents, the gold, the scattered wanderers prospecting in the hills, or finding their way along the roads, all suggested to the thief his old chances. And what had he, after all, to fear? No vigilant police, no conscientious public spirit, no strong jails. Only a momentary and terrible outburst of popular justice was, at the worst, to be dreaded. If he escaped that, by flight, or by even temporary concealment of his crime, there would be no detectives to hunt him down, no permanently accessible evidence to be produced against him. No witness would be public-spirited enough to wait an hour longer than might be convenient for a chance to testify. In a few weeks the witnesses who could hurt him might be scattered far away, and the whole thing forgotten. Under such circumstances, could the bare chance of even one hundred and fifty lashes with a branding, or even the possibility of being hanged, deter a rogue from his work? The analogy of the case of England at the close of the last century, with the ineffectiveness of the capriciously executed death penalty as there ordained for lesser offenses, at once suggests itself. Criminals, like savages, scatter to their hiding-places after any sudden defeat; but they are not thereby civilized, and constant vigilance is needed as much after their defeat as before. And when the vigilance committees scattered the rogues of a given camp, the result was very like the one that takes place when a lonesome wanderer in Californian wildernesses scatters the coyotes that have gathered at night around his camp-fire. The coyote loves to hold parliament, in such a case, just beyond the circles of the firelight, for the benefit of the poor wretch who, rolled up in his blankets, is trying to rest from his labors beside his fire. With unearthly noises the vile beasts drive away from him sleep, for a prostrate and almost motionless man, all alone, the coyote regards as a deeply admirable object. And the man occasionally starts up, perchance, and dashes out into the dark with ineffective ravings, while the whole pack vanish yelping in the night. But, alas, when he returns to his fire and lies down, the gleaming eyes are soon again near, and he has nothing to do but to curse away the hours until dawn, helpless against his tormentors as Gulliver bound in Lilliput. As any one can see by a chronological study of the newspapers of 1851 and 1852, just such was the experience of many camps with their rogues. Of unhanged rogues
a community rids itself only by ceasing to nourish them; while, if you nourish rogues, you cannot hope to hang them all, nor yet to hang the most of them.33

A chronological study of the newspaper files, I say, proves this inefficacy of mere lynching, in so far as such a study can of itself make any social tendency clear. In the spring of 1851, in fact, and also far into the summer of that year, one finds much lynching going on. That autumn there seems indeed to be once more general peace and good order in the mines; but for this not merely past popular violence must be held responsible, but many other influences as well. The dry season continued until late, and vast river-bed operations, great tunnels, flumes, dams, ditches, were occupying men's attention. Labor was organized as never before in the mines. The vested interests of the various communities were great and increasing; the yield was large, but the responsibility serious. At such a moment the community was on its good behavior. Moreover (and this is a deeply significant fact), the violence of the spring and summer had reacted on the honest men even more than on thieves. The need of vindicating lynching, a need that these people almost always felt, showed that they were capable of being shocked by their own deeds of popular vengeance. For, after all, these honest men had very often been well brought up at home, and were still new to bloodshed. In their lives the lynching affairs were, despite their recent frequency, still terrible and wholly exceptional events. And so they may be

33 The reader should compare here again Mr. Shinn's discussion of our whole topic, and the instances that he cites. He has often failed to give his sources, and he seems to me one-sided in the choice of facts; but his is the only effort published before the present one to discuss systematically the whole subject of popular justice in California, and his view is much more favorable than mine. For further instances of moderately orderly popular procedure in the mines, I must content myself here with referring to the San Francisco Alta of 1851 (Harvard College Library file), in the numbers for May 21 (where a horse-thief at Nevada was allowed by the “crowd” to choose, himself, who should give him the thirty-nine lashes); July 11 (where a Sonora correspondent describes the caution with which a vigilance committee proceeded in trying a Mexican horse-thief, who was given a whole day in which to prepare his case and produce his witnesses, and who was then convicted and flogged, a collection being afterwards taken up for his benefit); and October 22 (where the passengers on a Marysville steamboat tried and convicted in regular miners' form one of their number who had committed a theft on board, and sentenced him to pay a large fine in gold dust to a sick and destitute man who chanced also to be on board). All these incidents are characteristic.
fairly presumed to have taken, for a while at least, the ordinary precautions of decent citizens. They did not so easily tolerate minor disorders, nor by their good-humor encourage ruffians to live in their camps. Probably they gambled less frequently themselves, drank less, acted more soberly. To these causes, quite as much as to the temporary fright of the rascals, must we attribute the comparative good order of that autumn. Yet the rascals were neither dead nor gone from the State, nor reformed, though many of them had left the mines. Just after two horse-thieves had been sentenced to death under the new law at Stockton, the "Stockton Journal" of about October 25, 1851, 34 "again complains," as the "Alta" says, "of the increase of crime and rowdyism at that place." The complaint asserts that disorder prevails to a lamentable extent in Stockton, that "every day is marked with some scene of violence; and the night becomes frightful, from the hideous iniquities perpetrated under the shadow of its obscurity." "All quiet," continues the "Stockton Journal," "is banished from the place, for no citizen feels safe, unless he is armed for any emergency. Might is the only protection a man can claim in these perilous times." Now these words are a trifle passionate and rhetorical; but they have no doubt a very real foundation. Some of the banished rogues had gone to Stockton, although that city had not been unaffected by the general popular struggle for order in the summer of 1851. These wretches had found the moment favorable in that city, and the sentence of death just legally passed on the two horse-thieves had not awed them into submission. Yet this was in the comparatively peaceful closing season of the great year of popular justice, which was indeed a valuable year, yet not, in general, because of its violence, but because of its organization of labor.

To see the utter transiency of the effects of brute violence, as a suppressor of crime, we must, however, look onwards to the newspapers of 1852. Surely, if mere warning by frequent lynchings were enough, the warning of 1851, with the constant readiness of the people to follow it up, on occasion, by new lynchings, ought to have produced a reign of peace in the mines, lasting longer than through the autumn and winter following. But consider the facts. We have already seen how, in the spring of 1852, things went on at Moquelumne Hill. I have before me in a file a number of the steamer "Alta" of June 15, 1852. This number has

34 Quoted in the San Francisco Alta for October 27.
an astonishing catalogue of crimes, reported from the mining regions both north and south, together with lynchings; and the editor declares that, were he to give all the particulars to be gathered from his mining exchanges of one day, he could fill a number of his own daily edition. And then he adds a significant quotation from an interior paper of the southern mines. "The 'Calaveras Chronicle,'" he says, "complains of the alarming increase of crime in that section within the past few weeks. The grand jury have found ten indictments. 'Summary examples' (i.e., lynching examples), says the 'Chronicle,' 'for capital and minor offenses have been frequently made; but the canaille would scarcely lose sight of the scaffold, the tremor which a malefactor in the agony of death cast through their frame would scarcely have ceased, until they caused the public ear again to be greeted with intelligence of more outrages, more robberies, more assassinations.' As for the state of the mining public in that part of the country at the moment, it appears, from several items in that number of the steamer "Alta," that a "Mexican" at Jackson, having been accused, without any evidence of which an intelligible account can be given, of being the murderer of two Frenchmen who had been slain in their tents near there, was brought before a drunken justice of the peace, and was by him committed to prison; and that the "crowd" thereupon, without giving him a fair chance to be heard further in his own defense, took him from jail and hanged him, after a desperate struggle, in the presence of his pleading mother and sisters. Now this affair, which is very confusedly reported, and which, of course, may have been distorted in the telling, sufficiently indicates, at all events, that the lynching habit was as demoralizing as it was useless. 35

VII  A Typical History of a Mining Camp in 1851–52

More orderly expressions of popular justice, of the sort heretofore frequently recorded, were impossible, as we now see, without

35 I have not wished to burden these pages with a complete list of the very numerous cases of lynching that I have collected from the contemporary newspaper files. The foregoing cases, as far as they go, are to my mind typical, and I believe my choice to be a fair one. At all events such directly verifiable data have far more worth than the confused memory of the pioneers before referred to.
results that must be far worse than mere mistakes. A mining town
was not standing still. It was a growing or else a decaying or­
nism. In alternating between universal optimistic good-humor on
the one hand, and grim vengeance upon wrong-doers on the other,
it was, however, either stunting its true growth, or dooming itself
to decay and corruption. Fortune has preserved to us from the
pen of a very intelligent woman, who writes under an assumed
name, a marvelously skillful and undoubtedly truthful history of
a mining community during a brief period, first of cheerful pro­
spersity, and then of decay and disorder. The wife of a physician,
and herself a well-educated New England woman, “Dame Shir­
ley,” as she chooses to call herself, was the right kind of witness
to describe for us the social life of a mining camp from actual
experience. This she did in the form of letters written on the spot
to her own sister, and collected for publication some two or three
years later. Once for all, allowing for the artistic defects inevitable
in a disconnected series of private letters, these “Shirley” letters
form the best account of an early mining camp that is known to
me. For our real insight into the mining life as it was, they are, of
course, infinitely more helpful to us than the perverse romanticism
of a thousand such tales as Mr. Bret Harte’s, tales that, as the world
knows, were not the result of any personal experience of really
primitive conditions.

“Shirley” entered the mines with her husband in 1851, and
passed the following winter, and the summer of 1852, at Rich Bar
and Indian Bar successively, both of them busy camps, near to­
gether, on the North Fork of the Feather River. The climate
agreed with her very well, and on the whole she seems to have
endured the hardships of the life most cheerfully.

36 These Shirley Letters, found all through the numbers of Ewer’s Pioneer
(published at San Francisco in 1854-55), have already been once cited. Of
their authenticity we are assured by the editor. The internal evidence is to
the same effect. “Dame Shirley’s” interest is not at all our particular one here;
and she is quite unconscious of the far-reaching moral and social significa­
cence of much that she describes. Many of the incidents introduced are such as
imagination could of itself never suggest, in such an order and connection.
There is no mark of any conscious seeking for dramatic effect. The moods
that the writer expresses indicate no remote purpose, but are the simple
embodiment of the thoughts of a sensitive mind, interested deeply in the
wealth of new experiences. The letters are charmingly unsentimental; the
style is sometimes a little stiff and provincial, but is on the whole very
readable. The real name of the author, according to Poole’s Index, is Mrs.
L. A. C. Clapp.
Rich Bar\textsuperscript{37} was, in September, 1851, when she first saw it, a town of one street, "thickly planted with about forty tenements;" tents, rag and wooden houses, plank hovels, log cabins. One hotel there was in it, the "Empire." Rich Bar had had, in its early days, a great reputation for its wealth, insomuch that during its first summer, it had suddenly made wealthy, then converted into drunken gamblers, and so utterly ruined, several hundred miners, all by giving them occasional returns of some hundreds of dollars to the panful. It had now entered into a second stage of more modestly prosperous and more steadily laborious life; it was a very orderly place, and was inhabited partly by American, partly by foreign miners. Some of the latter were South Americans. "Shirley" on her arrival found herself one of five women on the bar; and was of course very pleasantly and respectfully treated by those miners whom she had occasion to know.\textsuperscript{38}

In the "Empire," the only two-story building in town, built originally as a gamblers' palace, but, by reason of the temporary industry and sobriety of the Bar, now converted into a very quiet hotel, "Shirley" found temporary lodgings. The hotel office was "fitted up with that eternal crimson calico, which flushes the whole social life of the 'Golden State' with its everlasting red."\textsuperscript{39} In this room there was a bar, and a shop of miners' clothing and groceries. The "parlor" was behind this room, on the first floor: a room straw-carpeted, and furnished with a big mirror, a red-seated "sofa, fourteen feet long," a "round table with a green cloth, red calico curtains, a cooking-stove, a rocking-chair, and a woman and a baby, the latter wearing a scarlet frock to match the sofa and curtains." Upstairs were several bedrooms, with immense, heavy

\textsuperscript{37} \textit{Pioneer,} vol. i. p. 221.

\textsuperscript{38} The popular stories of absurd displays of sentimentality by early miners who chanced to be reminded of home through the sight of a woman or of a child never find much corroborating from the statements of women who were actually in the mines at the time. Most women were of course uncommonly well treated by the whole community, and any man's services would have been instantly and gladly at their disposal in case of any need. They were met with even effusive politeness; but miners were not such fools as the story-tellers like to make them. "Shirley," soon after her arrival, was greeted in her husband's office by one of his friends, who insisted on making her sip champagne on the spot at this friend's own expense, in honor of his first sight of a woman for two years. But Shirley did not hear that any one ever danced about a woman's cast-off bonnet or petticoat.

\textsuperscript{39} \textit{Pioneer,} vol. i. p. 174.
bedsteads, warped and uneven floors, purple calico linings on the walls, and red calico curtains. The whole house was very roughly and awkwardly pieced together by a careless carpenter, and cost its builders eight thousand dollars. It was the great pride and ornament of the camp.

The landlord was a Western farmer, his wife yellow-complexioned and care-worn. The baby, six months old, kicked and cried in a champagne-basket cradle. The woman cooked for all the boarders herself. Of the four women who besides “Shirley” were in town, another kept with her husband the “Miners’ Home” and “tended bar.” Within about a week after “Shirley” came, a third of the four, whom she had not met, died, and “Shirley” attended the funeral,40 which took place from a log cabin. This dwelling was windowless, but with one large opening in the wall to admit light. The funeral scene was characteristic of the social condition of the moment. Everything about the place was “exceedingly clean and neat” for the occasion. “On a board, supported by two butter-tubs, was extended the body of the dead woman, covered with a sheet; by its side stood the coffin of unstained pine, lined with white cambric. . . . The husband held in his arms a sickly babe ten months old, which was moaning piteously for its mother. The other child, a handsome, bold-looking little girl, six years of age, was running gayly around the room, perfectly unconscious of her bereavement.” Every few moments she would “run up to her dead mother, and peep laughingly under the handkerchief.” “It was evident that her baby-toilet had been made by men; she had on a new calico dress, which, having no tucks in it, trailed to the floor,” giving her a “dwarf-womanly appearance.” After a long and wandering impromptu prayer by somebody, a prayer which “Shirley” found disagreeable (since she herself was a church-woman, and missed the burial service), the procession, containing twenty men and three women, set out for the hill-side graveyard, “a dark cloth cover, borrowed from a neighboring monte table,” being “flung over the coffin,” as a pall. It was the best pall Rich Bar could have furnished for anybody. The coffin-lid was nailed down, as there were no screws, the sharp hammer blows on the hollow coffin shocking the solemn little assembly with their uncanny noise. “Shirley” tried, a few days later, to amuse the little motherless girl, who was then about to leave the camp with her

father for Marysville, and offered her a few playthings. The little one chose with ecstatic delight some tiny scent-bottles, which she called "baby-decanter."

Among the miners, perfect good-humor prevailed on the Bar. On the anniversary of Chilian independence, Yankee miners walked fraternally in procession with the Chilians, every member of the procession "intensely drunk," and yet there seems to have been no quarreling. The people on the Bar used profane language to an unpleasant extent on the commonest occasions; but they were well-meaning about it, and called it only a "slip of the tongue." "Shirley," as a woman of cultivation and curiosity, took a friendly interest in their less disagreeable manners and customs, and especially in their rich, and to her at that moment very novel, slang. She recorded with amusement how they ended a discussion upon business questions with: "Talk enough when horses fight," or "Talk enough between gentlemen;" how they assured themselves of one's sincerity by questioning: "Honest Injun?" (which she spells, with Yankee primness, Indian); and how they would ask one of another: "Have you a spare pick-axe about your clothes?" or say that they "had got the dead-wood on" somebody. Take them for all in all, they seemed to her far oftener amusing than coarse or disagreeable. And many of them she plainly found delightful men, men of education no doubt, and of good social position at home.

Before October had fairly begun, she had moved with her husband to the neighboring Indian Bar, where he had many personal friends. The scenery here was wilder; but the society was much the same in its busy and peaceful joviality. Here were some twenty tents and cabins on the bar itself; other houses were on the hill, the whole place evidently growing very fast; and other inhabited bars were near. The whole region was full of activity; dams, wing-dams, flumes, artificial ditches, were to be seen all about. "Shirley" now began to live in her own log cabin, which she found already hung with a gaudy chintz. The one hotel of Indian Bar was near her cabin, too near, in fact; for there much drinking, and music, with dancing (by men with men), went on. "Shirley" found and improvised very amusing furniture for her dwelling; trunks, claret-cases, three-legged stools, monte-table covers, and candle-

41 Pioneer, vol. i. p. 274.
boxes, furnishing the materials for her ingenuity. In her little library she had a Bible, a prayer-book, Shakespeare, and Lowell's "Fable for the Critics," with two or three other books. The negro cook of the hotel, who for some time did her own cooking as well, played finely on the violin when he chose, and was very courteous to "Shirley." She speaks of him often with infinite amusement. Prominent in the society of the Bar was a trapper, of the old Frémont party, who told blood-curdling tales of Indian fights; another character was a learned Quaker, who lectured at length to "Shirley" on literature, but never liked to listen to her on any subject, and told her as much very frankly. The camp had just become possessed also of a justice of the peace, a benevolent looking fat man, with a big head, slightly bald, and a smooth fat face. He was genial and sweet-tempered, was commonly supposed to be incompetent, and had got himself elected by keeping both the coming election and his candidacy a secret, save from his friends. Most of the miners, when they came to hear of him and of the election, thought such an officer a nuisance in those diggings, as the camp could surely keep order without his help. But so long as he had nothing to do, he was permitted to do it, and to be as great a man for his pains as he liked. Late in October, one case of supposed theft occurred, the trial taking place at Rich Bar, before a miners' meeting. The "Squire" was allowed to look on from the platform, while the improvised popular magistrate, sitting by his side, administered justice. The thief, as "Shirley" heard, was lightly flogged, and was then banished. 43

Not until December, however, was the general peace broken further. But then it was indeed broken by a decidedly barbarous case of hanging for theft. The "Squire" was powerless to affect the course of events; the "people" of Indian Bar, many of them drunken and full of disorderly desire for a frolic, tried the accused, whose guilt was certain enough, although his previous character had been fair; and, when he had been found guilty, the "crowd" hanged him in a very brutal fashion. He was himself drunken to the last moment. The more reckless people of the Bar were the ones concerned in this affair, and all "Shirley's" own friends disapproved of it. 44

General demoralization, however, set in with winter. There was

little to do on the Bar; the most of the men were young; the
confinement of the winter, on a place "about as large as a poor
widow's potato-patch," was terrible to them. Christmas evening
saw the beginning of a great revel at the hotel near "Shirley's"
log-cabin. Days had been spent in preparing for it; the bar of the
hotel had been retrimmed with red calico; brandy and champagne
in vast quantities had been brought into camp; and, what was most
wonderful of all, the floor of the hotel had been washed. An oyster
and champagne supper, with toasts and songs, began the revel.
"Shirley" heard dancing in the hotel as she fell asleep that night in
her cabin; and next morning, when she woke, they were still
dancing. The whole party now kept themselves drunken for
three days, growing constantly wilder. They formed a mock
vigilance committee to catch and bring in the few remaining sober
men of the camp, to try them, and to condemn them to drink
some stated quantity. Some of the wildest revelers were the most
respected men on the river. At last they all reached the climax:
as "Shirley" heard the thing described, they lay about in heaps on
the floor of the hotel, howling, barking, and roaring. Altogether
"Shirley" thought the letter describing this affair the unpleasantest
of her series so far. Strange to say, no fights are recorded at this
time. But thenceforth confusion seems to be somewhat noticeable
in the social affairs of that vicinity. In March a man at a camp
near by was stabbed in the back during a drunken frolic, and
without any sort of cause. Yet people took at the time no notice
of the affair. In April a Mexican at Indian Bar asked an Ameri­
can for some money due the former. The American promptly
stabbed his creditor; but again nothing was done. The Mexicans
were in fact now too numerous for comfort at Indian Bar, since
Rich Bar had just expelled all foreigners, who therefore now came
to this place. The public houses, which now were noisy with gam­
bling, drinking, and fighting, had increased from one to seven or


46 These "balls," attended by men only, because there were only men to
attend them, were not uncommon in the mines. Borthwick, in his Three
Years, has preserved, opposite p. 320, a sketch of one of them, made on the
spot, and worth pages of stupid description. See also his excellent sketches,
from life, of gambling-scenes.


eight, and on Sundays they were "truly horrible." But summer began without any further great outbreaks of mob violence. On the Fourth of July, however, the "gradually increasing state of bad feeling" recently shown by our countrymen towards the foreigners, culminated, for the moment, in a general assault, the result "of whiskey and patriotism," on the Spaniards near one of the saloons, of whom two or three were badly hurt.49 "Shirley" confesses that, as she learns, the people of Spanish race on the Bar, many of whom are "highly educated gentlemen," are disposed to base an ill opinion of our whole nation on the actions of the rougher men at Indian Bar. "They think" [very oddly] "that it is the grand characteristic of Columbia's children to be prejudiced, opinionated, selfish, avaricious, and unjust. It is vain to tell them that such are not specimens of American gentlemen." Our democratic airs as shown in the mines, "Shirley" thinks, deceived them. They fancy that we must be what we choose to seem, namely, all alike. But the men who really so acted as so unfavorably to impress the foreign gentlemen were, she declares, the gamblers and rowdies of the camp. "The rest of the people are afraid of these daring, unprincipled persons, and when they commit the most glaring injustice against the Spaniards, it is generally passed unnoticed."

"We have had," says "Shirley," wearily, "innumerable drunken fights during the summer, with the usual amount of broken heads, collar bones, stabs, etc." These fights usually took place on Sunday; and not otherwise could "Shirley" always have been sure of remembering the day of rest. Things were sadly changed from those bright days of her early stay at the Bar.

The vengeance of the gods, that was thus gathering over Indian Bar, descended with a sudden stroke on Sunday, July 11. "Shirley" had been walking with a party of friends in the beautiful summer woods; but when she returned the town was in a fury. A "majestic-looking Spaniard" had quarreled with an Irishman about a Mexican girl ("Shirley" for the first time, I think, thus showing a knowledge of the presence at Indian Bar of those women who seem, in the bright and orderly days of her first arrival, to have been actually unknown in the camp). The Mexican, having at last stabbed and killed the other, fled to the hills; and the Americans were rushing about, shouting: "Down with the Spaniards!" "Don't let one of the murderous devils remain!" and other similarly enlight-
ened words. "Shirley" was conducted by her husband for safety up on to the hill, and to a house where there lived a family containing two women. Here from above, gazing directly down on to the Bar, she watched "a sea of heads, bristling with rifles, guns, and clubs." In this vast confusion a gun was accidentally discharged, during a scuffle, and two men were wounded. This recalled the people to their senses, and they forthwith elected a vigilance committee. They were then pacified for the day.

But the next day the committee tried five or six Spaniards, "supposed to have been ringleaders in the drunken mob of Sunday," and sentenced two to be flogged, and all to be banished, their property "being confiscated for the use of the wounded persons." "Shirley" was obliged to hear, from her cabin, the flogging of the two men, and found it, naturally, very highly disagreeable. One of the two convicted men, a "gentlemanly young Spaniard," begged in vain to be killed rather than whipped, and finally swore the most awful vengeance on all Americans henceforth. These sentences of the committee were, after all, very lenient; for the mob had demanded the death of the prisoners. Thus began the rule of the Committee of Vigilance.

Within the next week there was a murder by a negro, and he was hanged for it at Rich Bar. Fights went on more wildly than before. Yet another negro is named, who cut his own throat and created much excitement thereby, since at first one of his fellows was accused of having done the deed. As for the state of society, "it has been never been so bad," "Shirley" writes, two or three weeks later, "as since the appointment of a committee of vigilance." It was now almost impossible to sleep. The rowdies paraded the streets all night, howling, worrying their enemies, and making great bonfires,—all the men of this crowd of roughs being constantly drunken. "The poor, exhausted miners . . . grumble and complain, but they—although far outnumbering the rioters—are too timid to resist. All say, 'It is shameful; something ought to be done,' etc., and in the mean time the rioters triumph. You will wonder that the committee of vigilance does not interfere. It is said that some of that very committee are the ringleaders." A duel took place during this time at a neighboring bar. "The duelists were surrounded by a large crowd, I have been told, foremost among which stood the committee of vigilance!"

50 For the immediately foregoing, see Pioneer, vol. iv. p. 103, sqq.
The mining operations that summer were not a distinguished success at Indian Bar, and in autumn there was what miners call a "general stampede from those diggings." The physician and his wife took leave of the mines not unwillingly. "Shirley's" health, to be sure, had wonderfully improved. In closing her mining life she notices that "the few men that have remained on the Bar have amused themselves by prosecuting one another right and left." "The 'Squire,'" she adds, "comes out strong on these occasions." His recent course in these litigations "has been so fair, candid, and sensible, that he has won golden opinions from all, and were it not for his insufferable laziness and good-nature, he would have made a good justice of the peace."51 This criticism applies so well, also, to all the honest miners of Indian Bar and vicinity (men who formed an undoubted majority of the community), that we need no better summary than these words give us of the life of that year on the Bar. These native Americans of good character would have had little real trouble in preserving the peace of the camp, had they not chosen, one and all, to show such detestable "laziness and good-nature."

"Shirley's" well-sketched pictures have passed before us, and the series is complete: easily secured peace, then carelessly criminal tolerance, then brutally intolerant degeneracy, and then the final wretched dissolution. There can be no doubt that the story is typical of the life of many camps. With "Shirley," we rejoice at last to leave to its triumph the majesty of the benevolent law, personified in the fat-faced squire, as it works to the edification of that handful of impecunious and litigious fellow-citizens who were forced to stay on the Bar.

VIII The Warfare Against the Foreigners

We have now disposed, we hope forever, of the familiar pioneer theory that makes the "foreign criminals" the one great cause of the troubles of the miners. The rapid degeneration of the weaker young men of all sorts in those times has been commonly enough noticed in the accounts of the mines. The foreigners, too, had their share in the effects of this tendency, and the Spanish-Americans most of all, because they were most abused, and least capable of resisting the moral effects of abuse. Many of them were also bad

enough to begin with, and that there were great numbers of for­
egn rogues in California is, of course, certain. But for the rapid
degeneration, both of individuals and of communities, the honest
men were chiefly to blame, because they knew the danger, and
neglected for a time, in the mines, every serious social duty. The
honest men were, at the worst, a fair majority, and were usually
an overwhelming majority of the mining communities. Had they
not been so, California would never have emerged from the strug­
gle as soon as it did. Since they were so, it is useless for the survivors
now to remind us of the undoubtedly honorable intentions of these
good miners of early days, and to lay all the blame elsewhere. Not
every one that saith Lord! Lord! is a good citizen.

But if the foreign criminals were not the great source of mis­
chief, the honest men certainly did all that they could to make
these foreigners such a source. The fearful blindness of the early
behavior of the Americans in California towards foreigners is
something almost unintelligible. The avaricious thirst for gold
among the Americans themselves can alone explain the corruption
of heart that induced this blindness. Some of the effects we have
already seen. We must look yet a little closer at this aspect of the
struggle.

The problem of the future relations of foreigners and Americans
in California was, at the moment of the birth of the State, un­
doubtedly perplexing. A mixed population of gold-seekers was
obviously a thing to be feared. Left to themselves, American
miners, as it seemed, might be trusted to keep a fair order. With all
sorts of people thronging the territory, danger might be appre­
hended. This problem, then, as to the future, was sure to trouble
even the clearest heads. But, after all, clear heads ought quickly
to have understood that this perplexing problem was not for any
man, but, in its main elements, only for fortune to solve; and that
the work of sensible men must be limited to minimizing the threat­
ening evils by caution, by industrious good citizenship, and by a
conciliatory behavior. The foreigners could not, on the whole, be
kept from coming. One could only choose whether one would
courage the better or the worse class of foreigners to come to
the land, and whether one would seek to make those who came
friendly and peaceable, or rebellious and desperate. But the Cali­
fornia public and the first legislature chose to pass an act to dis­
courage decent foreigners from visiting California, and to convert
into rogues all honest foreigners who might have come. This was, indeed, not the title of the act. It was the Foreign Miners' Tax Law of 1850.

Its avowed purpose was as far as possible to exclude foreigners from these mines, the God-given property of the American people. Its main provision was a tax of thirty dollars a month (levied by means of the sale of monthly licenses) upon each foreigner engaged in mining. At the time when it was passed there were already several thousand Sonoran miners in California; and, as we have also seen, there had already been difficulty with them in the southern mines, a difficulty that, as we learn from Bayard Taylor, passed off peaceably enough at the moment, because the Sonorans would not fight. Taylor's mistake lay in supposing the Sonorans to have been seriously discouraged. In the next year they were more numerous than ever. So the public and the legislature were forewarned. The common talk about our national divine right to all the gold in California was detestable mock-pious cant, and we knew it. The right and duty that undoubtedly belonged to us was to build up a prosperous and peaceful community anywhere on our own soil. But you cannot build up a prosperous and peaceful community so long as you pass laws to oppress and torment a large resident class of the community. The one first duty of a state is to keep its own peace, and not to disturb the peace. The legislators must have known that to pass the law was to lead almost inevitably to violent efforts at an evasion of its monstrous provisions, and was meanwhile to subject the foreigners to violent assaults from any American ruffians who might choose to pretend, in the wild mountain regions, that they were themselves the state officers. Violence must lead to violence, and the State would have done all it could to sanction the disturbances.

Seldom is a political mistake so quickly judged by events. The next legislature, little wiser about many things than its predecessor, was still, in this matter, forced quickly enough to withdraw its predecessor's absurdity from the statute-books. The "Alta California" breathes with a sigh the general relief on hearing that this is done. But ere it could be done, untold mischief, which added

52 See also Riley's letter (Cal. Docs. of 1850, p. 788) as corroboration.

53 See the weekly Alta, in the Harvard College Library file, for March 15 and March 22, 1851. As appears from remarks and news herein contained, the repeal of the tax was, like all political action, the product of manifold
fearfully to the sorrows of the struggle for order, had been caused by the unlucky act.

No adventurer, no gambler, no thief, no cutthroat, who had desired to come to California from Mexico, or elsewhere abroad, could be prevented by a threat of taxing him thirty dollars a month for mining. Many a cautious, sober, intelligent foreigner might be warned away by the exorbitant tax, as well as by the hostility which it indicated. For, when levied not upon the uncommonly lucky miner, with his two ounces or his pound a day, but upon the ordinary poor devil, with his ups and downs, whose "wages" per month were in only a very few months more than enough to support him at the prices that prevailed, and in the winter months were often nothing at all, the thirty-dollar tax was a monstrous imposition. And when levied on men who had come already in 1848, and who had often felt, before the passage of the act, that the Americans hated them merely for being the more skillful miners, this tax was a blow that their hot spirits were sure to resent.

Trouble came at once, and quickly culminated in the difficulties at Sonora, in 1850. From his sources Mr. Shinn has given, in chapter xviii. of the "Mining Camps," an account of this disturbance. He regards it as a "case where indignation against foreigners had much justification." I am prepared to believe that whenever it is proved, but what I have been able to gather from the contemporary newspaper files makes me prefer to express the matter by calling the affair a not wholly unprovoked, but still disgraceful riot on the part of Americans. They were undoubtedly harassed by foreigners of the poorer sort, and a number of murders were committed by such, but when the Americans turned upon for-

54 His chief source, I suppose, is the Miners' Directory of Tuolumne County (Sonora, 1856), which he cites in his Land Laws of Mining Camps, and elsewhere. This pamphlet I have not been able to use.
eigners as a class, and especially upon Sonorans and South Americans, and tried to exclude them from the mines in a body, by means of mob-violence, supported by resolutions passed at miners' meetings, the undertaking was a brutal outrage, and the good sense of decent Americans quickly rebounded, for the moment, from the mood that could be guilty of such behavior. The result was, however, meanwhile, that many foreigners were rendered desperate and were turned into dangerous rascals, and that many more were driven violently away from the mines; but that, nevertheless, the body of the foreign miners remained in the mines at their work, ill-humored, suspicious, and ready for the worst; so that the last state of "those diggings" was far worse than the first. There is here no space for a discussion of the sources bearing on this topic; and these Sonoran difficulties form one of the many still almost unstudied topics that abound in California history, and that invite monographic treatment. I can give only the result of what I so far can make out. When, early in the summer of 1850, the collectors came for the foreign miners' tax, they found the foreigners surly and suspicious, and did what was possible to make them more so. A number of murders were committed by "Mexicans," and then the American miners began to meet, and to pass resolutions, not against murderers, nor in favor of a firm organization of the regular machinery of law, but against foreigners. One famous set of resolutions, quoted in all the authorities on this affair, pronounced in favor of a committee of three Americans in each camp, to decide what foreigners were "respectable," and to exclude all others by a sort of executive order, meanwhile depriving those who remained of all arms, save in cases where special permits should be issued. One is reminded once more, by this procedure of poor Ide and the "blessings of liberty." Other resolutions, passed in those days, and often later in various camps, excluded foreigners altogether, sometimes giving the obvious intentions of Providence as the reason for this brutality. There followed numerous assaults upon Mexicans, and several riotous assemblages of Americans.

It is impossible to judge how far the newspaper reports of foreign outrages in that region and time, outrages such as robberies and murders committed upon Americans, are truthful. Any mysterious outrage was attributed to "Mexicans;" any American wretch who chanced to find it useful could in moments of excite-
ment divert suspicion from himself, by mentioning the Mexicans in general, or any particular Mexicans, as the authors of his crimes. And, in "those diggings," there were, undoubtedly, numerous Mexicans who well deserved hanging. But the story as told by the foreign population is not known to us. We can see only indirectly, through the furious and confused reports of the Americans themselves, how much of organized and coarse brutality these Mexicans suffered from the miners' meetings. The outrages committed by foreigners were after all, however numerous, the crimes of individuals. Ours were the crimes of a community, consisting largely of honest but cruelly bigoted men, who encouraged the ruffians of their own nation to ill-treat the wanderers of another, to the frequent destruction of peace and good order. We were favored of heaven with the instinct of organization; and so here we organized brutality, and, so to speak, asked God's blessing upon it. The foreigners were often enough degraded wretches; such drank, gambled, stole, and sometimes murdered: they were also, often enough, honest fellows, or even men of high character and social position; and such we tried in our way to ruin. In all cases they were, as foreigners, unable to form their own government, or to preserve their own order. And so we kept them in fear, and, as far as possible, in misery.

So ill we indeed did not treat them as some nations would have done; we did not massacre them wholesale, as Turks might have massacred them: that treatment we reserved for the defenseless Digger Indians, whose villages certain among our miners used on occasion to regard as targets for rifle-practice, or to destroy wholesale with fire, outrage, and murder, as if they had been so many wasps' nests in our gardens at home. Nay, the foreign miners, being civilized men, generally received "fair trials," as we said, whenever they were accused. It was, however, considered safe by an average lynching jury in those days to convict a "greaser" on very moderate evidence, if none better could be had. One could see his guilt so plainly written, we know, in his ugly swarthy face, before the trial began. Therefore the life of a Spanish-American in the mines in the early days, if frequently profitable, was apt to be a little disagreeable. It served him right, of course. He had no business, as an alien, to come to the land that God had given us. And if he was a native Californian, a born "greaser," then so much the worse for him. He was so much the more our born foe; we
hated his whole degenerate, thieving, land-owning, lazy, and discontented race. Some of them were now even bandits; most of them by this time were, with our help, more or less drunkards; and it was not our fault if they were not all rascals! So they deserved no better.

The Sonora troubles of 1850 would be less significant if they had expressed only a temporary mistake, and had given place to a proper comprehension of our duty to foreigners. But although the exorbitant foreign miner's tax was repealed in 1851, and although, when a tax was reimposed later, it was of comparatively moderate amount, still the miners themselves were not converted from their error until long afterwards, and, in numerous individual cases, they were never converted at all. The violent self-assertions that from time to time were made of the American spirit over against the foreign element, accomplished absolutely no good aim, and only increased the bitterness on both sides, while corrupting more and more our own sense of justice. Instead, therefore, of justifying themselves as necessary acts of "self-preservation," the miners' outbreaks against foreigners only rendered their own lives and property less secure. Two years after the Sonora troubles, one finds in the summer of 1852 the same weary business going on in the southern mines, less imposing, no doubt, in its expressions of wrath, but none the less disgraceful and demoralizing. The later the year, the more certain it is that all molestation of foreigners who had been in the peaceful possession of claims meant simply confiscation of valuable property that had been acquired by hard toil. For such claims, in these later times, were often river-bed claims, or "coyote-holes," or similarly laborious enterprises. So, in the disturbance in July, 1852, in Mariposa, referred to in the foregoing note, the foreign miners, as appears from the report, had undertaken all the work of turning the course of a river, and their property was confiscated as soon as it was perceived to be valuable. And the turpitude of such conduct is especially manifest

55 See in the steamer *Alta* (Harvard College Library file) for July 13, 1852, the account of the expulsion of foreign miners, French and Spanish-American especially, from expensive and valuable claims in Mariposa. See, also, resolutions of miners at Sonora, passed October 12, in the steamer *Alta* of November 1, ordering foreigners out of the mines.

56 E. Auger, in his *Voyage en Californie* (Paris, 1857), p. 112, gives an account from hearsay, whose correctness I am unable to control, of one of the earlier difficulties between French and American miners in the southern
from the fact that the foreigners (as Auger, just cited, admits in case of his own countrymen) were in any case, and even under the fairest treatment, at a serious disadvantage in all operations of an extensive sort, by reason of their comparative deficiency in the character and training required in order to improvise, amid the confusion of a new country, greater organizations of labor and capital. The Frenchmen, says Auger (p. 106), in case of great mining undertakings, "ont toujours cédé au découragement qui remplaçait chez eux une ardeur immédiate ou aux divisions intestines qui les séparaient brusquement au moment de recueillir les fruits de leur entreprise." He excepts only the one greater case cited, where the Americans did the work of dissolution for the Frenchmen.57 Thus, however, the very instinct and training of which we in this land have such good reason to be proud, aggravates, in the present case, our disgrace. Because we knew so well how to organize, we were not the weak nor the injured party, but had these foreigners at our mercy; and for the same reason our outrages upon them were organized outrages, expressions of our peculiar national combination of a love of order with a frequently detestable meanness towards strangers.

The northern mines, however, are often supposed to have been not only more orderly, but also more tolerant. This is probably, on the whole, the case. As there were fewer foreigners present in the northern mines, the temptations to abuse them were less frequent. In some cases, however, proof can be found even in the southern mines themselves of very great earnestness in the enforcement of the rights of foreigners. An amusing account is given (in a book that contains a series of well-written and apparently substantially truthful sketches of California life, by a Canadian) of a demonstration in a camp on the Stanislaus, as late as 1856, by the

mines, and remarks in that connection, very accurately, that, among the miners "La justice favorise généralement les Américains aux dépens des étrangers." On page 106, the author recounts from hearsay another quarrel at this time over a river-bed claim, "sur le Stanislaus-river," where his countrymen were violently dispossessed. This may be the Mariposa case misplaced.

57 Borthwick, op. cit., p. 369, cited also by Mr. Shinn, in the Mining Camps, p. 155, contrasts finely the organizing power of the American miners with the gregarious habits of the seldom organized French miners, and makes the fact illustrate national peculiarities.
whole force of the camp to protect certain Chinamen in their rights as miners.58 This camp, Shaw tells us, was inhabited mainly by miners from the northern States of the Union, and where the influence of such was paramount it may have been, in general, a somewhat more tolerant influence. Yet, once for all, our American intolerance towards the unassimilable foreigner is not a sectional peculiarity, however often it may appear somewhat more prominently in one section of our land than in another. And the northern mines show us numerous cases of it. "Shirley’s" experiences, we remember, were in the northern mines. It was in the same mines, and in the same summer of 1852, that miners' meetings at Bidwell's Bar, at Foster's Bar, at Rough and Ready, and elsewhere, passed resolutions excluding foreigners.59 This shows how the same vain and demoralizing undertakings were still believed in at the north that had been so disastrous at the south. And one sees in another form how little reliance can be placed upon the impression that the baseness of the foreigners in California was to blame for the chief troubles of the struggle for order in the mines. But, as a crowning illustration of the position of the northern miners in this matter, the fact remains that in Downieville, far up in the northern mines, was committed in the summer of 1851 the most outrageous act of lynch law in all the pioneer annals, the entirely unnecessary hanging of a woman, whose death, under the circumstances, was plainly due, not merely to her known guilt, but quite as much to the fact that she was not an American. And the deed was not only done but defended by American miners.

58 Pringle Shaw, *Ramblings in California* (Toronto, James Bain; date of publication not given, but apparently not far from 1858), p. 72, sqq. An American miner sold his claim to Chinamen, who were dispossessed by three "gaunt long-haired fellows" from Arkansas. Shaw was himself the recorder of claims in the district, appointed to his office by the miners' meeting. The Chinamen complained to him, he remonstrated with the "jumpers," and was insulted and threatened by them. He then called out the force of the camp, about one hundred men, who marched in military order to the disputed claim, under arms, and gave solemn warning to the Arkansas trio to leave it in five minutes. The order was obeyed.

59 Steamer *Alta* for May 31 and June 15, 1852. In the meeting at Bidwell's Bar, the miners expressed great indignation at "all merchants and shipping agents engaged in transporting "a countless number of villains from all parts of the world to California." So the *Alta* (steamer edition of June 15) expresses their view, partly in their own words.
Very obvious considerations lead civilized men, in times of social disturbance even more than in times of peace and good order, to be lenient to the public offenses of women. A man who gravely transgresses against order is necessarily viewed first of all as transgressor, and only in the second place do his fellows remember that considerations of mercy, of charity, or of his own personal merit, may enter, to qualify the sternness of justice towards him. But a woman, however she transgresses against law and order, is necessarily regarded first of all as a woman, and only in the second place does one remember that even in her case justice must have its place. Therefore all the considerations that may render lynch law a temporary necessity among men in an unsettled community have, obviously, absolutely no application to the few women who may chance to be there. If they become intolerable, a quiet expulsion of them must serve, until such a time as the community, having made up its mind to behave sensibly, has provided prisons to confine them.

However, the people of Downieville, in July, 1851, were once led to think differently. The incident has been frequently mentioned in books and essays about the early times, and has often been regarded with horror, and often, also, explained and even defended, as a necessity of the moment. Garbled accounts of it are found, sometimes, in the later pioneer reminiscences. Of the newspapers of the time that I have been able to use, but one, so far as I know, has an extended account of the affair coming directly from an eye-witness. This paper is the "Daily Pacific Star," of San Francisco, whose version, I believe, has never yet been employed for historical purposes. I had the good fortune to come upon this version while consulting a partial file of the paper in the Mercantile Library in San Francisco, and upon it I have here largely depended. Other newspaper reports, such as the "Alta" account, or that in the "Sacramento Transcript," I have seen; but they are brief and unsatisfactory. On the whole it is plain that the newspapers, even in those plain-spoken days of early California,

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60 See, for example, the otherwise generally inaccurate essay of Mr. H. Robinson, on "Pioneer Times in California," in the *Overland Monthly* for 1872, vol. viii. p. 457. See, also, Borthwick's unconsciously unfair version, from hearsay, *op. cit.*, p. 222.
were disposed to hush the matter up as soon as possible. One of the editors of the "Star" happened to be in Downieville at the time; hence this particular report in the "Star" for July 19, 1851.

On the night of July 4, one Cannan, apparently an American, was walking home with some friends, in a state of mind and body appropriate to the occasion, when they passed near the house where, as they well knew, there lived, together with her Spanish paramour a young woman of Spanish-American race. She was, it would seem, a person whose associates were mostly gamblers; just how irregular her life was does not appear, save from this one item about her paramour. To judge by what is stated, she may therefore have been of at least pretended fidelity to him. All accounts make her a woman of considerable beauty, of some intelligence and vivacity, and of a still quite youthful appearance; and she seems to have been a person not at all despised in the camp. At this moment her house was dark, and the occupants were sleeping. But Cannan, in passing by, stumbled and fell, as his companions say, against the door of her house; and the light, rude door giving way, he fell half inside. One of his companions pulled him back, saying: "Come out; hush up; there's a woman in that house," or some such words. As Cannan rose, he had, in a drunken whim, picked up something from the floor, just inside the house door—a scarf or some like article; and his companions with difficulty got it away from him to throw it back. Then they all found their probably devious way homewards.

Next morning Cannan, with one of the same companions, passed by the house, and announced to his companion his purpose to apologize to the woman for having made the disturbance of the night before. Cannan could speak Spanish, which his companion did not understand, so that we have, in this respect, no competent witness surviving the following scene. At all events, as Cannan's companion testifies, the companion of the woman met them at the door as they approached, and seemed angry with Cannan, and was understood to threaten him. A moment later, the woman herself appeared, and spoke yet more angrily. Cannan continued the conversation in what seemed to his companion a conciliatory tone; the woman,

61 If Mr. Robinson, in the essay cited, can be viewed as trustworthy, he was a man of good position among the miners, and member of an influential order.
however, grew constantly more excited at his words, whatever they were, and erelong drew a knife, rushed quickly upon him, and stabbed him to death at a stroke. Whether Cannan really gave any momentary provocation by violent and insulting language addressed to the woman, this American witness is of course unable to testify. Both the woman herself and her paramour afterwards asserted that he did, and that it was his abuse, used in the course of the quarrel, which drove her to the act, in an outburst of fury.

The deed was quickly known throughout the town, and the citizens at once organized a popular court, in the ordinary lynchers' form, with an elected judge and a jury. The woman and her paramour were brought before the court, the crowd feeling and showing meanwhile very great excitement. Some shouted, "Hang them;" others "Give them a trial." Our eye-witness heard a number also shout, "Give them a fair trial and then hang them," a compromise which seems perfectly to have expressed the Great American Mind, as represented by these particular townspeople. A gentleman present, named Thayer, protested indeed openly, during the excitement, against this popular violence, but he was ordered by the crowd "to consult his own safety and desist." The trial began in the presence of the impatient crowd. The disturbance of the previous night was recounted; Cannan's friends insisting that there was no intention on their part to trouble the woman; and that what happened was due to a drunken accident and a frail door. The murder was described by Cannan's companion, and the two accused, being called upon, both gave, as the woman's sole justification, her rage at Cannan's midnight disturbance, and at his abuse. The man had evidently had no part in the murder, which was the work of the instant.

Then followed, it would seem, a recess in the trial, and thereafter a little more testimony for the defense. A physician, Dr. Aiken, was called by the woman, and gave it as his opinion that she was with child in the third month. The doctor made, as the editor tells us, a very unfavorable impression on the people. The only reason given for this unfavorable impression is "that he seemed desirous, so it was thought, to save the prisoner." Never before this in California, and never since, so far as I know, has Judge Lynch been called upon to deal with the delicate question now presented to this court. The Great American Mind suggested, under the circumstances, a consultation of physicians, and another
physician was called, who, with Dr. Aiken, retired into a house, taking the prisoner. The Great American Mind itself, meanwhile, grew intensely excited outside the frail structure in which the consultation was taking place; and this mind induced the crowd who represented it to threaten fiercely, and in no whispers, the offending Dr. Aiken, and to fill the air with shouts of "Hang her." The result whereof was that at this very orderly and decent consultation of scientific experts, while Dr. Aiken seems not to have been convinced of his error, the consulting physician kept his own and his fellow's skin safe by announcing what we may hope to have been a sincere, and even by chance a well-founded, opinion, that differed altogether from Dr. Aiken's. Hereupon the jury soon quieted the tumult of the Great American Mind by declaring their verdict of guilty against the woman, and by themselves passing sentence of death upon her, while they acquitted the man. As it is an old trick of hypocritical flatterers of public opinion in this land to attribute all outrages and riots to our foreign fellow-residents, we do only justice if we remark that the names of the jurymen at this trial are given, and are as native to our language as are the names of Bunyan's jurymen at the trial of Faithful. In this instance, then, they are such names as Burr, Reed, Woodruff, and the like.

One who fancies that the fair prisoner was overwhelmed with abject terror all this while does not know her race. That same afternoon she was to suffer, and, when the time came, she walked out very quietly and amiably, with hair neatly braided, stepped up to the improvised gallows, and made a short speech, in which she bade them all a cheerful farewell, and said that she had no defense for her crime, save that she had been made very angry by Cannan, and would surely do the same thing again if she were to be spared, and were again to be as much insulted by anybody. Then she adjusted her own noose, and cheerfully passed away.

This account, in so far as it is due to the "Star" editor, is not the account of an enemy of the Downieville people, or of an angry spectator. The "Star" says, editorially, that it cannot very heartily approve of this hasty lynching of a woman, but that it expects the moral effect of the act to be on the whole good. Downieville had been much troubled with bad characters, and a necessity existed for some action. "We witnessed the trial, and feel convinced that the actors desired to do right." They had in fact themselves so-
licited this publication. One is reminded, as one reads, of the saying attributed to "Boss" Tweed, in his last moments. "He had tried," he declared, "to do right, but he had had bad luck." The people of Downieville obviously had bad luck.

X The Attainment of Order

Yet, after all, the effect of these outbursts of popular fury was indirectly good, although not in the way that many pioneers like to dwell upon. The good effect lay in the very horror begotten by the popular demoralization that all this violence tended to produce. While a part of the community was debased by all these doings, and was given over to a false and brutal confidence in mob law, a confidence that many individual men have never since lost, the better part of every such mining community learned, from all this disorder, the sad lesson that their stay in California was to be long, their social responsibility great, and their duty to devote time and money to rational work as citizens unavoidable. They saw the fearful effects of their own irresponsible freedom. They began to form town governments of a more stable sort, to condemn rather than to excuse mob violence, to regard the free and adventurous prospecting life, if pursued on a grand scale, as a dangerous and generally profitless waste of the community's energies, to prefer thereto steady work in great mining enterprises, and in every way to insist upon order. The coming of women, the growth of families, the formation of church organizations, the building of school-houses, the establishment of local interests of all sorts, saved the wiser communities from the horrors of lynch law. The romantic degradation of the early mining life, with its transient glory, its fatal fascination, its inevitable brutality, and its resulting loathsome corruption, gave place to the commonplace industries of the later mining days. The quartz mines and the deep placers were in time developed, vast amounts of capital came to be invested in the whole mining industry, and in a few years (by 1858, for instance) many mining towns were almost as conservative as much older manufacturing towns have been in other States. For all this result, lynch law in the mines, after 1850, was responsible only in so far as it excited in the minds of sensible men a horror of its own disorderly atrocities. Save in the newest camps, and in those most remote from regular courts, one can say almost uni-
versally that, in so far as the lynch law had been orderly, it had been at best the symptom and outcome of a treasonable popular carelessness, while, in so far as it had been disorderly, it had been brutal and demoralizing, and in itself an unmixed evil. Almost everywhere, moreover, as we have seen, it was not an externally produced necessity, forced from without upon the community by the violence of invading criminals; but it was the symptom of an inner social disease. For this disease the honest men themselves were the ones most responsible, since they were best able to understand their duty. The lesson of the whole matter is as simple and plain as it is persistently denied by a romantic pioneer vanity; and our true pride, as we look back to those days of sturdy and sinful life, must be, not that the pioneers could so successfully show by their popular justice their undoubted instinctive skill in self-government,—although indeed, despite all their sins, they showed such a skill also; but that the moral elasticity of our people is so great, their social vitality so marvelous, that a community of Americans could sin as fearfully as, in the early years, the mining community did sin, and could yet live to purify itself within so short a time, not by a revolution, but by a simple progress from social foolishness to social steadfastness. Even thus a great river, for an hour defiled by some corrupting disturbance, purifies itself, merely through its own flow, over its sandy bed, beneath the wide and sunny heavens.