Private Governance During the California Gold Rush

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The period of American western expansion is often portrayed as time in United States history characterized by pervasive lawlessness, societal disorder, and rampant immorality due to the absence of state authority along the sparsely populated western frontier that widely held perspective that the west in the 19th century constituted a wild and untamed place on the edge of civilization is mostly unfounded as demonstrated by the events of the California Gold Rush beginning in 1848 and ending in 1853. During the course of this important historical event in the history of American west that encouraged thousands of Americans to migrate and settle in the territory of California in order to benefit from the economic prosperity initiated by discovery of gold at Sutter's mill order was maintained, laws were enforced, and a degree of social harmony prevailed without the presence of a firmly established state government. The territory of California for most of its history before its admission into the union as a state in 1850 was patrolled by the United States military and overseen by a military governor that did not interfere in matters of local governance. Historical accounts describing the spontaneous social order that arose in California among the miners present the period as time of peace and social tranquility characterized by the general absence of crime where miners could leave gold in their tents and wash bins of gold unguarded in the off season without fear that their property may be stolen. In addition to theft, murder and other serious crimes were virtually unheard of in California during the gold rush even though a state provided a court system was non-existent to enforce laws and keep order which raises an important question: *How was order preserved in California and societal flourishing promoted without state authority?* The absence of a fully functioning state in the territory of California vested with the conceive power to enforce laws and the historical accounts of the social order in California being harmonious would seem to the layman as a contradictory and inexplicable occurrence. Many people commonly hold the view that in order to

have a society where order is preserved, property rights are upheld, and human life is protected a state must be established endowed with sole coercive authority in society. The series of events constituting the California Gold Rush completely dispel this commonly held notion that a state must exist to provide governance services for order and security to prevail in society. California gold miners were able to institute voluntary forms of economic organization among themselves during Gold Rush through the establishment of private governments in the form of mining camp government in order to provide governance services and other public goods normally provided by the state in a more economically efficient manner; the miner engaged in mining camp life were also able to solve the problem of negative externalities through more socially beneficial means than the state.

Four days before he treaty of Guadalupe Hidalgo was signed to cease the hostilities of the Mexican-American War ceding 522,955 square miles of territory to the United States government including the Mexican territory of Alta California, the nineteenth of January 1848 ushered in the beginning of a momentous turning point in the history of California; the territory was transformed from a sparsely inhibited outpost of settlement on the North American continent characterized by vast untouched wilderness into a place of economic prosperity and rapid population growth through the discovery of gold. Before the discovery of gold in California, a man by the name of Captain John A. Sutter received a land grant of elven leagues in the Sacramento valley by the Mexican territorial governor upon which he constructed an adobe fort with multiple storehouses to service travelers, government officials, and explorers in the territory of Alta California. Sutter's business operations not only consisted of a trading post for servicing travelers but also encompassed various other production processes. The historical account depicts Sutter's firm as a truly multifaceted organization characterized as possessing a feudal

element where his two hundred laborers grew crops, raised cattle, and operated a tannery in exchange for pieces of tin representing a day's labor that could only be redeemed at his storehouses. Sutter's economic enterprise was faring well until the workers twenty miles away in Coloma made a discovery that changed everything for Sutter and those engaged in similar lines of production, in particular farming and cattle ranching. Upon the completion of the neighboring Marshall's flour mill, workers raised the water-gate inaugurating the new mill which revealed a single nugget of gold the size of a child's forefinger which led Sutter's two hundred workers to abandon their employment in search for gold leaving his crops untended, cattle to roam free, and tanneries to rot. As word spread concerning the discovery of gold at Coloma on the 19th of January 1848 people across the territory of California began to abandon their occupations in previously established production processes and industries incentivized by the opportunity to earn a higher relative income or rate of return in gold mining setting which set into motion a rush of people to the goldfields. The historical accounts of the early gold rush in 1848 illustrate the potency of this change in economic incentive by describing a myriad of events where people would abandon their employment in droves; sailors left their ships unmanned in San Francisco harbor, soldiers deserted their posts outside Sonora, and nearly all of the inhabitants of San Francisco except five fled the city in search of gold. In addition, there is an account of the United States army in California discovering farmland left fallow and many farmhouses abandoned when on their territorial patrols. An individual gold miner in 1848 could expect to extract from fifty to five hundred dollars of gold dust per day which was most likely higher than any other wage or return found in other occupations which explains the reallocation of labor to gold mining. The early days of the California Gold Rush in the historical account are described as a utopian period in history of California characterized by charity, goodwill, equality, and fraternity

among miners with newcomers to the California goldfields were welcomed with open arms. In the work, *Mining Camps: A Study in Frontier government* Howard Shin illustrates the utopian like nature of the early days of the gold rush,

"The mines put all men for once upon a level. Clothes, money, manners, family connections, letters of introduction, never before counted for so little. The whole community was given an even start in the race. Gold was so abundant, and its sources seemed for a time so inexhaustible, that the aggrandizing power of wealth was momentarily annihilated. Social and financial inequalities between man and man were together swept out of sight. Each stranger was welcomed, told to take a pan and pick and go to work for himself (Shin104).[i]

In the historical literature of the initial days California Gold Rush there are numerous accounts of miners in good spirit engaging in charitable acts including one account where a poor and hungry sixteen year old boy stumbled upon a camp of thirty miners in 1848 upon which the miners took pity upon him and decided to help him improve his lot in life by donating all the gold that they extracted in the course of an hour to the boy which totaled over one hundred dollars in gold dust. The miners subsequently gave the boy a list of all of the necessary tools to pan for gold and told him return to mine with them on a claim that they had staked for him. The fraternal character of relationships between miners is also expressed in the most prevalent form of economic organization adopted by the miners of the early period of the gold, the legal contract of partnership. Miners in partnership contract would work their claims together, live together, share the tasks of maintaining their encampment, and equally divide the gold among themselves. In addition to partnerships, Americans migrating to California in search for gold formed groups called companies to provide mutual security and comfort for its members. Most companies

consisted of individuals from the same home communities forming a governance contract that would govern its members on the way to the California gold deposits and establish legal rules for the future mining camp. Shin in his historical account of the gold rush mentions that the future first governor of California, Peter Burnett came to California when a company consisting of inhabitants of the Willamette valley elected him to serve as the captain of the company and lead his community's expedition to the California gold lands. Shin in his history cites a company contract from another work entitled *Adventures in California* which was written by a miner who took part in the mining company,

"(1) That we shall bear an equal share in all expenses. (2) That no man shall be allowed to leave the company without general consent till we reach the mines. (3) That any one leaving with our consent shall have back his original investment. (4) That we work together in the mines, and use our tools in common. (5) That each man shall retain the gold he finds, but must contribute to an equal portion of our daily expenses. (6) That we stand by each other. (7) That each man shall in turn cook, and do his share of the drudgery. (8) That guilty of stealing shall be expelled from tent and claim, with such other punishment as a majority of our company decide upon. (9) That no sick comrade be abandoned(Shin106)."

The governance contracts among instituted among miners in companies during the early period of the California Gold Rush existed with great variation. Each mining company organization possessed their own legal code, provided their own particular goods to their members, and devised their own way of dividing up the returns from the mining. Some mining companies during the period prohibited the consumption of alcohol under their governance contracts and imposed rules to promote moral behavior among its members. A prevalent practice

that existed among mining companies was the provision of sick insurance to its members; the members of the company would agree to pay a portion of their earnings from mining to the captain of the company to be held in trust to paid out in the case that they should fall ill. Mining companies in 1848 would also engage in an equal division of returns, similar to the two miner partnership. John Umbeck in his paper, *A Theory of Contract Choice And the California Gold Rush* provides a compelling economic argument explaining why the prevalence of sharing contracts persisted over land allotment contracts during the early part of the California Gold Rush. Under a sharing contract a group of miners would assert ownership over a section of gold bearing land under the agreement that each miner would be required to work a certain number of hours panning for gold and divide their returns on the basis of a previously agreed upon allotment formula. Miners under a land allotment contract would secure ownership of a tract of land and then divide the land into individual claims for each member of their group; the claim subsequently becomes the private property of the individual miner, and he is given the right to exclude outsiders or trespassers from his claim. Under the land allotment contract miners can choose the degree to which they labor and do not have to share the gold they discover. Umbeck in his paper claims that the costs associated with measurement and enforcement are more costly under a sharing contract than a land allotment contract. Measuring costs would be higher under a sharing agreement because the gold yield has to gathered up and divided every time payments are made under the contract. In comparison, measurement costs under a land allotment contract are not as high to the land requiring division only once. Enforcement costs under a sharing contract would be relatively higher than a land allotment contract because gold is a small and portable good that can be concealed from the rest of the group. A miner could simply pocket the highly valuable gold for himself instead of presenting it to the group to be divided up and shared

as under the agreement. The enforcement costs of a land allotment contract are significantly lower due to the fact that a miner trespassing on another miner's land would be likely evident. In addition, Umbeck claims that sharing contracts will face in an increase in enforcement costs due the problem of miners not fulfilling their work requirements under the agreement. He provides the example of a miner not in a sharing contract extracting $10 worth of gold, and a miner in a sharing contract extracting $10 in gold but sharing $5 in gold with his fellow miners. Umbeck concludes that a worker laboring under a sharing contract will have a lower cost of leisure and demand more leisure which would increase enforcement costs because he will have to be forced to fulfill his work requirements under the agreement. Umbeck in his paper questions why a sharing contract would used if it is more costly than the land allotment contract when it logically would not occur due to the principle of cost minimization. He hypothesizes that miners engage in sharing contracts in order to reduce the variance in their income streams. If gold is unevenly distributed in ground a miner might work long periods of time without finding any anything, and other times he may uncover gold quickly therefore, possessing a highly variable income stream. A miner that prefers a steady stream of income may enter into a contract with another miner that is expecting to receive the same gold yield and average income given that contracting costs are low. Increasing the size of the claim through a sharing contract will reduce the variation in gold yield and income. Umbeck claims that as the population of miners the relative advantage of choosing a sharing contract over a land allotment contract is dissipated. As the group size of the miners grows the enforcement costs of monitoring the members under sharing contract increases; the enforcement costs under a land allotment contract will increase as population increases, but not to the degree that costs of the sharing contract will increase. The relative advantage of a sharing contract in decreasing the variation in gold yield will be reduced in comparison to the

land allotment contract as the population increases. If the land under the allotment system is divided up amongst a larger population of miners, the variation in gold yield will match the variation of a sharing contract or fall below the variation offered by sharing. According to Umbeck, the increasing in enforcement costs under the sharing contract and the relative reduction in variation of income brought about by an increasing population of miners will incentivize the movement towards the adoption of land allotment contracts at the expense of sharing contracts. Umbeck concludes that the transition away from sharing agreements during the latter part of the California Gold Rush was due to the large influx of miners during 1849 that increased enforcement costs and decreased the advantage of sharing contracts.

The latter part of the California Gold Rush starting in 1849 was characterized by a great influx of people to California in search of wealth, the creation of new settlements, and significant increases in gold production. Beginning in 1849, a significant portion of migration came to California through vessels departing from the Atlantic Coast of the United States sailing around South America and making port in the harbor of San Francisco; in January of 1849 sixty vessels had done just that bringing eight thousand men to California. In 1849, the total number of ships entering the port of San Francisco had exceeded four hundred and forty-nine vessels. In August of that year, four hundred ships were floating unmanned and abandoned in San Francisco harbor with their crews off searching for gold in the mineral lands. Thirty-five thousand men in total traveled by sea to take part in the California Gold Rush by the end of 1849. These men who journeyed to California in search of gold and wealth where aptly named the Argonauts. The newly arrived American miners flowed out of San Francisco to the goldfields establishing towns and turning towns into cities. Stockton consisted of only one ranch-house until the miners transformed the settlement into a canvas city with a population of one thousand people, and a

similar population transformation took place in Sacramento. In 1849 Miners settled upon land with rich gold deposits establishing new mining camps and law courts in addition to those that had been formed in 1848.

The American population of California in 1845 only numbered five hundred. In February 1848, just after the discovery of gold the population of California was two thousand and by December of that year the population had grown to six thousand. In July of 1849 the population of California more than doubled to fifteen thousand and by December of 1849 the population swelled to fifty-three thousand. The migration to California spurred on by gold was of such a great magnitude to move the center of population in the United States eighty-one miles farther west by the height of the gold rush in 1853 with California's population totaling over three hundred thousand. From 1848 to 1883 twelve hundred million dollars of gold product was mined in California or three-fourths of the total gold product extracted in the United States during the nineteenth century.

Mining camps established during the California Gold Rush can be conceived of as clubs or voluntary forms of private governance that did not rely on the state for their source of authority. The territory of California during the early part of the gold rush did not have a state or territorial government that the mining camps could base their authority upon; the United States military was the only trace of the United States government in California. The United States military even though it had a presence in California did not interfere with the mining courts and camp governments instituted by the gold miners. Shin in his history of the California mining camps writes,

"Throughout the various letters, proclamations, and official actions of the de facto Governor of California in 1848, nothing is more evident than the complete way mining communities were left to their own devices. Even General Riley in his visit, a year after Colonel Mason's, told the miners that "all questions touching the temporary right of individuals to work in particular localities of which they were in procession, should be left to the decision of the local authorities," meaning alcaldes and other officers by that time installed in many camps."

In addition to the absence of outside coercive force used by the state to grant mining camps authority, mining camps themselves did not use coercive means to keep miners in governance arrangements that did not suit them. Miners could modify the boundaries of the political unit if they felt discontent with the existing camp government and laws through secession. In most instances miners would initiate a call for secession if the miners found the rules regarding claims to be unfavorable. The process of secession in the California mining camps was unbureaucratic and could instituted without great hardship. Miners that desired to separate from the established mining camp would post notices informing their fellow miners of their intentions to hold a meeting on the question of secession. At the meeting the miners would hold a simple vote on whether the territory of the mining camp should be divided, and a new camp government be installed. If the majority of the miners at the meeting voted in favor of the proposal, then a new sovereign camp government would be formed without consulting the previously established mining camp. The miners of the newly formed camp would simply notify the mining camp they separated from and resume their activities as members of a separate camp government without fear that the established camp government would resort to violence to prevent the separation. Conflict among different mining camp governments during the California Gold Rush was non-existent with miners often finding out they had more in common and

deciding to unite under one camp government. The freedom of entry into the political unit and exit from the political unit demonstrates the mining camps in California were truly voluntary forms of private governance; groups of miners were not forced to remain under the authority of a government that did not satisfy their preferences for governance services. Under the state provision of governance services there no ability for voluntary exit from the single political unit even if the provision of governance services and public is not in accordance with consumers preferences. The status of California mining camps as voluntary private governments is also solidified by the fact that individual miners had the ability to withdrawal their support for a particular mining camp government by leaving its jurisdiction and joining another mining camp that best satisfies his preferences which is not possible when one monopolistic state exists. The taxation scheme under mining camp governments was centered upon the charging of a fee for the registration of mining claims which in turn generated the necessary revenue to provide governance services or public goods to the camp. Taxation under the system of mining camps can be considered completely voluntary because the individual miner by choosing to settle in a particular mining camp is implicitly agreeing to the existing governance contact. The miner paying for governance services of a camp government through taxation is similar to purchasing any other good if he tires of paying for the services offered by the camp, he could leave the camp and not be under the protection of a private governance arrangement if he so chooses.

Miners during the California in the absence of a coercive state where able to provide the public goods of governance and a court system through their own voluntary initiative. The systems of government instituted among the gold miners in the California mining camps constituted three primary forms the folkmoot, standing committee, and Alcalde. The most prevalent form of government established among the miners during the California Gold Rush

was the informal folkmoot system which commonly installed in small communities of miners numbering thirty to forty miners. Under the decentralized folk-moot organization of government decisions made about the preservation of life and property were in the hands of the miner's themselves; the folk-moot system did not establish any permanent offices of governance and particular office holders were not vested with any authority to protect property, enforce laws, mediate disputes, and carry out legislative processes. All of the powers typically vested in the state and exercised by state officials were vested in a general assembly of miners which would conduct trials, enforce laws, and legislate. Governance under the folk-moot system could be likened to a form of direct democracy where all miners took part in nearly every aspect of the state, even boys as young as fifteen where able to vote and make decisions in these popular governing assemblies. The only individuals that could not take part in the governance of folkmoot or possess voting rights were miners from other camps and non-miners. The informal folk-moot system of government operated in a rather spontaneous manner, there existed no permanently established court to mediate civil and criminal disputes. A miner's court under the folk moot system only convened to mediate disputes concerning mining claims and criminal matters when a general consensus of miners considered accusations brought before the camp to be credible. Once an accusation against a particular miner were deemed to merit some based on some degree of probable cause the defendant would be tied to a tree or held at gunpoint awaiting trial, an assembly of miners was formed to act as the jury, and one miner in the camp was chosen to preside over the trial. During the course of the trial the prosecution and the defense were able to give speeches concerning the guilt or innocence of the defendant in an attempt to persuade the assembled crowd of miners who would in turn decide whether the defendant should be found guilty or acquitted. The miner presiding over the miner's court would then urge the assembly "to

do the fair thing according to common sense" when the time came for the miners to cast their votes on the defendant's guilt. If the accused miner was found guilty of a crime the presiding miner would determine the prisoner's sentence; the assembly had no influence on the sentencing phase of the trial. In criminal cases the presiding officer had three primary options for the sentencing due to the lack of any means of permanently confining the prisoner: whipping, banishment from the mining camp, or hanging. Even though the amount of crime in the mining camps was not very significant there are historical cases where miners under the folkmoot system conducted trials and levied punishments. In the book entitled, *Mining Camps: A Study in American Frontier Government*, the author Charles Howard Shin illustrates the instances when punishments were imposed under the folk-moot legal system, "Cases of whipping were very numerous. A man who stole a sack of flour, just after the Nevada City fire of 1851, was given twelve lashes. In 1850, in grass valley, a mule thief was given twelve lashes. In trinity County at Hay Fork, the first thief was whipped by the entire camp, each miner giving a blow" The miner's courts established under the form of government known as the folkmoot demonstrates that court system that was able to effectively enforce laws. Another voluntary system of government introduced by the miners during the California Gold Rush was known as the standing committee. Under the system of the standing committee, an assembly of miners would elect a council of three members to hold government office. The committee council was vested with all judicial power in the camp to adjudicate civil and criminal cases along with many other powers that government's possess. In the Rough and Ready Camp located in Nevada county California the standing committee council had the power to solve disputes concerning mining claims, try criminal cases, determine the location of roads within the camp, draw the boundaries of lots within the camp, and appoint a constable to enforce the camp's laws. The third and final form of

government instituted among the gold miners was the Alcalde system adopted the Spanish and Mexican legal tradition. California gold miners under the Alcalde system would hold an initial assembly to elect one powerful official called the Alcalde and a few minor government official to assist the Alcalde in the operation of the government including a recorder of mining claims, a sheriff, and a court clerk. The Alcalde like the standing committee had the power to solve all judicial disputes concerning claims and had the power to try criminal cases. Under the Alcalde judicial system, the Alcalde would issue summonses and writs concerning criminal or civil matters for the parties involved to be brought before the court. The sheriff enforced the writs and summons of the Alcalde along with preserving order in the camp and carrying out the punishments to be imposed upon the guilty party. Once, the wits and summonses were enforced a jury was assembled to hear the case and render a verdict. The functionaries that undertook the trial were compensated for their respective roles in providing the public good of a court system; the Alcalde was paid around sixteen dollars for presiding over a trial, the sheriff was compensated for the writs he served, jurors were paid six dollars for trial they took part in, and jurors were paid on the basis of their expenses. Alcalde mining camps in order to receive funding to provide the public good of a court system imposed a fee on the registration of new mining claims under their jurisdiction which ranged from fifty cents to a dollar per claim registration. The imposition of claim registration fees in Alcalde mining camps was usually an adequate source of revenue to support their governance expenditures due to the miner's frequent movement from claim to claim. Other camps utilizing the Alcalde system that did not use a registration fee imposed a direct assessment tax on mining claims. The mining camps of the California Gold Rush not only provided a court system to enforce laws camp organizations provided a series of public goods.

Voluntary forms of social organization manifested in the establishment of mining camps during the California Gold Rush in addition to providing the public good of governance through the establishment of court systems, mining camps were also able to provide other goods are conceived of as only being able to be provided by the state including welfare services and services to the sick. Some instances of mining organizations providing public goods have been already expressed in the previous section of the paper on the early gold rush period. In particular, the early mining companies had provisions in their contracts that each member of the company provide a portion of their income to the captain of the company to be paid out in the case of illness, thus establishing a form of sick insurance for the miners. The mining camp organizations of the Gold Rush provided charitable services that some people consider to be a public goods which can only be provided by an established state. As mentioned earlier there was the example of the miners in one particular camp laboring for a young man to provide him with the necessary gold dust to purchase tools to work a claim that they had given him out of charity. The miners in some camps would help their fellow miners return home to their families if they grew tired of mining or were sick and unable to work in the form of a two thousand dollar Home-stake gift. Shin in history of the California Gold Rush includes an account of a California miner recounting the charitable nature of mining camp life and the practice of offering discouraged miners a home-stake payment,

" I have never lived in any community where there was less crime, or where people were more charitable, then they were in the early mining camps of California. No one was ever allowed to suffer for necessities of life, and nowhere were the sick neglected. I remember many instances where a miner with a broken constitution, who had become discouraged or unable to work, and

desired to return to his family, was sent home by the miners, and in addition, was given one or two thousand dollars for a 'home-stake.'(Shin148)."

An example in the historical literature of the California Gold Rush concerning mining camps providing goods in the absence of a coercive state is the voluntary government instituted in the Sonora Camp. The Sonora mining camp originally organized under the Alcalde in 1848 was reorganized in 1849 as one of the first town governments established by the miners in response to the development of scurvy in the population in the camp during the rainy season of 1849 to 1850. The development of scurvy on the part of the miners in the Sonora was due to their sole substance on salted meat and insufficient consumption of vegetables were high in price at the time. The inhabitants of the Sonora feeling that individual acts of charity were insufficient to assist fellow miners afflicted with scurvy decided on November 7th, 1849, to form a town government in order to establish a hospital. The Alcalde of Sonora C.F. Dodge was made the mayor of Sonora and a seven member town council was created. A portion of the funds needed for the creation of a town hospital came from the Alcalde donating the income he received from his office and the voluntary contributions of miner. The primary source of government revenue for the creation of the hospital was the sale of vacant town lots surveyed by the town government. The town of Sonora operated the town hospital for a period of six months providing the scurvy stricken miners with anti-scorbutics consisting of potatoes, canned fruit, and lime-juice at great expense; the prices of the goods at the time were twenty times higher than normal. In addition, servants were hired to tend to the ill miners for a wage of $8 per day. The town of Sonora provided the hospital services to the miners until the problem of scurvy was eliminated among the population and then it was disbanded.

Voluntary private governance in the form of mining camps established during the California Gold Rush were more efficient in satisfying preferences for governance services and providing public goods than provision by the state. Peter T. Leeson in his paper entitled, *Governments, Clubs, and Constitutions* contrasts the provision of governance services and public goods by the state with a system of clubs arising through private market activity arguing that a system of private governance has a higher degree of constitutional effectiveness due to the self-enforcing nature of constitutional contracts subject to market forces. Leeson initiates his theoretical analysis of the two differing governance arrangements through outlining Buchanan's economic reasoning for the creation of collective governing bodies and constitutional contracts by describing the problems faced by individuals in the state of nature. In the absence of governance individuals are required to protect their own property from the threat of expropriation by others while simultaneously producing the goods that they desire. Individuals feeling insecure in their property rights and being restricted in their ability to cooperate with others for mutual gain due to the resulting insecurity begin to demand governance services. In order to satisfy their demand for governance individuals enter into disarmament contracts where they voluntarily agree to respect the property rights of others in exchange for their property rights to be recognized. Upon the establishment of the disarmament contract a prisoner's dilemma problem naturally arises where those subject to the agreement are incentivized to withdrawal from the agreement and prey upon those who have disarmed themselves. In order to solve the prisoner's dilemma problem, individual members subject to the disarmament contract agree to create a new contract where all coercive authority is given to one party to enforce the initial terms of the disarmament agreement and force individuals to abide by their previous commitments; the new contract that arises is called a social contract or a constitution. Leeson

argues that a system of clubs would develop in a similar fashion to Buchannan's account of the development of constitutional contacts with individuals insecure in their property rights and unable to secure the public goods they desire in nature purchasing protection services off individuals that have a comparative advantage to them in their strength. This leads to the development of a market for protection and governance services were entrepreneurs offer a myriad of different governance contracts that vary in the quality, price, and types of goods they provide. The establishment of a market for protection services allows consumers to choose a governance contract that best satisfies their individual preferences concerning form of government they would like to live under and the particular public goods they would like to receive. Leeson in his paper argues that a system of clubs is more constitutionally effective than the state meaning that the terms of the governance contract are adhered to with greater regularity He attributes the greater constitutional effectiveness of system clubs to their place in the market where they are incentivized to self-enforce their contracts. Under a system of clubs, the club owner or entrepreneur receives revenue from the enforcement of the governance contract and is incentivized to provide quality governance services. If the entrepreneur fails to adequately uphold the governance contract, he faces the threat of consumer exit were his patrons leave his governance arrangement and consume the services of another competing governance provider that better satisfies the preferences of consumers resulting in the loss of revenue on the part of the entrepreneur. The self-enforcing nature of a system of clubs or private governments is more efficient in satisfying consumer preferences then the state. Under the state provision of governance services and public goods there exists no self-enforcement mechanism to ensure consumer preferences are satisfied due to its prohibition on consumer exit and private competition. If consumers become dissatisfied with state's refusal to adequately enforce its own

laws, they are prohibited from demonstrating their preferences in the market and prevented from patronizing other private governance arrangements that enforce laws. In addition, the state is incapable of satisfying preferences in determining the quantity of the good that should be produced. The state is incapable of engaging in economic calculation it can not economize scarce resources because it is not constrained by the necessity of generating enough total revenue on the market in order to cover its costs and can easily engage in coercive taxation to make up a short fall in revenue. Further taxation directs resources away from the production of goods that were satisfying consumer preferences to governance services and public goods that are impossible to know the value of due the lack of voluntary choice. The state will over or under produce governance services and in comparison, to a system of clubs which is constrained by voluntary market preferences. Edward Stringham in his book *Private Governance: Creating Order in Economic and Social Life* illustrates the state's difficultly in determining the quantity of a good that should be produced by providing an example of the state regulating the stock exchange. In his example, Stringham contrasts the scenario where the stock exchange engages in self-governance through imposing regulations upon itself with the contrasting scenario where the state imposes regulations upon the stock exchange. In the first scenario, the stock exchange company imposes regulations on its exchange in hopes of persuading investors that it is safe to invest and that they will not be defrauded even though the additional regulations are not without cost to investors in terms of enforcement. The stock exchange will be incentivized to impose an optimum quantity of regulations in order to maximize their net revenue meaning that stock exchange company will impose additional rules until the marginal benefit equals the marginal cost or until the marginal regulation is not seen as value enhancing to the investors at large. If the self-regulating stock-exchange imposes excess regulations with a negative net benefit to the

investor, then the firm will face a higher marginal cost then marginal benefit and lose revenue. The firm will also lose revenue when the firm produces an insufficient number of rules; only at the optimum quantity will the firm be able to maximize revenue. Stringham contrasts the self-regulating exchange with the imposition of regulations on the stock exchange by the state which often imposes an excess quantity of regulations beyond the optimum amount to the point the marginal cost exceeds the marginal cost which means that resources are being wasted. In his book he points out that this is a real world phenomenon citing a study by Stigler that analyzed the number of stock issues and the relative returns of those stocks before and after the Securities and Exchange Commission was established. According to Stigler's findings the increase in costs of public offerings led to a decline in new offerings which emphasizes that Stringham's position that the imposition of rules beyond the optimum quantity resulted in economic harm for the exchange. Stringham's example of state's inability to properly provide the optimum quantity of regulations is a microcosm that can be applied to all goods provided by the state in particular governance services and provision of public goods. Private governance firms or a system of clubs on the other hand can provide the optimum quantity of protection services and public goods. The mining camps established during the California Gold can be conceived of as clubs or private governments brought into being by the existence of a market for governance services that was not suppressed by the United States government. A market where miners could choose between various competing governance arrangements in particular the folkmoot, standing committee, and Alcalde systems. In addition, the miners could choose a camp on the basis of certain public goods being provided with the governance contract. The mining camps would have had a high degree of constitutional effectiveness as Leeson's theory suggests due to the miners having the ability to exit governance arrangements that do not satisfy their preferences

through secession from the established camp or moving to another competing camp that could better satisfy their preferences by paying a claim registration fee to that camp government. Even though the mining camps were not owned by a club owner or entrepreneur the members of the camp would have incurred costs if the camp government violated the governance contract by not providing adequate services. Instead of the entrepreneur losing profit if he under produces or over produces governance services or public goods, the miners would lose the necessary revenue needed to provide the public goods they desire and have greater difficulty in securing their claims. The mining camps of the California would still have possessed the incentive to better satisfy the preferences of the miners through the self-enforcement of their governance contract and providing the optimum quantity of goods in the absence of an entrepreneur. Mining camps due to their self-enforcing nature where most likely able to better satisfy governance preferences and adequately provide governance services more efficiently than the state.

Negative externalities during California Gold Rush primarily arose due to state intervention in the passage of statutory law by the state legislature of California which favored mining interests over the interests of all other property owners and shielded miners from common law liability. The state of California passed a piece legislation entitled, the Possessory Act which allowed miners to encroach upon land settled by those engaged in farming and mine the land if it could be proven that the soil contained valuable minerals without being subject to paying damages of any short as would be required if common law protections were left intact. The act stated, “that all persons who settle for agricultural purposes upon any mining lands in California, so settle at their own risk,” and that farmers were “subject to the rights of the miner, who may proceed to extract any valuable metals which he finds in such lands.” Subsequent legislation passed by the California state government removed some of the exemptions granted

to miners from common law liability. Legislation in 1852 allowed farmers to bring legal action against miners who enter on to their land but prohibited the farmer from interfering in the miner's operations. In addition, the legislature passed an 1855 act that allowed those who settled upon public lands for agricultural purposes to bring suit against miners for damages inflicted on crops, buildings, and improvements but the state legislature again reaffirmed the prohibition that the occupants of public land not be allowed to obstruct the operations of the miners. The liability exemption granted to the miners by the state legislature allowed them to destroy vineyards, orchards, roadways, and even entire towns if gold was discovered in the soil. There are accounts of mining towns being moved up to three times due the miners tunneling under the settlements to exact gold rendering the ground unstable. Shin in his history on the California tells the story of two miners in 1851 attempting to sample the soil beneath Main Street in Nevada City for gold. Under the law if the miners found gold, they would be able to lawfully excavate the soil beneath town. A business owner concerned that any form of mining operation in front of his business would destroy his property confronted the two miners and told them to stop. The miners replied that there was no law that prohibited them from mining on main street. The business owner then proceeded to scare the miners off with his revolver. Shin in his historical text on mining camps provides an account of mining courts internalizing negative externalities,

"In one case a miners' court decided, when a small orchard of four-year-old apple-trees had been mined out, that the land was worthless; but that the trees, which had been brought overland from Oregon, were worth fifty dollars apiece, fruit then being excessively high priced in the mines. They had not born fruit yet, but the owner received twenty-five hundred dollars for them. We have heard of serval instances where men who paid high prices for possessory claims

to agricultural lands made extensive improvements; and, the lands being entered upon for mining purposes, no equivalent damages could be obtained(Shin254)."

The mining court established during the California Gold Rush were able to remedy negative externalities when the state was creating them through the liability exemptions. Shin in his historical account seems to imply that the mining courts were more capable of providing compensation for damages than the state. Another notable negative externality that arose during the California Gold Rush was the miners dumping the earthen material left over from the gold mining process into the Yuba river making the river unnavigable. Gold mining since 1876 had led to one hundred cubic yards of debris being washed into the Yuba river impairing over 15,220 acres of land along the river. The negative externality was not internalized until the inhabitants downstream from the miners filed suit and the state supreme court ruled in their favor restoring their common law rights on January 7th, 1884.

The mining camp form of governance have may be able to internalize negative externalities more efficiently than the state. Robert C. Ellickson in his paper*, Of Coase and Cattle: Dispute Resolution among Neighbors in Shasta County* argues that people resort to the use of informal norms to solve disputes and enforce their property rights when transaction costs are high in the form of court costs. Ellickson in the paper analyzes how people address cattle trespass disputes in Shasta county California where particular areas of the county are closed range and other areas of the county are open range. In his study he found that the inhabitants of Shasta county dealt with instances of cattle trespass in the same manner without regard to whether the area was designated open or closed range. Instead, property owners relied on a generally accepted series of norms to manage disputes. Ellickson reasons that this system of

norms arose due to the costly nature of learning the law and the high transaction costs associated with the formal legal proceedings initiated through the court system. He cites the absence of court cases concerning animal trespass in Shasta county as evidence that the court system was used as a costly last resort and that the use of informal norms prevailed. Ellickson concluded that the inhabitants of Shasta county utilized gossip, threats to call elected officials, and threats to kill the cattle as means to solving animal trespass disputes before resorting to the courts. He also described a gentler approach that the inhabitants of Shasta county used internalize negative externalities what he calls the live and let live approach were members of the community would bare the damages in hopes that their neighbor would bare the damages of their animal trespass with the costs to each other canceling out. The mining camps in California could have very well relied on a system of informal norms to deal with property disputes and negative externalities. In the historic accounts of camp life miners were expected to solve minor disputes among themselves without forcing the camp to convene to solve disputes. A system of norms would have been likely to rise under the folkmoot system of government because it normally consisted of the smallest number of members and there would have most likely existed a higher level of informal social control. In addition, court costs under the folk-moot system would have been lower than a formal court system due to it being a spontaneous organization that only formed when necessary to solve disputes. The lower court costs under the folk-moot system would have led to lower transaction costs and allowed for externalities to be internalized in a less costly fashion.

Private governance instituted among miners during the California Gold Rush in form of mining camp governments provided protection services and public goods typically provided by the state with greater economic efficiency due to their ability to better satisfy consumer

preferences stemming from their incentive to be constitutionally effective in the marketplace for the purpose of maximizing revenue and avoid consumer exit. In addition, the provision of governance services or public goods by private governments in form of mining camps would more economically efficient in comparison to the state on the theoretical basis that the state cannot engage in economic calculation and cannot determine the optimum quantity of goods to produce to adequately satisfy consumer preferences. The miner engaged in mining camp life were also able to solve the problem of negative externalities through informal norms reducing transaction costs.

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