

LIFE ON THE GOLD FIELDS

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History to 1851

1 It is trite that New South Wales was a penal colony, founded as such upon the arrival of the First Fleet in January 1788. Van Diemen's Land, later Tasmania, subsequently became a separate penal colony. Transportation to New South Wales continued till 1840 and to Van Diemen's Land until the end of the 1840s.¹

2 The sheep industry became the principal industry of New South Wales and wool its principal export. By 1851 all the lands around Ballarat² and all the lands on what became the Western Gold Fields of New South Wales had been taken up and occupied for the purpose of grazing sheep.³

3 From 1827, Government policy aimed at directing convict labour to the hinterland.⁴ The principal employment of convict and other labour on the sheep runs was as shepherds. The need for shepherds was that until after the commencement of the gold rushes the sheep properties were not fenced, so that the sheep required oversight by a shepherd who watched them during the day and penned them at night. He was often assisted by a hut keeper, who performed the duty of night guard.⁵

4 Despite a severe depression in the 1840s, wool remained the principal export and up to 1851 there was no possibility of any other industry emerging which could match wool as the colony's export staple.⁶ By 1851 New South Wales had reached the maximum of its wool and tallow producing power.⁷

5 Thus in 1851 sheep graziers and particularly squatters were the holders of the vast bulk of settled land in New South Wales. By 1851, under leases, 180 million acres were held by 1,800 people out of a population not much short of 200,000.⁸ At one stage, Benjamin Boyd held 30 or more runs and over one million acres and WC Wentworth held eleven runs and 500,000 acres.⁹

The Discovery of Gold

6 As is apparent from the subsequent history of the gold fields, gold was widespread in both New South Wales and Victoria and was in many instances located at or near the surface of the ground. Over much of this ground shepherds, as noted above, ranged daily. It is clear that something like 100 pastoral labourers found gold before 1850, but this did not lead to a gold rush.¹⁰ One named McGregor mined the gold methodically on a small scale and sold it in Sydney as early as 1845.¹¹ WB Clarke was an Anglican clergyman in Sydney and also a talented amateur geologist. As early as 1841 he found gold near Hartley (where, however, it has never been mined).¹² He sent specimens to Professor Sedgwick at Cambridge University. He even showed his best specimen in 1844 to Governor

¹ Alan Atkinson, *The Europeans in Australia: A History Volume II Democracy* (OUP, South Melbourne, 2004), pp 224-226.

² See Weston Bate, *Lucky City: The First Generation at Ballarat 1851-1901* (MUP, 1978), pp 1-2.

³ Brian Hodge, *The Goldfields Story 1851-1861 Book 1 Valleys of Gold* (Cambaroora Star, Penshurst, 1976), pp 19-22.

⁴ Russel Ward, *The Australian Legend* (OUP, Melbourne, 2nd Ed, 1966, rep1974), p 73.

⁵ Russel Ward, p 80.

⁶ JB Hirst, *The Strange Birth of Colonial Democracy: New South Wales 1848-1884* (Allen & Unwin, Sydney, 1988), p 99.

⁷ Hodge, *Valleys*, p 22.

⁸ Hodge, *Valleys*, p 19.

⁹ Robin Gollan, *Radical and Working Class Politics: A Study of Eastern Australia 1850-1910* (MUP, 1960, rep 1966), p 5.

¹⁰ Geoffrey Blainey, *The Rush That Never Ended: A History of Australian Mining* (MUP, 1963), p 6.

¹¹ *Ibid.*

¹² Blainey, pp 7-8.

Gipps, who it is said responded, “Put it away, Mr Clarke, or we shall all have our throats cut.” Similarly, some gold was found in Victoria as early as 1845-6.¹³

7 However, public interest in gold was precipitated by one Edward Hammond Hargraves. He was born in England in 1816 and had been in Australia since 1834. He was 18 stone and not energetic. Leaving his family in New South Wales, he went to California in 1849 to dig for gold. He returned to Sydney in January 1851.¹⁴ He knew that gold had been found near Wellington. On his way there, he went to Lewis Ponds Creek about 16 miles from Orange. There on 12 February 1851 he found a few grains of gold in the creek, at a place that can still be seen.

8 Thereafter he prospected further for gold in the vicinity with a young man named Lister and two young men named Tom, and further gold was found. On 22 March 1851, he went to Sydney and showed the Colonial Secretary Deas Thomson his original find.¹⁵ Shortly before 10 May 1851 he held a public meeting in Bathurst at which he publicised his discovery and named the site of his find Ophir after the biblical city of gold. This meeting was reported in the *Bathurst Free Press* of 10 May 1851.¹⁶ On the day of the original discovery he wrote that he had exclaimed to his guide, “This is a memorable day in the history of NSW. I shall be a baronet, you will be knighted and my old horse will be stuffed, put into a glass case and sent to the British Museum.”

9 There were disputes over several decades as to whether in reality Hargraves or Lister and the Toms were the original discoverers of gold. However, there is no doubt that Hargraves was a master of publicity and that it was his publicity campaign that sparked the first gold rush.¹⁷

10 In mid July 1851 the first rush began in Victoria at Clunes near Ballarat and by the end of the month there were some 300-400 diggers at Clunes. Gold was discovered by one Hiscock at Buninyong near Ballarat early in August and late in August gold was discovered ten miles from Buninyong at what was to become Ballarat.¹⁸

11 On the Western Gold Fields of New South Wales there were soon discoveries on the Turon, Louisa Creek and the Meroo and the Abercrombie and on the Southern Gold Fields at Bells Creek, Majors Creek and Araluen. Subsequently there were alluvial fields at Kiandra in 1860 and at Young and Forbes in 1860 and 1861. In 1862 Forbes and Young provided half of the £2,500,000 worth of gold recovered in NSW in a record year. Gulgong in 1871 was “one of the last poor men’s rushes in south-eastern Australia”.¹⁹ In Victoria soon after Ballarat there were important discoveries at Bendigo, Castlemaine and surrounding districts and also in the Ovens Valley at Beechworth. There were many gold mining centres in Victoria.

Growth of the Colonies

12 The gold rushes produced an explosion of population in Australia such as has not been seen either before or since. Half a million people came to Australia in the ten years from 1851.²⁰ 86,000 arrived in the year following the discovery of gold.²¹ In Victoria, 35,000 people went to the diggings by the end of 1852 and 65,000 by the first quarter of 1854.²²

13 The population of New South Wales went from 187,243 in 1851 to 350,860 in 1861, almost doubling. The population of Victoria went from 87,345 in 1851 to 540,322 in 1861, about a six fold increase.²³ The population of

¹³ Blainey, p 10.

¹⁴ Blainey, p 14; Hodge, *Valleys*, p 9.

¹⁵ Blainey, p 17; Hodge, *Valleys*, p 11.

¹⁶ Blainey, p 18; Hodge, *Valleys*, p 12.

¹⁷ Blainey, p 18; see Hodge, *Valleys*, p 14 as to Lister and the Toms’ claim.

¹⁸ Geoffrey Serle, *The Golden Age A history of the colony of Victoria, 1851-1861* (MUP, 1963, rep with corrections 1968), pp 11-12; Weston Bate, pp 7-8.

¹⁹ Blainey, p 85.

²⁰ Blainey, p 38.

²¹ Atkinson, pp 229-230.

²² RM Crawford, *Australia* (Hutchinson, London, 3rd (rev) Ed, 1970, rep 1971), p 21.

²³ Russel Ward, p 112.

Australia trebled in the first 12 years.²⁴ There were 40,000 diggers in June 1852 and 100,000 in 1855.²⁵ It will readily be appreciated from the above figures that the impact on Victoria was greater than the impact on New South Wales. From 1851 to 1860, Australia produced 39 per cent of the world's gold.²⁶ Gold supplanted wool as Australia's principal export. In the 1850s New South Wales produced seven per cent of the gold produced by Victoria and from 1860-1863, 25 per cent.²⁷ Among the immigrants there are contemporary references to the large number of educated and professional men on the diggings.²⁸ From 1854 23 per cent of new arrivals were skilled tradesmen and professional people.²⁹

14 The difference between the impact on New South Wales and Victoria was characterised in the following way by Crawford (fn 22):

New South Wales was an old, established colony, able to absorb its relatively minor gold-rush as a colourful but not cataclysmic chapter in its history; infant Victoria could not do so. In ten years it was transformed from a pastoral extension of Tasmania and New South Wales into a bustling, aggressively self-assertive colony of over half a million people, close on 140,000 of them living in Melbourne, which was already on the way to becoming a metropolis.

This was a change in numbers; it was also a change in kind.³⁰

15 In New South Wales the fields remained small and dispersed.³¹ The gold influx led in the first decade to seven settlements, none of which was permanently of any great size. Outside these settlements, Bathurst doubled in population and Mudgee trebled. There was a rapid enlargement of an affluent middle class in Sydney.³² In subsequent decades, gold led to larger towns at Young, Forbes and Gulgong, but none of these was on the scale of the Victorian towns shortly to be mentioned. More is said of the nature of the New South Wales gold fields settlements below.

16 In Victoria, on the other hand, the gold rushes led to the establishment of substantial towns based on gold. The one of these in the forefront of our attention is Ballarat, which by 1871 had a population of 47,000³³ and has remained one of the most substantial towns in Victoria to this day. Bendigo was on much the same scale. Castlemaine and other towns were also substantial. More will be said of the nature of Ballarat below.

Nature of Fields and Methods of Mining

17 It is not the function of this paper to give a detailed history of mining on individual fields. However, on virtually all fields mining methods went through the same three phases and it is proposed to give a general account of these methods as a background to the way of life. The three phases can be described as surface alluvial mining, deep lead mining and quartz mining.

18 A description of surface alluvial mining is given by Serle (fn 18) as follows:

In these early years when almost all the workings were surface alluvium, the methods of work did not greatly vary. If the deposit were very shallow it was simply a matter of opening the claim up as a pit, exposing the gold-bearing stratum, picking out any nuggets with a knife and handing the rich earth up in buckets. Where

²⁴ Blainey, p 38.

²⁵ Blainey, p 42.

²⁶ Brian Hodge, *The Goldfields Story 1851-1861 Book 2 Frontiers of Gold* (Cambaroora Star, Peshurst, 1979), p 241.

²⁷ Blainey, p 84.

²⁸ Russel Ward, p 137.

²⁹ Crawford, p 104.

³⁰ Ibid.

³¹ Hirst, p 212.

³² Hodge, *Frontiers*, pp 240-241.

³³ Weston Bate, p 114.

deposits were deeper, a three or four feet square or round shaft was sunk and horizontal drives were made at the bottom. It was necessary to raise the bucket with a rope or to use a windlass or a weighted pole to lever it up. Timbering was needed to keep the sides of the shaft firm and to shield those working in the drives from collapse. The earth was carried to the creek in carts, wheelbarrows, sacks, baskets or tins, by man or beast. The simple method of washing in a tin dish was slow and wasteful and quickly gave way to the Californian cradle, which was adequate to separate gold from gravel and light soil but not from stiff clay. Hence the puddling-tub – generally half a cask – came to be used more and more ... Where there was sufficient running water a ‘Long Tom’ – a long trough – was similarly used.³⁴

In Victoria individual claims were initially only eight feet square,³⁵ subsequently 12 feet square³⁶ and never very large. Their dimensions varied at different times and on different gold fields. Their duration was coterminous with the licence or miner’s right under which they were pegged or its renewal.

19 The deep leads were buried rivers with gravel in their beds containing gold. The modern creeks and gullies gave no indication of their course. They had been buried over thousands of years by lava flows or otherwise. The search for them was more of a gamble than any other branch of gold mining. Shafts had to be sunk at least 50 or 60 feet and often 100 or 120 feet to reach the deep leads. In the course of the excavation, the shafts had to be timbered to prevent their collapse. Once a depth of 30 or 40 feet was attained, the shafts usually encountered water, which had to be bailed day and night. When the shaft reached a deep lead, it was then necessary to create a chamber or lateral drives to permit the gold bearing gravel to be recovered. Sometimes the drives were quite short, but sometimes they extended as much as 300 or 350 feet.³⁷

20 Obviously these operations required more men, capital and organisation to be carried out. Furthermore, ventilation was a problem, as the heat and humidity were otherwise unbearable. Steam driven pumps began to be used to deal with the water problem.³⁸

Even surface alluvial mining could be performed effectively only by teams of at least two or three men. In wet claims on deep leads as many as ten to 14 men had to work together. This meant that store keepers became involved as capitalists and brought permanence to settlements. Company mining started to develop, but the involvement of companies was generally opposed by miners who wanted to continue to work as individuals, even if in cooperation with others.³⁹

21 The source of gold other than in the alluvium was in quartz reefs. Quartz reef mining began early, contemporaneously with alluvial. Once the alluvial gold was exhausted, the quartz became the only source of gold. Quartz mining involved the breaking of the hard rock to extract it from the earth and crushing it to extract the gold. Although there were early attempts to do this by hand, as a matter of practicality the crushing required machinery, often in the form of stamper batteries, some use of which has persisted almost to the present day.⁴⁰ This again required the involvement of many men and capital. Quartz reef mining necessarily required leases for it to be carried out. These were much larger than claims, initially 10 acres⁴¹ and subsequently larger again and were held for a term of years. As time went by quartz reef mining generally came to be practised by companies, although, as already stated, this tended to be resisted by individual miners. Smaller parties did extract quartz and send it for crushing in the machinery of larger organisations.⁴²

³⁴ Serle, p 73.

³⁵ Blainey, p 32.

³⁶ Serle, p 220.

³⁷ Weston Bate, p 80.

³⁸ See Blainey, pp 46-51.

³⁹ Russel Ward, pp 117-118.

⁴⁰ Personal observation.

⁴¹ Serle, p220.

⁴² See Blainey, pp 64-66; Weston Bate, p 89.

The Physical Nature of the Settlements

22 This section will concentrate on Sofala and Ballarat as typifying what might be said about gold fields settlements in New South Wales and Victoria respectively.

23 At the beginning of the rushes, Crawford said, “Canvas, bark and rough-hewn slabs solved the problem of accommodating new numbers in Melbourne and on the diggings.”⁴³

24 Hodge (fn 26) gave the following description of the township of Sofala at its inception:

Sofala in its early weeks – and indeed, months – was a settlement of tents, dotted along the convolutions of the river, close by the precious claims. All business premises at first were temporary, and even the police barracks built on the opposite side of the river on what logically came to be called Commissioner’s Hill, were very rough slab and bark buildings. At the beginning of October the township was still ‘*a mere collection of tents of all sorts and sizes. It had a Post Office, a coach office, a circus, a Royal Hotel. The last of these establishments at which I took up my abode during my stay, consisted merely of a covering of white calico stretched over a framework of rough saplings*’, wrote John Dunmore Lang.⁴⁴

25 Sofala on November 10 was described as follows in *The Empire* newspaper:

For the most part, Sofala presents to the spectator, a strange jumble of tents of every possible shape: canvas, calico, slab and bark huts, bough gunyahs and nondescripts. Among this medley, two circuses are conspicuous. Stores of every possible description and containing varieties of merchandise, meet the eye everywhere, embellished with placards, announcing that the highest price be given to gold here. Shoemakers and blacksmiths establishments are numerous. Next to the post office are several very questionable establishments boasting a large number of visitors. In fact, under the guise of registry offices, ginger beer and lemon syrup establishments (and very often under no disguise at all), sly grog shops without number infest this township and indeed the whole diggings. The range is from the more genteel establishment, which retails ale and porter at three shillings per bottle down to the veriest den of iniquity, where the most abominable of drinks, under the name of rum, is sold at six pence a glass.⁴⁵

26 In 1858 the new Commissioner for the Western Gold Fields, Harold Maclean, described Sofala as follows:

*At about the central portion of that part of the river forming the goldfield is situated the flourishing township of Sofala, containing from 600 to 800 inhabitants. Sofala at the present time is marked by an appearance of great activity and prosperity. The former buildings of bark and slabs, are rapidly giving way to improved structures of weatherboards, with shingled roofs; and I am assured that the contemplated sale of the lands to the present occupants is likely to lead, at no distant period, to the erection of brick buildings.*⁴⁶

27 By this time Sofala had three churches and four schools, the Church of England School at Sofala having 150 pupils. Within the district there were 34 licensed public-houses and a large number of stores and other places of business.

28 Although it has continued to exist to this day, Sofala, in reality, did not develop beyond this stage.

30 In Victoria, the settlements began in the same modest way. Weston Bate (fn 2) described Buninyong at its inception as “a little Geelong under canvas.” He quoted the following description by one Alfred Clarke:

⁴³ Crawford, p 105.

⁴⁴ Hodge, *Frontiers*, p 47.

⁴⁵ *Empire*, 14 November, 1851

⁴⁶ Hodge, *Frontiers*, p 88.

The inhabitants of Geelong are becoming nomadic – various tribes from Geelong and Chilwell have sent their deputations, and the denizens of the Western District may be described ere long as dwellers in tents, as hewers of wood and drawers of water. Geelong is going out of town and going to Buninyong. Bricks and mortar are deserted for tarpaulins, comfort for inconvenience, ease for hardship, ordinary travail for hard labour, and all is set at nought by the desire for gold, gold that is to be rent from the bowels of the earth. Neither rain nor storm overpowers the desire; the cry is still ‘They come, they come.’⁴⁷

31 Serle described a gold field in its early days as follows:

The first view of an established goldfield was fascinating – holes like gravel-pits and tents everywhere, an anthill swarming with frenzied activity, a steady roar as in an immense factory from hundreds of rocking cradles. It was like a gipsy-camp, some said, or a fair extending for miles ‘but on getting closer, the holiday appearance ... is entirely removed – no fun of the fair, no laughing – no women – but rough men ... rocking cradles with an earnestness you cannot imagine. Mostly very serious, but some laughing as men laugh when they win at cards.’⁴⁸

32 On the next page, Serle described the early settlements as follows:

In the early days of the rushes, before the diggers settled down to long periods of residence on any one field, living-conditions were of the most primitive kind. Most of the tents were cotton, a few canvas and a few with tarpaulins: saplings were used for ridge-poles, nearly all of which had some means of identification attached – flags, boots, hats, anything out of the ordinary. Stumps and packing-cases served as furniture and a flour-bag was prized as the basis of a rough stretcher. Most slept on the ground, sometimes on straw mattresses or leaves (‘bush feathers’), in blankets which were often flea-ridden, and wearing most of the clothes they possessed.⁴⁹

33 In Ballarat in 1853, there was a profound change. Tradesmen returned to their trades and large wooden buildings were going up. A theatre opened and also an undertaker.⁵⁰ Weston Bate noted:

The diggers also were living more comfortably. Many tents were now clad with slabs and had substantial chimneys, usually of mud-brick.⁵¹

34 1854 was a year of profound social and economic changes:

In April miners began to build log huts in which to stay through the winter, and the stability and complexity engendered by widespread deep-sinking stimulated the activity of solicitors, auctioneers, sharebrokers, blacksmiths, builders and men of many occupations not much noticed before. Sixteen qualified practitioners were listed by the newly formed medical association.⁵²

35 The building industry was well developed in 1854. Ballarat possessed a sawmill and several timber merchants, one of whom was handling 5,000 feet of local hardwood every week. There was another sawmill five miles away at Warrenheip. A brickyard advertised 60,000 bricks and a monumental mason supplied hearthstones as well as tombstones. Shops kept paint, wallpaper, glass, nails and galvanised iron.⁵³

⁴⁷ Weston Bate, pp 7-8.

⁴⁸ Serle, p 71.

⁴⁹ Serle, p 72.

⁵⁰ Weston Bate, p 36.

⁵¹ Weston Bate, p 38.

⁵² Weston Bate, p 41.

⁵³ Weston Bate, p 44.

36 In May 1854 central Ballarat had 22 hotels. As well as concert halls in two hotels, there was a circus, four theatres and the Assembly Rooms.⁵⁴

37 In 1855, there were hundreds of businesses as opposed to a few dozen businesses before Eureka (December 1854).⁵⁵ Between 1855 and 1861, Main Street was transformed.⁵⁶ In 1855 the shops were still modest weatherboard buildings.⁵⁷ By the 1860s Main Street was a street of substantial weatherboard and even brick buildings.⁵⁸

38 It is to be remembered that, unlike Sofala, Ballarat went on growing. It has already been noted that by 1871 it had a population of 47,000. The railway reached Ballarat in 1862. In 1871 Ballarat received high praise from the celebrated English novelist, Anthony Trollope, who visited just after Christmas:

Trollope said he was struck with more surprise by Ballarat than by any other city of Australia, not for its youth (Melbourne was very young), and not for its size (a quarter of Melbourne's), but because it was so solidly built and so well endowed with hospital, libraries, hotels, public gardens and other amenities.⁵⁹

39 An important part of the explanation for Ballarat's growth and maintenance of its size was the development of secondary industry, which was not paralleled in New South Wales settlements such as Sofala. The substantial building industry in Ballarat has already been mentioned. From the mid-1850s there was an increasing number of engines in Ballarat, largely for keeping water levels down in the mines.⁶⁰ Importantly, these engines started to be manufactured in Ballarat, the first being made in 1858.⁶¹ The provision of the engines and other metal components for use in the mines led to a proliferation of foundries in Ballarat.⁶² In addition to the continuing expansion of the building industry, clothing manufacture commenced and there were tanners and flour mills.⁶³

40 The growth of Ballarat and other substantial towns exemplified the completely different scale of the changes which the gold rushes rendered in Victoria as compared with New South Wales.

The Social Nature of the Settlements

41 This has already appeared to a large extent from the account that has been given of the physical nature of the settlements. However, there are some other matters that require comment.

42 It will be apparent that in the initial stages of the rushes the inhabitants of the fields were all or virtually all male. Women were left behind. Thus, in September 1851 there were only about ten women among 600 men in Ballarat.⁶⁴ At that time, the appearance of a woman on the field was the signal for a gathering and a cry, "There's a woman!"⁶⁵ However, there was a gradual accession of women to the settlements as many of the married miners were joined by their wives and families.⁶⁶

⁵⁴ Weston Bate, p 45.

⁵⁵ Weston Bate, p 96.

⁵⁶ Weston Bate, p 105.

⁵⁷ Weston Bate, p 98.

⁵⁸ Weston Bate, p 106.

⁵⁹ Weston Bate, p 114.

⁶⁰ Weston Bate, pp 84, 122.

⁶¹ Weston Bate, p 123.

⁶² Weston Bate, pp 125-128.

⁶³ Weston Bate, pp 129-131.

⁶⁴ Weston Bate, p 18.

⁶⁵ WB Withers, *History of Ballarat* (Ballarat Star, 1870, rep Ballarat Heritage Services, 1999), p 55.

⁶⁶ Robert GV Baker, *The Second Rush A study of the goldrush to Sofala in 1851* (Centre Pak Research, Cronulla, 1986), p 22.

43 The prevalence of liquor in the settlements has already appeared above. There were “sly grog shops without number”⁶⁷ and in Ballarat 22 hotels in 1854⁶⁸ and in the Sofala district 34 hotels in 1858.⁶⁹ Most diggers consumed liquor and some expended all their earnings on it.

44 The prevalence of guns in the settlements should also be noted. Most diggers took a gun to the diggings with them. Furthermore, it was the custom that the guns should be fired off at night.

45 A much debated issue is whether the New South Wales and Victorian gold fields were more orderly and law abiding than the Californian and other US gold fields.⁷⁰ There are many reports of violence on the Californian fields.⁷¹ Despite the prevalence of liquor and guns noted above, the conclusion usually expressed is that the New South Wales and Victorian gold fields were more orderly and law abiding than the US fields and, indeed, were orderly and law abiding to a high degree.⁷² One notable contemporary statement is that of Lord Robert Cecil (later the Marquis of Salisbury and Prime Minister of England) who visited the Victorian gold fields in March 1852. He was astonished to find “less crime than in a large English town, and more order and civility than I have myself witnessed in my own native village of Hatfield”.⁷³

46 Whilst one must be careful of generalisations, the view to this effect is so universal that it cannot readily be doubted. It raises the question as to why this should have been so when there was great similarity in so many ways in conditions on the gold fields in California and Australia. Russel Ward (fn 4) has endorsed the view that the reasons were 1] the comparative nearness of the gold fields to the centres of government; 2] the relative homogeneity of the diggers’ racial stock; 3] the virtual absence of a warlike aboriginal race; 4] the love of order inherent in Englishmen; and 5] “rude notions of honour supported by a kind of public opinion amongst themselves”.⁷⁴ It is clear that a central reason lies in the administrative background and structures in New South Wales up to the time of the discovery of gold and the adaptation of those structures to provide administration and order on the gold fields in both New South Wales and Victoria when the gold rushes commenced in 1851. It is to be remembered that Victoria was separated from New South Wales and established as an independent colony only on 1 July 1851, coinciding almost exactly with the discovery of gold and the commencement of gold rushes, first in New South Wales and shortly afterwards in Victoria.

48 In 1846 the United States declared war on Mexico and in 1848 Mexico ceded California to the United States. “California became an American territory with a ‘thinly staffed, badly financed military government that had been superimposed on the very slight existing local government inherited from Mexico.’”⁷⁵ New South Wales on the other hand had been settled for more than half a century as a convict colony. From the start of the Colony, a central requirement of its administration was to provide for the control and supervision of convicts, who for some decades were a majority of its inhabitants. The importance in this regard of the Magistracy, particularly in outlying areas, from the 1810s on was noted by Lisa Ford (fn 75). She described them as “a vital tool of governance” and referred to their control of the police, their assignment of convict servants, their organization of musters of convicts and others, their presiding at public meetings and presentation of petitions and their taking of the local census.⁷⁶ The development of the administrative structures that grew up was discussed at length by Hilary Golder.⁷⁷ Golder

⁶⁷ Supra par 25.

⁶⁸ Supra par 36.

⁶⁹ Supra par 27.

⁷⁰ CMH Clark, *A History of Australia IV The Earth Abideth For Ever 1851-1888* (MUP, 1978), pp 11, 51; Atkinson, p 236; Blainey, p 42; Crawford, p 105; Hirst, p 209; Hodge, *Frontiers*, pp 92, 193; Serle, pp 81, 218.

⁷¹ Simon Chapple, *Law and Society Across the Pacific Nevada County, California, 1849-1860 and Gympie, Queensland, 1867-1880* (PhD thesis, University of New South Wales, 2010), pp 258-259

⁷² See references in footnote 70.

⁷³ Serle, p 35.

⁷⁴ Russel Ward, p 120.

⁷⁵ Chapple, p 40.

⁷⁶ Lisa Ford, *Settler Sovereignty Jurisdiction and Indigenous People in America and Australia, 1788-1836* (Harvard UP, 2010), pp 123-124.

⁷⁷ Hilary Golder, *Politics, Patronage and Public Works: The Administration of New South Wales, Volume 1, 1842-1900* (UNSW Press, 2005); see also John Kennedy McLaughlin, *The Magistracy in New South Wales, 1788-1850* (University of Sydney, Thesis for Degree of Master of Laws, August 1973).

emphasised that “administrative attitudes and practices in New South Wales” were shaped by the development of convict management, involving the control, maintenance and employment of thousands of prisoners.⁷⁸ This control from early times extended into the countryside because of the practice of assigning convicts to work for settlers. Many of those convicts were assigned to settlers in the countryside. On assignment the settler received the benefit of the convict’s working capacity free of charge. On the other hand, the Government ceased to be responsible for the maintenance of the convict, which then fell upon the settler to whom he or she was assigned. The Government had, through its representatives, largely the Magistrates, to maintain superintendence over the assigned convicts in the countryside. This provided a framework of law and order into which the gold fields were able to fit

47 There was a similar phenomenon in Canada. The gold fields in British Columbia were more peaceful and law abiding than those in California. The view has been expressed that this was because in “the Canadian West the law arrived before ‘the rush of settlement’ ... when the first settlers arrived in the West they found that governmental authority, i.e., the Hudson’s Bay Company, had preceded them.”⁷⁹

49 Another feature of life which should be mentioned is dispute resolution by Gold Fields Commissioners. As will appear below, in effect, the whole community participated in this process. In Victoria it was replaced by Courts in 1855 after Eureka, but in New South Wales it was carried on until 1874.

50 The following remarks upon the Gold Commissioners’ role as dispute settlers were made by JR Hardy, who was the first Gold Fields Commissioner and initiated the adjudication system

I know no more remarkable fact in the circle of social facts than this – that though the Gold Commissioners appeared amongst the diggers with the unfavourable *prestige* of tax-gatherers, they were universally popular and welcome. They were looked upon with confidence, as the protectors and the just arbiters of the gold field. The thousands of disputes that necessarily arise in the gold field, were at once, without a day’s delay, settled, without the expense, the delay, the tedious formality, that impedes the way of justice in other places ...the witnesses necessarily on the spot, and all the neighbours, the jury *de circumstantibus*, interested in a just decision, and present to assist in a just determination.⁸⁰

This passage summarises accurately the elements and grounds of success of adjudication by the Gold Commissioners. The proceedings – complaint, hearing and decision---were completely oral. No written record was kept.

51 One account of such an adjudication was given by C Rudston Read, a Victorian Commissioner, of proceedings before him in about 1852 at Myers Creek near Bendigo. On being summoned to adjudicate on a complaint respecting encroachments, he feared that to go amongst the diggers without five or six troopers was the height of insanity. However, having no troopers, he trusted to the general feeling amongst diggers of wishing to see justice done. He therefore proceeded to Peg Leg Gully where one or two diggers respectfully offered to hold his horse. His account then proceeded:

Following the man who had preferred his complaint in respect to disputed ground, a large crowd of men, numbering a thousand or more, immediately gathered together, but what was their object of so gathering? was (sic) it to pitch me neck and crop into a hole, if I did not give it in favour of the party who mustered strongest, and were determined that they should have it right or wrong? Was it to give evidence if required? Was it to endeavour to annoy me so as to *get a rise* out of me? or (sic) was it from curiosity to see whether I was inclined to favour one party, because they were what are termed a *swell* party, more than another who were not? ... In answer to these questions, I must say -- purely from curiosity (sic). Both parties would commence, perhaps, declaring it was theirs, but, I quietly informed them, that if they wanted me to decide

⁷⁸ Golder, p 25.

⁷⁹ Hamar Foster, ‘Law Enforcement in Nineteenth-Century British Columbia: A Brief and Comparative Overview’ *BC Studies No 63* Autumn 1984 pp 4-5.

⁸⁰ JR Hardy, *Squatters and Gold-Diggers, Their Claims and Rights* (WR Piddington, Sydney, 1855), p 14.

impartially, they must speak one at a time; this was instantly complied with, and hearing both parties, and witnesses *pro et con*, and deciding to the best of my judgment, either by a division, or drawing lots, the case was satisfactorily settled, for it was not difficult to tell by a sort of popular feeling generally, if one *really* was in the wrong.⁸¹

He added that during the whole time he was a Commissioner at the gold fields, “I always received the greatest civility from gold diggers.”

52 The continuation and success, for some 25 years in New South Wales, of a totally unwritten system of adjudication is one of the most remarkable features of the Australian gold fields. This is all the more so when one considers that the system decided hundreds or thousands of disputes and that in many instances the decisions determined questions of title to mining tenements, some of which produced gold worth thousands of dollars. It is clear that the system was effective in the absence of recorded results. There is no express explanation apparent in the available material of how this was so. The conclusion to be reached in this regard would seem to arise from the nature of the communities in the context of which the decisions were made. These were clearly communities in which the participants were physically and socially close and interested in what was occurring around them, particularly in relation to mining. TA Browne, who was the novelist Rolf Boldrewood, was also the Gold Fields Commissioner at Gulgong from 1871 to 1874. A reading of his novel *The Miner’s Right* gives a lively sense of the interest of these communities in the adjudication of disputes. The book gives a fictional account of an Englishman venturing to the gold fields where he ultimately makes his fortune. The account purports to be based on the Victorian gold fields in the 1850s, but in fact records events on and the society of the Gulgong Gold Field while Browne was there in the early 1870s.⁸² It has been recorded that proceedings before the Commissioner were always observed by people in the community, in some cases by hundreds or thousands. The close community was always aware of the results and generally those results were acted on immediately. In these circumstances it would have been idle to assert, even some time afterwards, that the results were other than what they were. In any event, it seems quite plain that the system did work, even in the absence of writing.

53 Among the records that have survived in the New South Wales Archives of Gold Fields Commissioners and Wardens’ Court adjudications are the following:

Tambaroora Bench Books NSW NRS 3436 4/6596-6599;

Hill End Bench Books NSW NRS 3078, 4/6599-6602;

Register of Complaints in Sofala Warden’s Court 1874-1878.

⁸¹ See C Rudston Read, *What I Heard, Saw and Did on the Australian Gold Fields* (T&W Boone, London, 1853), pp 159-160.

⁸² RB Walker, “History and fiction in Rolf Boldrewood’s *‘The Miner’s Right’*” in *Australian Literary Studies*, vol 3, no 1, June 1967, p 29.