

FROM FOREST CREEK TO EUREKA: HOW THE DIGGERS OF THE 1850s GOLD RUSHES DROVE THE DEVELOPMENT OF DEMOCRACY IN VICTORIA

Pat Healy June 2023



Great Meeting of Diggers – 15 December 1851. D. Tulloch 1851. Engraved T Ham 1852.
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145 Main Rd Chewton Victoria 3451

PO Box 85 Chewton Victoria 3451

chewtonsecretary@gmail.com

This paper may be downloaded free of charge as a pdf document from the Chewton Domain Society website www.monstermeeting.net.

This paper tells the story of how the men and women who came to the gold fields in the 1850s transformed the new colony of Victoria and started and drove the development of parliamentary democracy. It is informed by the analyses, insights, information and *words* contained in the following:

- Marjorie Theobald. *Mount Alexander Mountain of Gold 1851-1861. The gold rush generation and the new society.* (Chewton Domain Society Inc. 2021)
- Marjorie Theobald. *The Fryers Creek Miners vs the Port Phillip & Colonial Mining Company: A Colonial David vs Goliath.* (Untold Tales. Not yet published)
- Geoff Hocking. *The Red Ribbon Rebellion! Decade of Dissent. Bendigo Petition 3rd ~27th August 1853.* (New Chum Press Castlemaine 2001)
- Geoff Hocking. *Sandhurst. Genesis to Federation. 1835 – 1910* (New Chum Press Castlemaine 2022)
- Geoff Hocking. *Eureka Stockade. A Pictorial History.* (Five Mile Press PL. Rowville Victoria 2004)
- Weston Bate. *The Lucky City. The First Generation at Ballarat 1851-1901* (Melbourne University Press 1978)
- Robyn Annear. *Nothing but GOLD. The Diggers of 1852.* (Text Publishing. Melbourne 1999)
- Peter Fitzsimons. *Eureka* (William Heinemann Australia 2013)
- Fred Cahir. *Black Gold. Aboriginal People on the Goldfields of Victoria, 1850-1870* (Australian National University 2012)
- Jan Wositzky *The Monster Meeting Book. How Eureka began with the 1851 Forest Creek Monster Meeting of Diggers.* (Chewton Domain Society Inc. 2014)
- Geoffrey Serle. *The Golden Age. A history of the colony of Victoria 1851-1861.* (Melbourne University Press 1977)
- Justin Corfield, Dorothy Wickham, Clare Gervasoni. *The Eureka Encyclopedia.* (Ballarat Heritage Services 2004)
- Geoffrey Blainey. *A Shorter History of Australia. Revised Edition* (Vintage Books Australia 2009)
- Stuart Macintyre. *A Concise History of Australia. Third Edition.* (Cambridge University Press 2009)
- Jacqui Durrant. *Beechworth's finest hour.* (<https://lifeonspringcreek.com>. No date)
- Anne Beggs Sunter. *The Buninyong Connection* (www.ballaratreformleague.org.au. No date)
- Weston Bate. *The Eureka Stockade: Gateway to Democracy.* (www.ballaratreformleague.org.au. No date)

THE 1850s GOLD RUSHES AND THE GOLD LICENCE

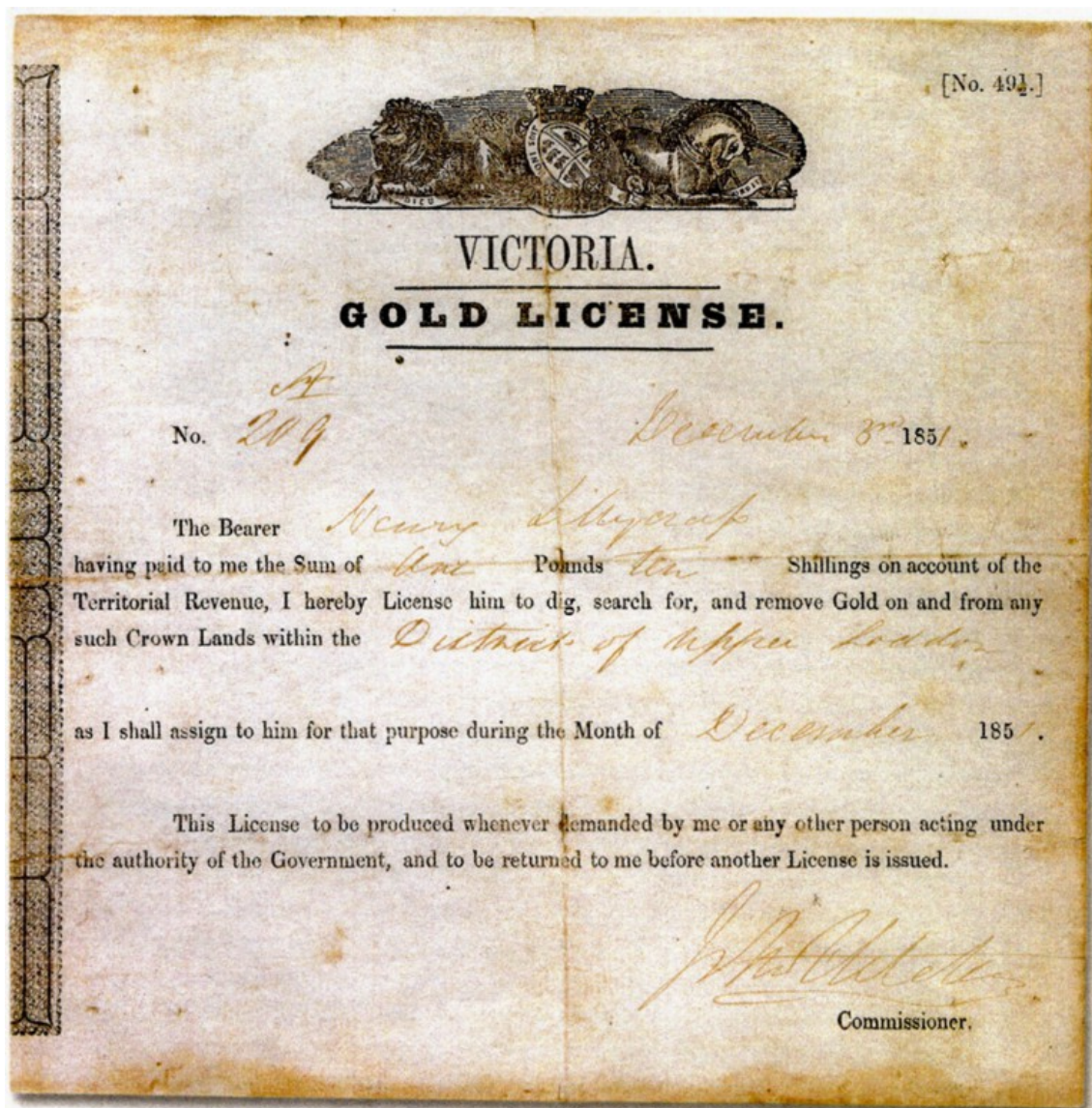
The gold rushes came upon the newly proclaimed Colony of Victoria with the force of a cyclone; some system of governance had to be devised and it had to be done on the run. Governor La Trobe had the ultimate responsibility of adapting the British legal system and the British civil service to the unfamiliar territory of the central Victorian goldfields. In hindsight his mistake was to overlay British traditions of citizenship as the miners understood them with the quasi-military rule of the Gold Commission. – Marjorie Theobald

In July 1851 the new colony of Victoria was proclaimed and six weeks later the goldrushes began. It had long been an open secret in some quarters that there was gold in Victoria. But the information had been suppressed by squatters, unwilling to see their sheep stations overrun by gold seekers, and the colonial Governor Charles La Trobe determined to avoid the social upheaval of a gold rush, which was likely to turn the social order *upside down*. Follow up of earlier finds in 1849 had been discouraged until after Port Phillip separated from NSW, ensuring that any resulting revenue would be used solely for Victoria. However, in June 1851 a group of prominent Melbourne citizens became concerned that recent discoveries of gold in NSW would lead to an exodus from the newly established colony of Victoria. They formed the Gold Discovery Committee and announced a 200 guineas reward for the discovery of a viable goldfield within 200 miles of Melbourne. There was an immediate response and discoveries were soon announced. The first were at Clunes and Anderson's Creek near Warrandyte but both showed relatively meagre returns. In early August a discovery was made at Buninyong, but the surface gold was soon exhausted by the many diggers. Then there was another find 10 miles away in Ballarat. There was little surface alluvial gold and deep shafts had to be dug to access the gold in ancient riverbeds, but some reported good returns and a rush to Ballarat began. But soon many of the diggers left Ballarat to rush to the Mount Alexander fields, 50 miles away, following reports of even greater riches to be found.

The rushes took place on the lands of the Djaara people, who had long known about the gold but, since they had no use for it, they had left it lying in the ground. Their traditional right to the land was not acknowledged by either those who came to find the gold or the colonial government. The rushes further dispossessed the Djaara people, already driven from their lands and waterways in the 1830s and 1840s by the squatters and continued the violence and imported diseases that decimated their people and the mining that despoiled their land. But the Djaara people did not entirely go away. Their participation in the gold rushes, as fossickers and miners in their own right and as guides, traders and native police, is

documented by Fred Cahir in his book *Black Gold. Aboriginal People on the Goldfields of Victoria 1850-1870*. Their traditional right to the land of the gold rushes remained unacknowledged until 2013 when the Victorian Government formally granted them native title to 266,532 hectares of their stolen land.

Since all minerals were by law the property of the Crown, Governor La Trobe responded to news of the finds by issuing a proclamation on 13 August 1851, that anyone digging for gold required government authorisation. Five days later he proclaimed regulations for the issue of gold licences. The licence would cost 30 shillings a month and be available to persons able to show that they were not “*improperly absent from (their) hired service*”. This latter condition, which soon became inoperable, arose from the provisions of the *Masters and Servants Act 1823* which required workers to remain in their job unless given leave by their employer or face fines and imprisonment.



Victorian Gold License 1851

The gold licence system had a two-fold purpose. It was to raise the money needed to fund the cost of goldfields administration and infrastructure – the Gold Commission. But the money raised was never enough because many of the gold diggers were either not able or not willing to pay 30 shillings a month for a licence. Evidence from various official sources, plus much anecdotal material, indicates that as many as 50 per cent evaded the licence fee at some time in their mining lives.

The other and more important purpose of the licence was to stop the rush, control the labour force and get people back to their jobs in workshops and farms in time for the shearing and harvest. But the introduction of gold licences did not stop the rush as La Trobe had intended.

From the start the licensing system was regarded by even senior goldfields administrators as an unworkable law that they were nevertheless obliged to uphold. It became and remained the source of major conflict between the government and the diggers until it was replaced by an export duty in 1855. The diggers regarded it as an unfair tax and from its introduction there was strong opposition across all the fields. The Argus newspaper, reporting on one gathering of diggers in Buninyong, wrote of “*men strong in their sense of right, lifting up a protest against an impending wrong, and protesting against the Government*”. Elsewhere there were critical articles and editorials in the major newspapers and protests from businessmen in the towns and cities who saw it as a potential threat to the colony’s economic prosperity.

Regardless, the gold licence system came into effect on 1 September 1851. By early October La Trobe had appointed the existing Land Commissioners to the roles of Gold Commissioners to administer the new regulations in all areas of Victoria. In his dispatches to Lord Grey, the Colonial Secretary in London and Sir Charles Fitzroy, the Governor General in Sydney, La Trobe was already acknowledging the problems caused by the gold rushes which, he claimed, were *unstoppable*: exodus to the goldfields had brought business in the cities to a standstill as workers of all classes left their jobs to join the rush; the *Masters and Servants Act* was unenforceable; and he did not have the necessary legislative powers, administrative resources and funds from the General Revenue that were needed to deal with the situation. Meanwhile, elections were being held for Victoria’s first Legislative Council, and the members were announced on 22 October 1851.

FOREST CREEK AND THE DIGGERS' MONSTER MEETING

In the Australian colonies where there was no aristocracy, no established church and only a thin crust of self-appointed gentry, it was inevitable that a new order would emerge, with or without the discovery of gold. ... As it happened, those who did not want things to change, and those who wished for something better confronted each other in this most unlikely setting of the central Victorian goldfields – over the issue of the licence fee. – Marjorie Theobald

On 8 September 1851 the Argus published a letter from a shepherd, John Worley, describing where gold could be found near the base of Mount Alexander, 50 miles to the north-east of Ballarat. Within weeks a major rush began as thousands tramped along the Mt Alexander road (later the Calder Highway) to find it. By November there were 2,000, by December 25,000, panning and digging at Forest Creek, the richest shallow alluvial gold field ever found. As news spread of the riches to be found there the rush grew. By December it was clear that the gold rush could not be stopped and Governor La Trobe was faced with increasing government costs for the Gold Commissioners to administer the goldfields and a growing labour crisis as more and more people abandoned their jobs and homes for the goldfields. Writing to Westminster on 3 December, he warned that *“the progress and results of the successful search for gold ... has been such to as completely to disorganize the whole structure of society”*.

Argus, Monday 8 September 1851. p2.

NEW GOLD FIELD – We have received the following letter announcing the discovery of a new gold field at Western Port.

DEAR SIR, I wish you to publish these few lines in your valuable paper, that the public may know that there is gold found in these ranges, about four miles from Dr Barker's home station, and about a mile from the Melbourne road; at the southernmost point of Mt Alexander, where three men and myself are working. I do this to prevent parties from getting us into trouble, as we have been threatened to have the constable fetched for being on the ground. If you will have the kindness to insert this in your paper, that we are prepared to pay anything that is just when the Commissioner in the name of the party comes.

John Worley, Mt Alexander Ranges, Sept 1st 1851

Governor La Trobe had a deep mistrust of social disorder and democracy and he feared that his plans for the gradual development of the new colony along the lines of the traditional British model, would be overturned by the social turmoil of a goldrush. In desperation to stop the rush he made a grave error of judgement and announced that the already high cost of the monthly licence would be doubled from 30 shillings to sixty shillings (three pounds) in January 1852. He wrongly believed that the fee increase would stop the rush and force the diggers back to the farms and the abandoned shops and workplaces of Melbourne and Geelong. But the diggers had other ideas. Although they came from all walks of life, most were ordinary working people and for them the gold rush was an opportunity to find riches and build a better life than they could get toiling in the workplaces of their masters, where they were bound by the 1823 *Masters and Servants Act* designed to control workers and repress trade unions. They could not vote and they had little in the way of civil rights, but they were not deterred by La Trobe's laws and his plans to stop them joining the rush to find gold – plans that did not include more civil rights and the vote for the diggers. La Trobe was no democrat.

On Friday 5 December the diggers were informed of the content of the proposed regulations when the *Argus* printed them in full. At the Forest Creek diggings there was immediate protest action. Copies of a Manifesto (printed on an illegal printing press) were posted along the creek the next day. It conceded that gold was the property of the Crown and those who mined it should pay a fair percentage of what they gained but called for a more equitable tax than the gold licence system provided. But as historian Marjorie Theobald notes, the Manifesto "*spoke the language of class warfare*" and that was anathema to the colonial ruling class.

On Monday 8 December a second notice appeared along the creek calling on diggers to attend a preliminary meeting that night near the post office to further consider the government proposal. Some 3,000 attended and after hearing from John Plaistow, Edward Potts and Henry Lineham (the likely authors of the Manifesto), they appointed representatives to call on local Gold Commissioner Frederick Powlett to request that on the following Monday (December 15) he called a general meeting of the diggers from all the local fields for the purpose of considering La Trobe's plan to double the licence fee. But when they called on Commissioner Powlett the following morning, he refused to call the proposed meeting. Instead, he left hurriedly for Melbourne to meet with La Trobe and warn him of the diggers' plans to call an even larger mass protest meeting on the Mount Alexander goldfield the following week.

FELLOW DIGGERS!

The intelligence has just arrived of the resolution of the Government to double the licence fee. Will you tamely submit to the imposition or assert your rights like men?

You are called upon to pay a tax, originated and concocted by the most heartless selfishness. A tax imposed by your Legislators for the purpose of detaining you in their workshops, in their stable yards, and by their flocks and herds.

They have conferred to affect this; they would increase this seven-fold; but they are afraid! Fie upon such pusillanimity! And shame upon the men who, to save a few paltry pounds for their own pockets, would tax the labour of the poor man's hands.

That the precious metals are the property of the Crown, has for long been decided by law; and those who search for and obtain them, pay a fair percentage of their earnings, as an acknowledgement of them, is but right; but is it fair? Is it just, that the gold seekers should pay as much as the gold finder?

Your Legislators talk of the *difficulty* of deciding upon some mode of licensing that will press *equitable upon all; and because, forsooth, these sapient worthies cannot devise some scheme* founded upon *justice*, they have recourse to one that is unjust and oppressive.

It will be vain for one or two individuals to tell the Commissioner, or his emissaries, that they have been unsuccessful, and that they cannot pay the licence fee. But remember that *union is strength*, that "though a single twig may be bent or broken, a bundle of them tied together yields not nor breaks."

Ye are Britons! Will you submit to oppression and injustice? Meet – agitate – be unanimous – and if there is justice in the land, they will, they *must* abolish the imposition.

Yours faithfully,

A DIGGER

Manifesto of Diggers at Forest Creek, December 1851

The diggers went ahead and convened a public meeting (later referred to as the Monster Meeting) at 4.00pm Monday 15 December near the old bark shepherd's hut by Forest Creek. It was advertised with 1,000 handbills (probably also printed illegally) posted throughout the field and calling on all the diggers to come to the meeting. They also published an advertisement in the Argus of Friday 12 December to inform the people of Melbourne and Geelong, including La Trobe and his government, that they were organising a mass meeting

of thousands of diggers to voice their opposition to the proposed doubling of the licence fee.

La Trobe was warned and in response to growing opposition, and fearing major civil unrest on the goldfields, he backed down. On Saturday 13 December the Colonial Secretary's Office prepared a formal written announcement that the proposal to double the licence fee would be rescinded. That official notice was subsequently published in the Victorian Government Gazette on 17 December. But the news was printed beforehand on Monday 15 December in the Argus, which only reached Forest Creek some days later. So, the diggers didn't hear about the change before their Monster Meeting went ahead.



Speakers at the Diggers meeting. Anonymous sketch drawn onsite.

On the afternoon of Monday 15 December, all over the Mount Alexander goldfield, diggers downed tools and, to the music of Hore's Sax-Horn band, 15,000 gathered at the old bark shepherd's hut to hear and cheer the speakers with a dray for a platform and a new flag flying. The large and peaceful diggers' meeting endorsed Edward Potts' condemnation of the gold

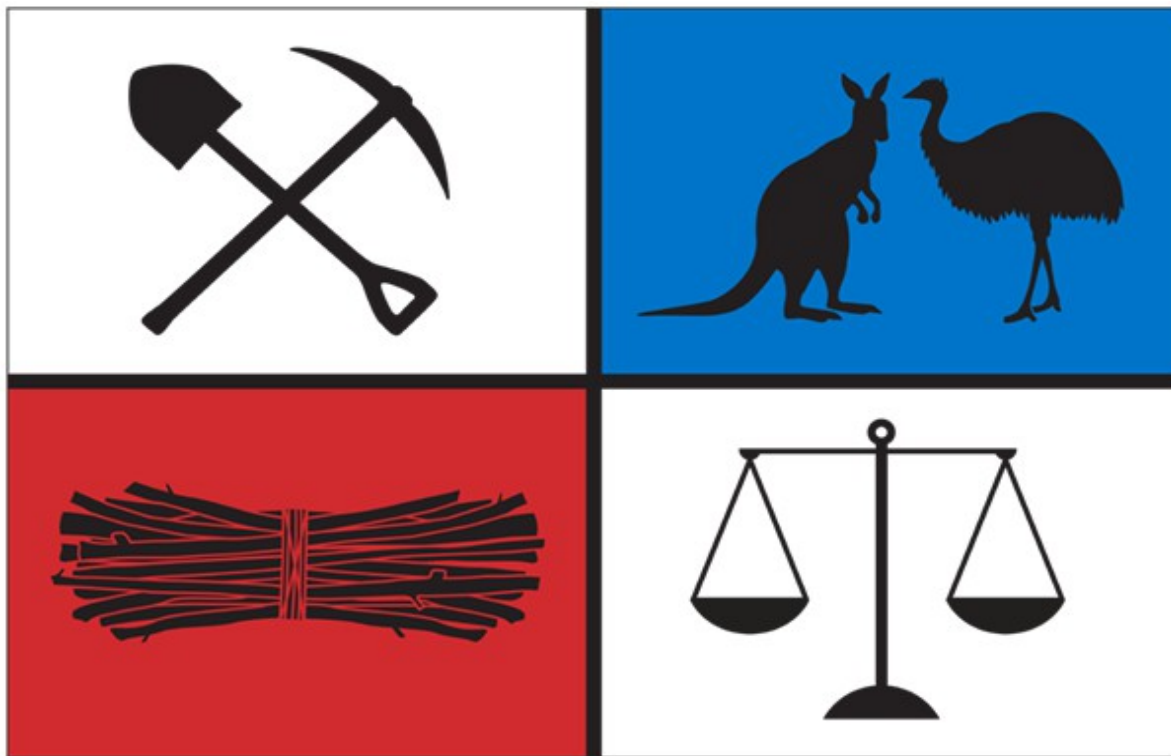
licence as an unjust tax: *That this meeting deprecates as unjust, illegal and impolitic, the attempt to increase the licence fee from thirty shillings to 3 pounds.*

They heeded Henry Lyneham's advice to be united in their opposition and pledged themselves to support his proposal to give assistance to any diggers who refused to pay the increased fee. *That this meeting while deprecating the use of physical force and pledging itself not to resort to it except in case of self defence, at the same time pledges itself to relieve or release any or all diggers that on account of non-payment of three-pound licence may be fined or confined by Government orders or Government agents, should Government temerity proceed to such illegal lengths.*

They were reminded by Robert Booley, Wesleyan lay preacher, Chartist and pioneer of the Eight Hour Day movement, of the need for justice and support for full democratic rights and a better life for working class people. *There are few people who properly understand what a Government is, or what it ought to be. It should be the chosen servants of a free people, and to be just they ought to be a right-minded people..... What ought to be the standard of man? Justice. Why do we cry out against Government? Because they do not do justice.*

And the diggers endorsed Captain John Harrison's proposal to establish a committee of delegates from all the diggings to watch over their interests. They appointed Captain Harrison, Dr Webb Richmond and John Plaistowe to confer with the government about their concerns and their alternative proposals. *That the miners at each diggings appoint Committees to watch over their interests, and that a Central Committee be formed by a Delegate from the Committee of each of the diggings, such delegates to be paid for their services, and report proceedings to a General Meeting of the miners, to be held the first Monday of each month.*

The diggers' delegates obtained a meeting with Colonial Secretary William Lonsdale soon after, but it achieved nothing. Their written submission, *Memorandum of Propositions for Regulating the Goldfields*, was dismissed without any further consideration by La Trobe. But a few days later they addressed a large meeting on Melbourne's Flagstaff Hill to report on La Trobe's response and announced that a miners' bank was under consideration and the Victoria United Gold Miners' Association had been formed (probably the first miners' union to be formed in Australia). The Association was short-lived and the bank did not eventuate but the Flagstaff Hill meeting was a source of great concern for the authorities. It demonstrated the potential for unrest at one field to set a precedent for future action across other fields and to unite the men on the fields with their supporters in the towns. Since it did both, their concern was doubtless well founded.



Artistic recreation by Robyn Annear of the flag flown by the Diggers at their Monster Meeting at Forest Creek in December 1851.

Although the Forest Creek diggers' defiance forced La Trobe to rescind his plans to double the licence fee, it did not end conflict over the licence system. But it set a pattern for the popular protests that spread across the goldfields, demanding an end to the gold licence and, increasingly, greater civil rights. United in their opposition to the gold licence, the gold diggers became the Diggers, a political force of men and women who understood that their strength lay in unity. Their more politically aware leaders shaped the Diggers' concern about the licence system into a broader challenge to the established order, linking opposition to the licence system to broader social and political issues. And strength in unity, civil disobedience and mass peaceful resistance became central tactics and a connecting thread through the diggers' protests that spread across the goldfields leading to the Red Ribbon Movement in Bendigo just eighteen months later.

La Trobe and his advisors had long feared that the gold rushes would disrupt the established order, but after the diggers' successful defiance at Forest Creek in December their concerns escalated. They wrongly came to view the diggers as agents of dissent and sedition supported by the Argus newspaper, which was widely circulated on the goldfields. La Trobe concluded that greater military force was needed to control the diggers and he sought more troops from London and a detachment of 200 from Governor General Fitzroy in Sydney (he got 30). He also appealed to Governor Denison in Van Diemens Land (later Tasmania) to send whatever police and military he could spare. Denison sent a contingent of 130 Pensioners (pensioned-

off police and soldiers generally regarded as drunken and ineffective) who arrived in February. Although of dubious value they remained to guard the Gold Commission until replaced a year later by a detachment of the 40th Regiment, which was later disbanded in the wake of their role at Eureka in December 1854. In the light of subsequent events, it is evident that an agitated La Trobe was, in the words of historian Marjorie Theobald, *looking backward to Australia's past as a convict society under a military regime, rather than forward to a community of free and self-governing people.*

THE PROTESTS SPREAD

The diggers' growing resentment about the cost of the gold licence was greatly exacerbated by the brutal and corrupt policing of the system. *Digger hunts* were common as armed mounted troopers and police searched for unlicensed diggers who, when found, were rounded up and chained to trees – *like dogs* – to await a hearing at the Magistrate's court and heavy fines or stints of labour on road gangs. The police and troopers operated under a moiety system that gave arresting officers 50 per cent of the fines collected from unlicensed diggers and sly grog traders – a lucrative system that encouraged rampant corruption. It infuriated the diggers, who regarded themselves as British citizens with rights that were incompatible with the authorities' brutality and control over all aspects of their lives, and their protests grew.

By mid-1852, unable to ignore their increasing and well-founded complaints, La Trobe responded with assurances that the moiety system of fines and the other inadequacies of the police force would be addressed with the introduction of the new Police Act, already underway. The new *Police Regulation Act*, passed in January 1853, adopted most of the recommendations of a Legislative Council select committee, including the abolition of the moiety system and establishment of a single police force. However, the restructure did little to improve the situation on the ground in the goldfields and resentment continued to grow and turn to direct action in both the diggings and the townships.

In October 1852 the diggers' anger about the government's failure to provide protection for law-abiding citizens, exploded into direct action. At the Moonlight Flat diggings (near Castlemaine), the diggers, outraged at inadequate government protection against a spate of brutal attacks, rapes and robberies, agreed to take direct action by forming a Mutual Protection Association, withholding their licence fees to fund a private police force and establishing a depot at Moonlight Flat where offenders could be held and dealt with immediately. On 23 October, at a meeting of 4,000, the Gold Diggers' Mutual Protection Association was formed to protest against *the present lawless state of the diggings*. To demonstrate their willingness to take matters into their own hands, on that same night 300 diggers apprehended a gang who had committed another robbery and delivered them to the

government authorities at the Commissioner's Camp at Golden Point.

And in 1853, as the Red Ribbon Movement gained strength in Bendigo, diggers on other fields turned to direct action to assert their rights. On the McIvor diggings (Heathcote) in August 1853, 1,000 angry diggers, took matters into their own hands, and confronted the authorities at the Commissioner's Camp, to successfully demand the release of diggers jailed for non-payment of the licence fee.

At Fryers Creek (near Castlemaine) diggers produced a strongly worded petition and turned to 'guerrilla' action to prevent the English Port Phillip and Colonial Mining Company's government supported takeover of the rich creek flats in the centre of what is now Fryerstown. Since land that had been *worked, or partially worked, in the ordinary method by licensees* could not be taken over by the company, the diggers adopted guerrilla tactics. As soon as the resident Commissioner appeared on the site of a proposed lease there was a rush of local diggers to work on it, effectively placing it outside the definition of available ground. Their hostile opposition to the government's support of the Company against the rights of the diggers was clearly expressed in their Petition calling on La Trobe to rescind the order and restore the confidence of the diggers in the Government.

Your petitioners cannot but feel that nothing but a desire to sacrifice the diggers to support a monopoly could sanction such a proceeding and they would respectfully submit, that to enforce this act of aggression against the rights of the digging community will be the first step to destroy that confidence which has hitherto been felt in this district towards the Government.

La Trobe's final decision is not recorded but it appears that the Port Phillip and Colonial Mining Company never worked a Fryers Creek lease. The diggers' organised guerilla actions defeated the government supported takeover and made the company's lease application inoperable.

And on the Ovens field (Beechworth), when police constable Hallet, wrongly shot a young digger, William Guest, 3,000 diggers stormed the Commissioner's camp, and attacked Hallet and Assistant Commissioner Meyer. At two subsequent government inquests police and government officials suppressed key evidence to cover-up their own mismanagement and corruption. But the diggers refused to accept the findings and called for an independent enquiry. La Trobe responded with a closed enquiry, run by Chief Commissioner Wright (about whom the diggers were complaining) and barred the media. Outraged, the diggers directly petitioned the government for the right to vote. The Ovens Petition embodied the principles of equality, accountability, integrity and fairness. It called for *full and fair* franchise for people of all backgrounds and races, replacement of the gold licence tax with one that was

applied fairly across the community as a civic duty and dismantling the network of Gold Commissioners, who they regarded as self-interested public officials, misusing their power and public funds to benefit and protect themselves and their friends. The Petition was submitted to the Victorian Legislative Council on 16 September 1853, a time when the Council was also hearing the demands of the Bendigo diggers.

Resentment about the violent and corrupt behaviour of the police and troopers also spread to the towns. In Castlemaine on Saturday 7 May 1853, Trooper Christian, on the report of informer Mr Mangan, falsely accused boarding housekeeper, Mr McMahan, of selling sly grog and ransacked and destroyed his boarding house. Since selling sly grog attracted a fine of 50 pounds, this would provide a substantial return for the arresting officers. But when McMahan was brought to court two days later, he was acquitted for lack of evidence and the informer Mangan was charged with perjury and jailed. It was too much for the townsfolk. Within hours there were signs all around Castlemaine calling on people to meet on Agitation Hill to *avenge your wrongs and demand your rights, or otherwise you will live and die all slaves*. A crowd of 1,000 people gathered to protest the troopers' corrupt and brutal behaviour. One speaker, Dr Southbee, expressed the strength of their concerns: *if the government persists in their oppression, the public of Castlemaine are unanimously determined to oppose the authorities, crumble them to dust as useless worms, and chivalrously demand their individual liberties*.

THE RED RIBBON MOVEMENT IN BENDIGO

Your Petitioners would also remind your Excellency that a Petition is the only mode by which they can submit their wants to your Excellency's consideration as although they contribute more to the Exchequer than half of the Colony, they are the largest class of Her Majesty's subjects in the Colony unrepresented. The Bendigo Petition 1853

By the winter of 1853 the township of Bendigo (aka Sandhurst) was well established and the Bendigo goldfields had surpassed the output of the Mount Alexander diggings. It became the centre of activism as the stream of new diggers continued while discovery of new fields stalled, resulting in falling yields for individual diggers. There was no improvement in the behaviour of the troopers and police despite the new *Police Regulations Act*, and the detested *1852 Gold Fields Act*, which had confirmed the licence fee, was due for review in September. Together with the deteriorating economic situation and the continuing provocative behaviour of the authorities, this provided fertile ground to grow the momentum and effectiveness of the diggers' protest movement, which caught the authorities unaware and unprepared. Chief Commissioner Wright admitted in his evidence to the later Legislative Council Red Ribbon Inquiry, that its success was *"far beyond anything I could have expected. The whole agitation was*

carried on in a way that I was certainly not prepared for”.

By July the Red Ribbon protest movement was well organised and supported by thousands of diggers who were no longer willing to accept the status quo. The Anti-Gold Licence Tax Society was well established with a central committee in Bendigo and branches in all the fields. Public meetings were held across the fields and attended by thousands ready to pay no more than ten shillings for a licence from the first of September. And although there was no evidence of immediate uprisings, La Trobe ordered a military detachment to be sent to Bendigo, mounted police and military formed up at the rear of each diggers' meeting and spies to report proceedings to the government Camp - further exacerbating the already tense and hostile situation.

In the traditional way of expressing grievances to the authorities, the Anti-Gold Licence Tax Society drew up the Bendigo Petition and took it around the goldfields, where it was signed by thousands. The Petition clearly set out the diggers' grievances about the licence fee, their inability to access land, poor conditions on the fields and the behaviour of the police and troopers, and it proposed significant reforms. The Petition noted that most diggers could not afford to pay the licence fee of thirty shillings a month and diggers wasted much time every month in procuring a licence; conditions of life on the goldfields caused much sickness and heavy expenses; successful diggers could not procure land because of the squatters' monopoly; many of the police and troopers were of *notoriously bad character*; the ill-treatment and imprisonment of those who could not afford to pay was against British law; and the licence fee was unfair because it was imposed alike on the successful and unsuccessful.

The Petition proposed major reforms to address these problems. First and most urgently, that the licence fee be reduced to ten shillings per month with the option of quarterly licences, reducing the time involved and the ill-feeling caused by monthly digger hunts; new arrivals be allowed 15 days residence before a licence was required; the five pounds penalty for non-possession of a licence be reduced to one pound; arrangements be made to enable diggers to invest in small allotments of land for agricultural purposes; and the practice of sending armed men to enforce the licence system be stopped. Finally, the Petition pointedly brought the issue of the franchise and the diggers' lack of political rights into the public discourse. It concluded by reminding La Trobe that although they contributed more than any other class to government funds, they were unrepresented (had no vote) and therefore had no option but to approach him with this Petition.

Your Petitioners would also remind your Excellency that a Petition is the only mode by which they can submit their wants to your Excellency's consideration as although they contribute more to the Exchequer than half of the Colony they are the largest class of Her Majesty's subjects in the Colony unrepresented.

52/30328 5/5/65
To His Excellency Charles Joseph La Trove
Esquire Lieutenant Governor of the Colony of Victoria &c

The Humble Petition of the Undersigned Gold Diggers
and other residents on the Gold Fields of the Colony

Sheweth

That Your Petitioners are the loyal and devoted Subjects of Her Most Gracious Majesty Queen Victoria the Sovereign
of this Colony
That in the present impoverished condition of the Gold Fields the impact of Thirty Shillings a Month is more than Your Petitioners
can pay as the fruit of labor at the Mines scarcely affords to a large proportion of the Gold Miners the common necessaries of life
That in consequence of the few Officials appointed to issue Licenses the Diggers Receivers and other residents are most
in at each Monthly issue in procuring their Licenses
That the laborious occupation of Gold digging and the privations attendant on a residence on the Gold fields entail much
sickness and its consequent expenses on Your Petitioners
That in consequence of the Squatter Land Monopoly a large proportion of successful Diggers who desire to invest their earnings
in a portion of land are debarred from so doing
That newly arrived Diggers must lose much time and money before they become acquainted with the process of Gold
Mining
That in consequence of Armed Men (many of whom are notoriously bad in character) being employed to enforce the impact
of Thirty Shillings a Month there is much ill feeling engendered amongst the Diggers against the Government
That in consequence of the non possession by some of the Miners of a Gold Diggers License some of the Commissioners
appointed to administer the Law on the Gold Fields have on various occasions Chained non-possessioners to Trees and Condemned them to hard labor on the
Public Roads of the Colony - A proceeding Your Petitioners maintain to be contrary to the spirit of the British Law which does not recognize the
principle of the subject being a criminal because he is indebted to the State
That the impact of Thirty Shillings a Month is unjust because the successful and unsuccessful Diggers are assessed
in the same rate

For these reasons and others which could be enumerated Your Petitioners pray Your Excellency to Grant the following
Petition
First. To direct that the License Fee be reduced to Ten Shillings a Month
Secondly. To direct that Monthly or Quarterly Licenses be issued at the option of the Applicants
Thirdly. To direct that new arrivals or arrivals be allowed on registering their names at the Commissioners
Office fifteen clear days residence on the Gold Fields before the License is enforced
Fourthly. To afford greater facility to Diggers and other residents on the Gold Fields who wish to engage
in Agricultural Pursuits for investing their earnings in small allotments of land
Fifthly. To direct that the Penalty of five Pounds for non possession of License be reduced to One Pound
Sixthly. To direct that (as the Diggers and other residents on the Gold Fields of the Colony have
uniformly developed a love of law and order) the sending of an Armed Force to enforce the
License Tax be discontinued

Your Petitioners would respectfully submit to your Excellency's consideration in favor of the reduction of the License Fee that
many Diggers and other residents on the Gold fields who are debarred from taking a License under the present system would of the Fee
were reduced to Ten Shillings a Month cheerfully comply with the Law so that the License Fund instead of being diminished would be increased
Your Petitioners would also remind your Excellency that a Petition is the only mode by which they can submit their wants
to your Excellency's consideration as although they contribute more to the Exchequer than half the Revenue of the Colony they are the
largest class of Her Majesty's Subjects in the Colony unrepresented

And Your Petitioners as in duty bound will ever pray &c.

The Bendigo Petition, 1853, 30 metres in length and bound in green silk Original at State Library of Victoria.

On 1 August 1853, the diggers' leaders, Thomson, Brown and Jones, took the Bendigo Petition (170 metres long and bound in green silk) to Melbourne, farewelled by a rally of 6,000 diggers with banners and flags. They stayed overnight at Castlemaine to hold a meeting on Agitation Hill and collect more signatures, then continued to Melbourne. They presented the Petition to La Trobe on 3 August. And in Bendigo the diggers quietly awaited La Trobe's response.

Meanwhile La Trobe had sent Chief Commissioner Wright to Castlemaine and Bendigo on 21 July to report on the situation there. But Wright failed to read the mood of the diggers and his subsequent report seriously misled La Trobe. He decisively dismissed the Petition claims of the diggers' inability to pay and the time wasted procuring the monthly licence, he saw no reason for reducing the fines given to those who evaded the licence and rejected all claims of police brutality - although he also gave orders that future police searches for unlicensed diggers be conducted under the command of a *Superior Officer*. He claimed that the majority of diggers had no interest in the licence issue and that a *storm in a teacup* had been concocted by the sensationalist press determined to destroy La Trobe.

In Melbourne, the Bendigo delegates presented the Bendigo Petition to La Trobe who, influenced by Wright's misleading report, declined to reduce the licence fee and his rejection of their claims of police brutality. Their report of La Trobe's response was published by the Argus on 5 August and reached Bendigo a few days later, where it outraged the diggers. La Trobe's later formal response to the Petition, published in the Argus on 22 August, full of excuses, obfuscation and assurances that he was doing the best he could. But it was irrelevant - too little too late - and had no influence on the later course of events.

The scene was set for confrontation. On 27 August 1853, a cold wet day, with fears on all sides about the outcome, 15,000 diggers marched to the Camp from all over the diggings with their banners and their new flag flying. Many were armed. They gathered around the Camp to wait as their delegates entered to offer ten shillings for a licence to Commissioners Wright and Panton. The Commissioners refused it on the basis that the fees were not due until September, but they agreed to report the diggers' grievances to La Trobe. The delegates then left the Camp and reported back to the diggers waiting patiently in the rain. It was a tense situation that could have led to conflict but remarkably there was no violent response from the armed diggers. But, their determination for change was clearly indicated by the resolution they passed:

This meeting pledges itself to affect no compromise with the authorities respecting the ten shillings licence, and as proof of the sincerity of the men adopting it, they do wear in their hats a piece of red cloth or riband.

The majority of diggers immediately took to wearing a red ribbon as a sign that they were pledged to no longer pay the old licence fee. And red ribbons appeared throughout the diggings, on stores, tents, horses and dogs, as a clear indication that the majority would not pay the old licence fee. Given the obvious extent of the diggers' unified resistance – a successful strategy since 1851 at Forest Creek – it was clear that the government could not maintain the current system and that change was inevitable.



Bendigo Diggers Red Ribbon Movement Flag 1853

Within days the government acted. They acknowledged that if the diggers persisted in their threatened campaign of passive resistance to the licence fee, they would be powerless to enforce it. Wright warned, in a letter to La Trobe, *'no force would avail to overcome the passive resistance which we anticipate will be the course acted upon by the instigators of the movement'*. It would be unrealistic to arrest all the diggers who did not have a licence and attempts to charge them would quickly overwhelm the courts. Wright advised on behalf of himself and Chief Commissioner of Police William Mitchell, *'reduction of the Licence Fee if not its abolition altogether is inevitable... If blood should once be shed it is impossible to see the consequences but it would very possibly throw serious obstacles in the way of establishing regulations to be enforced on the goldfields.'* La Trobe, persuaded to Wright's changed view, wrote to Westminster that it was out of the question to carry on the existing system *'without very considerable modifications.'* On 30 August, in his opening speech to the Legislative Council, he proposed that the licence fee be replaced by a royalty on gold.

The Legislative Council also acted quickly, appointing a Committee of Enquiry from amongst their members to consider the situation. They agreed to suspend the September licence fee and La Trobe signed a Proclamation to waive it. A notice to this effect, signed by Commissioner Wright, was dispatched to Bendigo to be posted throughout the diggings. Unfortunately, this action was so precipitous that neither the local Commissioner Panton, nor Colonial Secretary Foster in Melbourne, were aware of the change. Another notice signed by Foster was simultaneously posted in the diggings, advising that the September licence fee had to be paid. This caused confusion and chaos for the local authorities and for the diggers, who expected that Wright's notice to cancel the September licence heralded significant change to the licence system altogether.

The Legislative Council Committee of Enquiry called 26 witnesses on issues related to the licence fee, including the manner of its collection and rate of evasion, the franchise, the diggers' concerns about access to land and what part foreigners, agitators and the press played in the Red Ribbon Movement. Not surprisingly given its membership, the Committee blamed the latter for discontent on the goldfields, despite much evidence to the contrary. The Committee was not prepared to go so far as to recommend abolition of the licence system and their final report rejected La Trobe's call to replace the licence fee with a royalty. Instead they changed it to a sliding scale of fees: one pound for one month, 2 pounds for three months, three pounds for six months and five pounds for an annual licence which also gave the holder a limited right to vote, but in only one district.

The Committee recommendations became law just weeks later, on 1 December 1853. The *Act for the Management of the Goldfields* increased the fees for six and twelve months to four and eight pounds and imposed an annual licence fee of 50 pounds for storekeepers on the diggings, a new fee that caused much consternation. The Committee also recommended that the elective franchise be granted to those who took out an annual licence as it would *afford a guarantee for their settlement in, and attachment to, the colony*. In the view of the Council members, itinerant miners (ie those who did not obtain a yearly licence) were *not entitled to be entrusted with so important a privilege; and that a migratory population, many thousands of whom are not resident for more than a few months in the country, should not have the power to interfere in permanent Legislation, or its internal government*.

Their recommendations about the sale of small allotments of Crown land showed similar reasoning: ... *the most certain mode of identifying people with the country, and binding them to the law, is to give them a vested interest in the soil*.

The changes in the new Act did little to reduce the diggers' resentment and although many took out the more convenient quarterly licences, few took out an annual licence.

At his earlier meeting with the Bendigo delegates on 3 August, La Trobe had not directly responded to the issue of the franchise raised by the Bendigo Petition. But he obviously recognised the need to make some meaningful response to the issues the diggers had raised. His written reply to the Bendigo Petition had obfuscated, claiming that that he had no objection to the enfranchisement of the diggers and believed all parts of the community should be able to bring their concerns ‘*under notice*’, but he claimed that it was a matter for legislation. However, he undermined the credibility of this claim by soon after appointing Bendigo resident Edward Emmet, who had played no part in the Red Ribbon Movement, to a vacancy in the Legislative Council. The diggers were not appeased and greeted his action with anger. At their mass meeting outside the Camp on 27 August they passed the following motion:

... the meeting regarded with contempt the appointment of any nominee to represent their rights in Council, and that if any nominee so appointed entered the Council, it would be in opposition to the will of the people of Bendigo.

Within days Emmett resigned and La Trobe belatedly published a much earlier dispatch from Westminster that further undermined his claims. The dispatch reported that the Queen had no objection to representative self-government in the colonies, she did not seek to restrict the franchise in any way but preferred an appointed upper house. The Legislative Council, no longer able to blame delay on Westminster and royal objections, was finally jolted into action. Responding to the Red Ribbon Movement’s demand for wider franchise, it appointed another select committee of twelve of its members to begin drafting the long-delayed Constitution. This was the first step in establishing a more democratic system of self governance to replace the existing quasi-military arrangements in the colony.

The Legislative Council pushed ahead with their drafting amid continuing discontent about lack of consultation and undemocratic provisions, including high elective property qualifications and restrictions on the voting rights of miners with an annual licence. Three months later, in December 1853 it presented the final draft Bill recommending that Victoria adopt the key components of the British Constitution with a Parliament consisting of an upper house (Legislative Council) elected by property owners, professional men and officers in the armed forces and a lower house (Legislative Assembly) elected by a still limited franchise that included only those diggers who paid for an annual licence. It is not surprising that their recommendations were designed to effectively preserve the power of the existing members and supporters of the Council.

Finally on 25 March 1854, the Legislative Council passed legislation to establish the Constitution (*An Act to establish a Constitution in and for the Colony of Victoria*) and shipped it off to Britain for royal assent. It was held up in the British House of Commons, evoking

protest from all sections of the colonial society, before it was finally returned to Victoria, complete with the royal signature. The new Constitution was finally proclaimed by Governor Hotham in November 1855. The first elections were held in August/September 1856 and the first Victorian Parliament opened on 21 November 1856 - just three years after the Red Ribbon Movement forced the drafting of the Constitution in 1853. This was a major first step towards democratic reform in Victoria but it was not until government troops fired on the Ballarat diggers at the Eureka Stockade in December 1854, that the old order on the goldfields finally collapsed.

Although the Red Ribbon Movement forced the government to draft a new democratic Constitution, unrest continued on the Bendigo field and elsewhere. The new *Goldfields Act* restricted police powers but the digger hunts continued. The diggers continued to protest about the licence tax, the continuing digger hunts, and now the franchise and land ownership, convening mass meetings and drafting petitions. In December 1853 the Diggers' Congress was formed, held meetings across the diggings and sent delegates to Melbourne to protest about the new Constitution but La Trobe refused to meet them. In early 1854 storekeepers were protesting against the new 50 pounds annual fee which was forcing some of the smaller ones out of business. And then, in the midst of this escalating unrest, La Trobe was replaced as Governor by Charles Hotham.



Lieutenant - Governor Sir Charles Hotham. La Trobe Library Picture Collection, State Library of Victoria.

The diggers at first greeted Hotham with great enthusiasm, hoping that he would abandon the licence fee and replace it with a fairer system of taxation. But, as historian Geoffrey Serle noted, *the crazy commercial structure of the colony was tottering*. The boom times of the last two years were over, land sales and customs revenue were down and returns from gold licence fees were reduced after the Legislative Council changes to the licence fees in December 1853.

Hotham had inherited a huge government deficit and, despite his public claims of support for the miners, he determined that licence fees were to be collected *at all costs*. The Bendigo Advertiser editorial of 25 August 1854 reflected the diggers' escalating disaffection and sounded a prophetic warning: *'Once more our otherwise quiet population are becoming clamorous on the subject of the licence-tax. It is not its reduction but its total abolition that is now sought. A tax that can only be collected by armed bodies of men, will never be tolerated by a civilised people.'*

GOLD AT BALLARAT AND THE EUREKA STOCKADE

Eureka released radical energies previously held in check by basic loyalty and work-centredness in the goldfields community. But because the Goldfields Commission was a straw-man without justification in British constitutional tradition, its removal, achieved at last by Eureka, simply freed the goldfields to join the rest of the colony. Thus it was an awakening, not a new birth. And yet many people felt socially and politically reborn. - Weston Bate

1854 was a year of profound social and economic change in Victoria and the town of Ballarat was growing and developing into a stable urban community. But as the imperatives of mining in the Ballarat field clashed with the strictures of the licence system, there was a growing gulf between the town and the diggings, which were described by Raffaello Carboni as, *a Nugety Eldorado for the few, a ruinous field of hard labour for the many, a profound ditch of Perdition for Body and Soul to all*.

The predominance of the deep lead mining required to find the gold, required larger allocations of land than the 12x12 foot plots allowed by the legislation and the licence fees had to be paid through months of unproductive labour as miners burrowed down to find the gold in ancient riverbeds buried deep beneath the basalt. And there was an even greater gulf between the diggings and the expensively maintained Camp where the government officials

lived apart, leading *a genteel sporting life, dining well and mixing socially with the squatters, cronies from other fields and important visitors.*

Regulation of mining was haphazard as the regulations, which could only be found in the pages of the Victorian Government Gazette, were interpreted, and instant decisions made, by the Commissioners on-the-spot in often hotly contested situations. Settlement of claims was arbitrary and often open to corruption. Historian Geoffrey Blainey noted that by September 1854 the situation at the Ballarat mines was *beyond the capacity of the law and its representatives to control them.* In this contested and volatile situation, the Ballarat Reform League formed the Gold Diggers' Association to put their case for reform and Governor Hotham ordered licence hunts (*digger hunts*) be increased to twice weekly. Then, on 7 October, an incident occurred that in the words of historian Weston Bate, *drew together like pus all the potential ingredients of strife at Ballarat.*

Late that night a drunk Scottish miner, James Scobie, was murdered outside the Eureka Hotel, a rough house where beatings and robberies were common. The landlord James Bentley, a corrupt ex-convict, was thought to be responsible and he was brought before the local bench of Police Magistrate, John D'Ewes, Commissioner Robert Rede and Assistant Commissioner James Johnston. Magistrate D'Ewes, a friend of Bentley and a suspected partner in his hotel, refused to allow a jury trial and Bentley was acquitted by D'Ewes and Rede with Johnston dissenting. The inquest into Scobie's death returned an open verdict. The miners were outraged and on 17 October the Ballarat Reform League convened a large gathering near the Eureka Hotel to condemn the Bench as corrupt and call for the re-opening of proceedings against Bentley. It is probably not surprising that the initially peaceful meeting got out of hand and angry miners ransacked and burned the hotel and Bentley, fearing for his safety, fled to the Commissioner's Camp to call for assistance. Commissioner Rede led a party of troopers to the hotel but when he tried to address the crowd he was pelted with rubbish and *became incandescent with rage.* It was a public humiliation that allegedly had an impact on his subsequent dealings with the diggers.

Reactions to the burning of the hotel differed. For Commissioner Rede it was a symbol that he had lost control of the fields and been publicly humiliated and indicated there was an urgent need to gain control. The Ballarat Times, on the other hand, saw it as a sign of the *righteous indignation of a sovereign people too long bowed down under tyranny.* The Chartist leader, Hummfray, described the charred remains as *bundle of crayons with which to write the black history of crime and colonial misrule.* Governor Hotham demanded that the ringleaders be found and brought to justice. As a result, on 21 October three scapegoats, diggers Andrew McIntyre, Thomas Fletcher and Edmund Westerby, were arrested, charged with burning down the hotel and given jail sentences.



The charred stumps of Bentley's Hotel on the Melbourne Road, Ballarat 1854. S. T. Gill engraved by J Blundell, La Trobe Picture Collection State Library of Victoria.

This already volatile situation was further inflamed when, three days after Scobie was murdered, Johann Gregorious, the disabled Armenian servant of the Catholic priest Father Patrick Smyth, was wrongly caught up in a licence hunt, beaten and arrested for not having a licence (which he was legally not required to have). This infuriated the Irish miners who saw it as a grave insult to their priest. The charge was subsequently dropped but Gregorious was then inappropriately charged with assaulting the arresting officer – a longstanding practice by the troopers and source of outrage amongst the diggers. The following day, 11 October, Hotham ordered 430 additional police and troopers to Ballarat under the command of Captain John Thomas of the 40th Regiment, previously stationed at Bendigo. To his credit, Hotham also established a Board of Enquiry into the widespread official corruption alleged by the diggers, which resulted in the de-frocking of Magistrate D'Ewes and conviction of three men (including Bentley) for the manslaughter of Scobie. The series of events triggered several large protest meetings on Bakery Hill, and led to the formation of the Chartist-inspired Ballarat Reform League, led by Chartists Henry Holyoake, George Black and John Humffray, the *moral force men*, who played no part in the erection of the Stockade.

In an attempt to defuse the situation, a delegation of Humffray, Black and Thomas Kennedy met in Melbourne on 27 November 1854, with Governor Hotham, Colonial Secretary Foster and Attorney General Stawell. At the request of the diggers they *demand*ed the release of Fletcher, McIntyre and Westerby, claiming that the diggers of Ballarat took communal

responsibility for the hotel fire, which was anyhow justified by the endemic corruption of the goldfields administration. Hotham responded that he had no power to pardon the men, objected to the use of the word *demand*, which he regarded as insolent, and suggested that they raise a petition instead. The meeting achieved only a deadlock. Meanwhile more troopers were arriving in Ballarat.

On 29 November a crowd of thousands gathered on Bakery Hill to welcome the delegation returning from Melbourne and hear their report. The meeting was divided about how to respond to Hotham. There were those who called for peaceful resistance as urged by Hummfray and those who urged that they should no longer show their licences, press the police to arrest them all and then go peacefully to the Camp in an exercise of mass passive resistance. The meeting decided on action and passed the following motion:

That this meeting being convinced that the obnoxious licence fee is an imposition and an unjustifiable tax upon free labour, pledges itself to take immediate steps to abolish the same by at once burning all their licences; that in the event of any party being arrested for having no licence, that the united people will, under all circumstances, defend and protect them.

A bonfire was lit and in a show of defiance some of the diggers burned their licences.

The following day, Thursday 30 November, Commissioner Rede provocatively ordered another licence hunt as a show of strength. But the diggers were ready to resist. Fights broke out and shots were exchanged as Rede and his troopers rode onto the Gravel Pits and demanded that the diggers there show their licences. When confronted by an angry mob, Rede read the *Riot Act*, arrested seven diggers and retreated. Following this confrontation, diggers gathered at Bakery Hill for another meeting. Peter Lalor stepped onto a tree stump, took control of the meeting and strode into history. As the Southern Cross flag flew above, he proclaimed the Diggers' Oath: *We swear by the Southern Cross to stand truly by each other and defend our rights and our liberties*. He called for volunteers to swear on the Southern Cross to defend their rights and liberties, and men knelt and swore their allegiance to the flag. Lalor's words in his later deposition to the Eureka Commission of Enquiry, embodied much of the longstanding grievances of diggers from across the goldfields.

I looked around me; I saw brave and honest men who had come thousands of miles to labour for independence. I knew that hundreds were in great poverty, who would possess great wealth and happiness if allowed to cultivate the wilderness that surrounded us. The grievances under which we had long suffered, and the brutal attack of the day, flashed across my mind; and with the burning feelings of an injured man, I mounted the stump and proclaimed 'Liberty'.



Watercolour by Charles Doudiet Swearing Allegiance to the 'Southern Cross', 1854 Ballarat Fine Art Gallery Collection.

Following the meeting some diggers, led by Captain Charles Ross (designer of the Southern Cross flag), marched from Bakery Hill to the Eureka diggings where they began construction of a crude stockade and raised their flag on a slight rise just north of the Eureka lead. Meanwhile, in the Camp, Ballarat Reform League representatives George Black, Rafaello Carboni and Father Smyth, sought the release of the seven miners arrested in the previous day digger hunt but were refused.

By the following day hundreds of miners were at the Stockade where they spent time forming into companies, drilling and preparing their defences and weapons. Lalor was in command, supported by Ross, Carboni, Vern and Kennedy, and he sent men to reinforce the barricades and to forage for provisions, guns and ammunition, which actions angered some of the townspeople and storekeepers. A group of men arrived from Creswick led by Thomas Kennedy but, disappointed at what they found, left soon after. The next day the 200 strong Californian Rifle Brigade arrived, led by Irish-American James McGill who was made second-in-command to Lalor. They organised a sentry system and dug into existing diggers' holes on the flank of the rise. Despite the makeshift arrangements, Lalor and his comrades were confident and determined to prevail but their general lack of military experience meant

that the Stockade was from the beginning not well prepared to effectively respond to the attack by a disciplined British army detachment led by officers determined to teach the diggers a lesson.

On Saturday 2 December, Black, Hummfray and Father Smyth came to the Stockade to try again to persuade the diggers there to return to their tents and to come to mass the next morning. That night the lights of the town were extinguished as ordered by the Commissioner's Camp and work stopped on the diggings. All was quiet at the Stockade with only about 150 diggers sleeping there. Most had returned to their houses and tents outside the Stockade walls, expecting that nothing would happen on the Sabbath. At the Camp the troopers remained on alert against expected attacks and were preparing for action.

At 3.00am Sunday 3 December troops from the 12th and 40th regiments led by Captain Thomas, marched silently from the Camp, surrounded the Stockade and approached to within 150 metres of the barricade before a single shot broke the silence. Captain Thomas, believing that it had come from within the Stockade, ordered the bugle sounded for troops to open fire and attacked with a bayonet charge led by Captain Wise. Later reports attested to confusion amongst the surprised and ill-prepared diggers who, despite many fighting bravely, were quickly overwhelmed by the troopers. The battle lasted for less than half an hour.

Estimates of the number killed vary between fourteen and 24 diggers and one to four troopers, and many more were wounded. It is not known how many diggers died after the battle but there were many reports that the troopers behaved disgracefully, indiscriminately bayonetting and shooting survivors and burning tents with wounded men lying inside.

Only a few of the diggers' leaders still at the Stockade survived the battle. Peter Lalor was shot while firing on the charging troopers and rallying the diggers from on top of the barricade. Bleeding from his wound he jumped down and ran towards his men telling them the Stockade was taken and to leave quickly and he then collapsed. Afraid for his safety, and despite his protests, three of his comrades carried him to a digger's hole outside the Stockade and hid him underneath some slabs. He remained there until rescued by friends who treated his wounds and took him to Father Smyth's presbytery where his arm was amputated, before he was taken to Warrenheip and later Geelong to be cared for by supporters. McGill was spirited away to Melbourne, allegedly dressed in women's clothes. Captain Ross, who was shot as he stood his ground by the flagpole where his flag still flew, was taken by stretcher to the Free Trade hotel where he died from his wounds two days later. Vern fled and took refuge with supporters in Geelong. Raffaello Carboni was in his tent outside the Stockade but emerged after the fighting to assist the wounded. He was arrested at gunpoint by police spy Goodenough at the London Hotel while helping to treat an American miner and later sent

for trial charged with treason. (His account of the events at Eureka, *The Eureka Stockade*, was published in 1855).

The flag was captured during the fighting by policeman John King, who climbed the Stockade flagpole and dragged it down. It was trampled underfoot, stabbed and torn before King retrieved it and hid it in his tunic. It was kept by his descendants for many years before being loaned and then gifted to the Ballarat Fine Arts Gallery. It was eventually restored and is now regarded as a national icon and exhibited at the Eureka Centre in Ballarat.

An estimated 127 prisoners were rounded up and taken under guard to be held at the Camp, where they were abused by a group of drunken troopers until Commissioner Rede intervened. The following day some dead diggers were taken from the remains of the stockade to be buried in a common grave and others were taken in procession to the local cemetery. The government forces remaining in the Camp cared for the wounded, including Captain Wise, who died from infection of his wounds in the Camp hospital. The prisoners were subsequently released except for thirteen who were charged with treason and sent for trial in Melbourne. They were joined by Henry Seekamp, Editor of the Ballarat Times, who was arrested the next day on a charge of sedition related to articles about Eureka published in his paper. He was later charged, found guilty and jailed but the paper continued publication under the editorship of Clara Seekamp (Henry's wife).

After the Stockade battle, troopers were still on the hunt for suspected insurgents, sometimes firing indiscriminately on people and tents until, on Tuesday 5 December, Major General Robert Nickle and Colonel Edward Macarthur arrived at Ballarat with more troops, declared martial law and took control of the area.



Watercolour by J. B. Henderson Storming of the Eureka Stockade, Ballarat, 3 December 1854. Dixon Galleries State Library of New South Wales.

Subsequently, and despite the best efforts of the Legislative Council, (which had approved the use of troops) to raise public condemnation of the diggers' *insurgency*, a wave of support for the diggers was demonstrated at public meetings and in the press. In Melbourne, where rumours of digger insurgency were rife, the Mayor called a public meeting on 5 December attended by thousands, including most members of the Legislative Council, to decide how Melbourne would defend against an alleged army of diggers. Although initial resolutions expressed support for the government, sentiment changed, and with more resolutions expressing sympathy for the diggers the meeting called for the government to act on their behalf. In Geelong citizens' meetings condemned the government's handling of the Eureka crisis and petitioned Governor Hotham to repeal the licensing system. In Bendigo and Castlemaine large public meetings refused further payment of licence fees and called for abolition of the Gold Commission. Red ribbons proliferated. The majority of Ballarat miners had not taken up arms to support the Stockade but the government was condemned by even those who previously criticised the diggers' actions. Posters offering rewards for apprehension of the diggers' leaders were widely disdained.

The events at the Eureka Stockade and its aftermath precipitated an upsurge of militancy across the fields. In Bendigo and Castlemaine mass meetings of diggers determined to throw in their lot with the Bendigo Reform League and its Chartist inspired agenda:

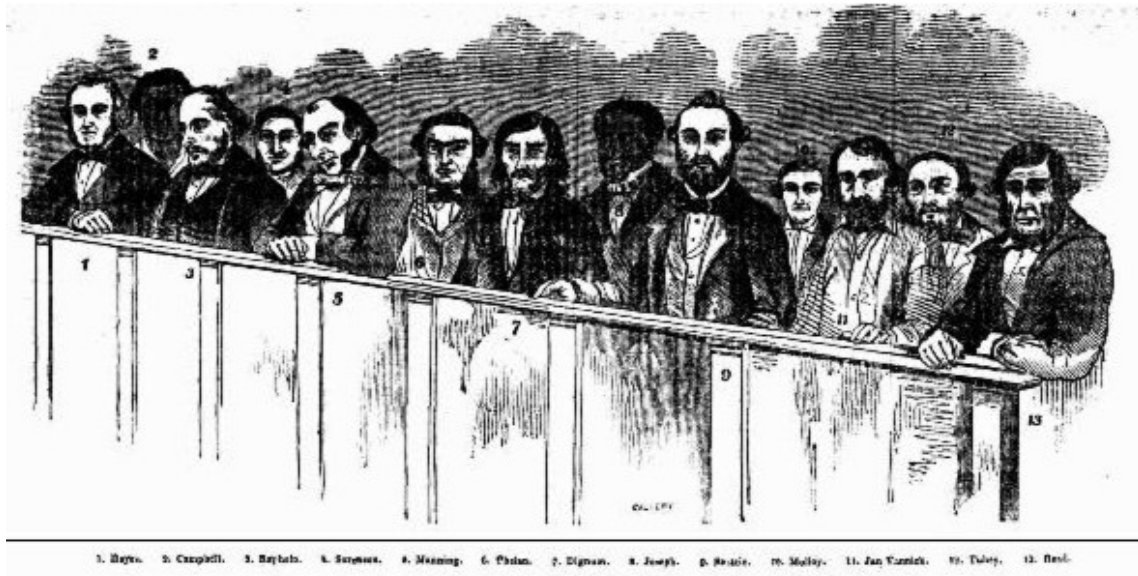
- Full and fair representation

- Manhood suffrage
- No property qualifications for members of the Legislative Council
- Payment of members of parliament
- Short duration of parliaments

The licence system had virtually collapsed and with it the revenue stream needed to fund the Gold Commission.

A very worried Hotham was now trying to calm the situation, justify his actions and pacify the diggers, but he remained confident of his position. But as historian Weston Bate noted, *Hotham had so far left political reality that it was impossible for him to reclaim it as he struggled to defend himself against mounting and valid criticism.* In a dispatch to the Secretary of State, Hotham claimed that although he wanted to conciliate the diggers, *I was prepared to make every effort to avoid bloodshed – which only became necessary when it was clear that a riot was rapidly growing into a revolution.* He blamed the situation on the La Trobe government's timid and vacillating policy that allowed the diggers to think themselves irresistible, and on foreign anarchists who, he claimed, were using the pretext of the licence agitation to *overthrow the government.* He engineered the resignation of Colonial Secretary Foster, who had rigorously enforced the collection of licence fees, as a scapegoat. He established the Eureka Royal Commission of Inquiry and urged it to start work as quickly as possible, but he refused to grant a general amnesty and continued with charges of treason against the prisoners from the Stockade. And he ordered that licence inspections resume. Public outrage forced him to remand the order to resume licence inspections, but he stood firm about the treason trials and lost any remaining prestige when all the prisoners were acquitted.

The prisoners taken at the Stockade stood trial in Melbourne in February/March 1855. The first prisoner put on trial was John Joseph, an illiterate African American (buried in Bendigo), with 12 witnesses (most soldiers and police spies plus a deaf storekeeper) appearing for the prosecution and eminent lawyers appearing pro-bono for the defence. When the jury found him not guilty after just 30 minutes the public gallery erupted in cheering, two people so loudly that they were jailed for contempt of court.



'Rebels' in the dock, wood engraving by Samuel Calvert, State Trial Prisoners, Mount Alexander Mail, 02 March 1855. La Trobe Picture Collection, State Library of Victoria.

The second trial of John Manning six days later proceeded similarly with 12 prosecution witnesses and the jury also acquitted him. The trials were then delayed for 3 weeks. Although Hotham was advised that to continue the trials would cause mockery and derision of the government, he persisted, saying that if the jury would not do their duty he failed to see why he should not do his. The trials resumed with Justice Redmond Barry replacing Justice A'Beckett. Timothy Hayes was put on trial on 19 March, followed two days later by Rafaello Carboni and on the following day, Jan Vennik, then James Beattie and Michael Tuohy on 23 March. All were acquitted. On 26-27 March Henry Reid, James McFie Campbell, William Molloy, Jacob Sorenson and John Phelan were tried together and Thomas Dignum was discharged. All were acquitted.



Acquittal of Ballarat Rioters 1855, engraving published in the Illustrated Australian News 25 June 1887, La Trobe Picture Collection, State Library of Victoria.

On 27 March 1855, the day of the last acquittal, the Eureka Royal Commission of Inquiry issued a report that condemned the use of the military as *a misfortune alike to the soldier and citizen of the same blood thus ingloriously brought into mutual strife*. It found that:

- the diggers' earnings were far less than those working in comparable industries,
- the licence fee was inequitable and oppressive and should be abolished and replaced with a tax on the export of gold (*two shillings and sixpence per ounce*),
- gold licences should be replaced with a Miners Right (costing one pound per annum), which gave the holder legal rights to his claim and, as an annual leaseholder of crown land, the right to vote, opening the way to universal (ie adult white male) suffrage).
- the Gold Commission should be abolished and replaced with local wardens, elected mining courts and representation of miners in the Legislative Assembly, changes rendering two-thirds of the goldfields administration and half the police on the fields unnecessary.

Hotham accepted the Commission's report (he had no option), claiming that although the principle of the licence was right, *the mode of working it was entirely wrong, police should never have been employed.*

The government immediately passed three bills in Legislative Council to give effect to the royalty on gold exports (*The Gold Export Bill*) and enlargement of the Legislative Council by 12 (eight elected from the goldfields and four nominations). The Miner's Right was legalised as the necessary evidence for occupation of a claim and gave the holder the right to elect the members of local miners' courts, which were given control of the industry in their localities. Raffaello Carboni was the first warden elected (unanimously) to the Ballarat local court to adjudicate on mining disputes and on 10 November Peter Lalor and John Hummfray were elected (unopposed) to the Legislative Assembly for Ballarat. Governor Hotham offered his resignation but died on 31 December 1855 before it took effect.

THE MEANING OF EUREKA

Historians' analyses of the significance of Eureka differ but nevertheless generally agree that it was a powerful catalyst for change. Following the cascade of protests beginning in 1851, it finally brought about the collapse of the old order on the gold fields.

Historian Geoffrey Serle noted: *It seems proper to describe Eureka as 'a fight for freedom' or as a democratic protest against arbitrary government. To claim much more is unwarranted.* He answers his own question, *To what extent did Eureka accelerate reforms that would have anyhow soon occurred, by claiming that it provided the occasion and the issues on which the latent popular democratic movement could build itself and argues (reasonably but not conclusively) that although it did not affect the form of the new constitution, it gained the vote in practice for the diggers.* He further argues that *the democratic assumptions of the vast majority which were to govern the colony's future course were made clear for the first time at the mass demonstrations in Melbourne which Eureka caused.*

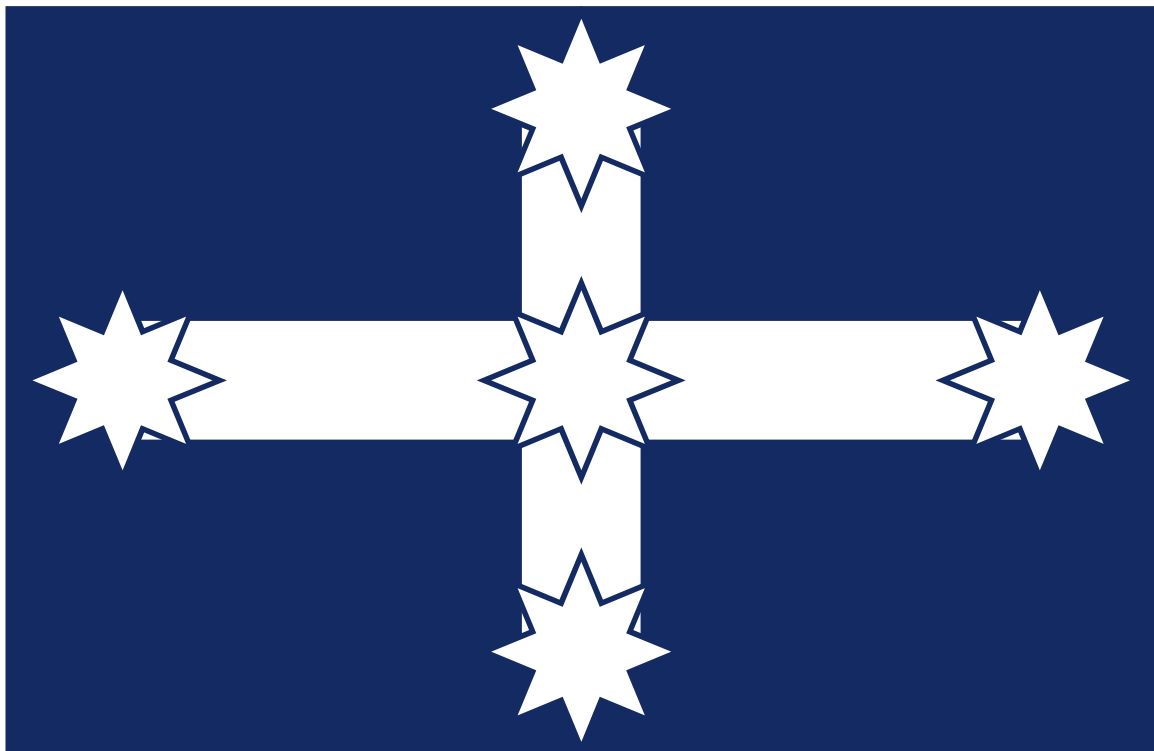
The Age newspaper of 20 December 1855 concurred, editorialising: *it is certain that the social compact is taking a new shape ... The most striking feature... is the earnest and intrepid assertion, common to all classes, of their right to equal ... political privileges.*

And in two following by-elections in suburban Melbourne, candidates with strongly democratic policies won the ballot.

For Marjorie Theobald: *In the months after the slaughter of ordinary citizens by the military acting in the name of the State, the treason trials and the acquittals were taken up and transformed into a shared understanding that the old order must go.*

For Weston Bates: *Eureka released radical energies previously held in check by basic loyalty and work-centredness in the goldfields community. But because the Goldfields Commission was a straw-man without justification in British constitutional tradition, its removal, achieved at last by Eureka, simply freed the goldfields to join the rest of the colony. Thus it was an awakening, not a new birth. And yet many people felt socially and politically reborn.*

In Geoff Hocking's words: *The movement for democratic change (which had its beginnings on Forest Creek at the Great Meeting of Diggers, and spread to Bendigo where, although the great petition had done little to sway the opinion of the governor, it had united the diggers in opposition) had seen its endgame near the gravel pits at Eureka.*



The Eureka/Southern Cross flag 1854