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About Provenance
The journal of Public Record Office Victoria

Provenance is a free journal published online by Public Record Office Victoria. The journal features peer-reviewed articles, as well as other written contributions, that contain research drawing on records in the state archives holdings.

Provenance is available online at www.prov.vic.gov.au

The purpose of Provenance is to foster access to PROV’s archival holdings and broaden its relevance to the wider Victorian community.

The records held by PROV contain a wealth of information regarding Victorian people, places, communities, events, policies, institutions, infrastructure, governance, and law. Provenance provides a forum for scholarly publication drawing on the full diversity of these records.

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Provenance journal publishes peer-reviewed articles, as well as other written contributions, that contain research drawing on records in PROV’s holdings.

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- the peak bodies of PROV’s major user and stakeholder groups;
- and the archives, records and information management professions.

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The 2009 issue of Provenance features two articles relating to the early years of Port Phillip and Victoria, both of which discuss the jurisdiction of British law to the Aboriginal people already living there. In ‘Superintendent La Trobe and the amenability of Aboriginal People to British law 1839-1846’ Frances Thiele examines Charles Joseph La Trobe’s efforts to bring reason and order to the legal status of Aboriginal people in the Port Phillip District, while Fred Cahir and Ian D Clark in ‘The case of Peter Mungett: Born out of the allegiance of the Queen, belonging to a sovereign and independent tribe of Ballan’, explore the issue of the jurisdiction of the British colonial criminal law over Indigenous Australians through the 1860 case files of Regina v Peter, involving a Marpeang buluk clansman of the Wathawurrung language group.

This year’s issue also features two contributions from Anna Kyi presenting research into Chinese petitions held in the PROV collection and elsewhere. In “The most determined, sustained diggers’ resistance campaign”: Chinese protests against the Victorian Government’s anti-Chinese legislation, 1855-1862, the Chinese protests against unjust taxation during the gold rushes emerge from the numerous petitions that Victorian Chinese communities authored during this period with the aim of swaying government policy. In her accompanying forum article ‘Finding the Chinese Perspective: Locating Chinese Petitions Against Anti-Chinese Legislation During the Mid to Late 1850s’, Kyi provides potential researchers with an inventory of petitions authored by Chinese Victorians and details of where these may be accessed, whether in public records or in publications.

In the wake of the recent global market meltdown, Peter Yule in his article ‘Searching for WL Baillieu at Public Record Office Victoria’ provides a timely account of one of Victoria’s major entrepreneurs, utilising a wide variety of PROV records to shed light on many previously unknown or misinterpreted aspects of the life and work of William Lawrence Baillieu, founder of the Baillieu family’s fortunes.

Madonna Grehan in “A most difficult and protracted labour case”: Midwives, medical men, and coronial investigations into maternal deaths in nineteenth-century Victoria, features a case study of the 1869 coronial inquiry into the death of Mrs Margaret Bardon which examines the care of women during childbirth in nineteenth-century Victoria. Liz Rushen in ‘Nichola Cooke: Port Phillip District’s First Headmistress’, tells the story of well-connected governess Nichola Anne Cooke, who established Melbourne’s first ladies’ seminary in 1838 and participated in the development of early Melbourne. Louise Blake takes us on a journey of rediscovery in “Woods Point is my dwelling place ...”: Interpreting a family heirloom, revisiting her own family’s history by weaving information available in public records with a reading of the scrapbook created by her great-grandmother Margaret Knopp. Marilyn Kenny and Anne Martin in ‘The Black Sheep: Robert Herdman of Paisley, Scotland and Australia’, trace the life of Robert Herdman by researching records held by descendants, PROV, and other sources both in Australia and overseas.

Ken James in ‘The Surveying Career of William Swan Urquhart, 1845-1864’, follows the life and work of one of Victoria’s early surveyors through correspondence and hand-drawn maps held at PROV, and Helen Dehn in ‘The Royal Oak Hotel, corner of South and Raglan Streets, Ballarat’, recounts part of Ballarat’s colourful social history through records relating to one of its busiest and well-loved hotels.

Sebastian Gurciullo
Editor
Refereed articles
Abstract

The career of the founder of the Baillieu family’s fortunes, William Lawrence Baillieu, is shrouded in misconception and even mystery. After a meteoric rise and fall in the land boom and bust of the 1880s and 1890s, he restored his fortunes and through the Collins House Group was involved in the establishment of almost every important mining and industrial enterprise in Australia between 1895 and 1930. A wide variety of records at PROV shed light on many previously unknown or misinterpreted aspects of his life and work.

The Baillieu family is one of the most famous dynasties in Australia, but while the family name is well-known, little is known of its history and much that is ‘known’ is incorrect or at least misinterpreted.[1] William Lawrence Baillieu, the founder of the Baillieu family fortune, is remembered almost exclusively because he paid his creditors sixpence in the pound (equivalent to 2.5 cents in the dollar) following a secret composition during the financial crash of the 1890s. Few realise that he was involved in the establishment of almost every important mining and industrial enterprise in Australia between 1895 and 1930, and a strong case can be made that he played a greater role in shaping the modern Australian economy than any other person.

Tall, handsome and with a magnetic personality that inspired great loyalty, Baillieu became the unofficial but acknowledged leader of the Collins House group of closely interlocked companies that dominated many sectors of the Australian economy in the first half of the twentieth century, and whose legacy even today survives with such companies as Rio Tinto, Orica, the ANZ Bank, Oz Minerals, Pacific Brands, Paperlinx, Amcor, and many others. One of Baillieu’s chief lieutenants, WS Robinson, wrote, ‘He was a great leader, easy to understand and full of understanding himself ... his courage and vision and the ease with which he commanded the loyalty and friendship of others placed him at the head of his fellows.’[2]

In spite of his prominence in the business community, there has never been a full biography of Baillieu and many aspects of his career are still shrouded in mystery. In particular, many myths have grown up concerning his activities during the land boom and bust of the late nineteenth century. While still in his twenties, Baillieu made a fortune speculating in real estate between 1885 and 1888. When the land boom ended, his riches disappeared as quickly as they had been acquired, forcing him to make his secret composition with his creditors in 1892. Then, during the worst depression in Victorian history, Baillieu built a new and lasting fortune based on mining, share trading, newspapers, real estate and breweries. His recovery during the grim years from 1892 to 1900, when most businessmen were battling just to survive, has always been the great mystery of Baillieu’s career. Many of the answers to the mystery lie in files held by Public Record Office Victoria (PROV).
The Melbourne land boom of the 1880s ranks along with the South Sea Bubble as one of the great speculative booms of history.[3] By the middle of 1888 land prices reached extraordinary levels. Prices in the central business district rivalled those of London and speculators were paying sky-high prices for ‘subdivisional land’ far beyond the suburban fringes of Melbourne.[4] When £50,000 was paid for 500 acres of poor soil 26 miles from Melbourne, The Times of London commented that in England £50,000 would buy an estate of 1,550 acres ‘with a really grand old mansion built by an eminent historical personage, a deer park, walled gardens, lawns, terraces, cedars, and six park lodges, one mile and a half from a railway station, and within thirty miles of London.’[5]

All bubbles eventually burst and the inevitable downturn began slowly in 1888 and gathered momentum over the next few years, before culminating in April 1893 with the closure of most of the trading banks operating in Melbourne. The fall in land prices in Melbourne was almost unbelievable. In July 1888 the Chatsworth Estate Company bought 1485 acres at Bulleen for £175 an acre – by 1893 the company’s liquidator was struggling to find buyers at £30 an acre. [6] Much land, particularly on the edge of Melbourne, was unsaleable after 1890. Land companies, which had bought thousands of acres at the height of the boom, were left with vast tracts of essentially worthless land. Frequently the only income from an investment of hundreds of thousands of pounds would be a few pounds a year from a local dairy farmer for grazing rights.

WL Baillieu’s early career is a typical story of the land boom. Born of poor parents in Queenscliff in 1859, Baillieu worked as a bank clerk until 1885 when he set up as a real estate agent in partnership with Donald Munro, the son of leading land boomer, James Munro. Baillieu was a brilliant salesman, while James Munro pushed business toward his son, and within two years Munro & Baillieu was Melbourne’s leading real estate agency. In the 12 months to October 1888 the partnership profits were £168,000 – at least $20 million in 2009 prices.[7] This made Baillieu a rich man. He set up his parents and numerous brothers and sisters in grand style, and with his father-in-law, Edward Latham, he built ‘Raheen’ in Studley Park Road, now the home of the Pratt family.

The wealth was lost as quickly as it was won. Munro & Baillieu invested most of their profits in outer suburban land and partly-paid shares in land companies, and borrowed a further £100,000 to buy still more land, all at the top of the boom. As soon as the bubble burst, most of the land became unsaleable and the shares a liability as calls greatly exceeded the share prices. In October 1892 Baillieu wrote to one of his creditors, ‘My position I regret to say does not get stronger financially. Each day something drops away that one regards as an asset.’ By this time Munro & Baillieu was insolvent.

Donald Munro disappeared into obscurity, but WL Baillieu rebuilt his fortunes in an extraordinary fashion during the gloomy years of the late 1890s, emerging from the depression with his wealth restored and positioned to become one of the most influential Australian industrialists of the first half of the twentieth century.
The records held by PROV are critical for understanding both WL Baillieu's rise and fall in the 1880s and 1890s and his later rise to lasting success. Obviously the standard family history research tools such as births, deaths, marriages, wills and probate are useful for constructing a framework. Baillieu's parents arrived in Australia in 1853 and had 16 children, so the family structure rapidly became extremely complicated, particularly as the same names recur frequently throughout the family. As the records series relevant for family history research are the most used series at PROV, they are now user-friendly and it is rare to encounter difficulties finding the relevant files.

The same cannot be said of the other two series critical for investigating the career of WL Baillieu, VPRS 567 (defunct mining companies) and VPRS 932 (defunct non-mining companies). These files were generated by the former state bodies which regulated companies before the establishment of a national system of corporate regulation in the late 1980s. Theoretically there should be a file for every company set up in Victoria, but finding them can be a real adventure. Many files apparently never made it to PROV. The microfiche index (VPRS 8267) to VPRS 932, which originated with Corporate Affairs, frequently gives the same item number to two separate companies. This leads to a flurry of excitement when collecting a file. Hoping to receive the file for some disastrous land boom company or little-known mining company, the keen researcher is likely to be confronted with the records of the Ouyen Grocery Company or the Kooweerup Swamp Drainage Company No 3, although this is better than the all-too-frequent message, 'no file found in box'.

However, when the correct file comes, 'Eureka!' moments often follow. The information in the company files varies dramatically. Occasionally there is little more than one sheet of paper announcing that the company has been formed, but often there is enough to reconstruct its complete history from conception to death. A good example is the Bourke Street Freehold & Investment Company, which the file shows was formed in August 1888 to buy a large city block on Russell Street between Bourke and Little Collins Streets owned by the Premier Building Land & Investment Association. In a bull market the company appeared a sure investment as city land prices were rising by the month. The directors were Benjamin and Theodore Fink, William Malpas, WL Baillieu, Thomas Fischer and John Howden and the list of shareholders was dominated by the Munro, Baillieu and Fink families: of the 120,000 shares, WL Baillieu had 15,000, his brother EL ‘Prince’ Baillieu 2500, Donald Munro 5000, and Benjamin Fink, his wife Catherine, and his brother Theodore 10,000 each. The other shareholders were all regular associates of the Munro-Baillieu-Fink group.[8]

By the time the Bourke Street Company tried to sell its land the market had peaked, buyers were scarce and many lots remained unsold. Instead of realising quick windfall profits, the company became the landlord of an assortment of shops, hotels and offices in a part of the city that has never quite been ‘prime’ and was therefore more vulnerable to the growing depression. Munro & Baillieu earned small commissions for collecting rents from struggling shopkeepers and hoteliers, but the rents were never enough to pay the interest on the loans taken out to buy the properties. The company files held at PROV show that each month more tenants were in arrears with their rent, and by early 1891 the total rental income had fallen below £300 per month, which was less than half the Bourke Street Company’s interest bill. Many shareholders saw the company as a lost cause and in 1890 the annual return showed that over half the calls on shares had not been paid. The difficulties of the company were also reflected in this extraordinary resolution passed, appropriately enough, at an extraordinary general meeting in 1890:

That the Company hereby ratifies confirms and adopts all and whatsoever the past or present Directors of the Company have, or any of them has done or purport to have done in connection with the affairs and business of the Company as appears in the Directors’ minute book and also ratifies confirms and adopts all other acts documents deeds matters things and transactions not appearing in such minute book, notwithstanding any defect or irregularity in the appointments of the Directors, or any of them, or that such appointment was or had become invalid, or that the office of the Directors, or any of them had become vacant and notwithstanding that any documents may have been or were executed without the previous consent or sanction of the Directors or a quorum thereof.[9]

There appears to be no record of the events that led to this resolution, but it lends itself far more readily to a negative than a positive interpretation. At the very least it indicates that the company’s governance had not reached even the modest levels required of public companies in the 1880s.

In 1891 the Bourke Street Company mortgaged all its properties to James Graham, a leading Melbourne merchant since the 1850s. While this saved the company from imminent collapse, it left it with an annual interest bill of over £7,000 which could only be met if the rental income was maintained. This proved impossible as the depression worsened and an increasing number of the company’s shops put up their shutters for the last time. Eventually, with no possibility of paying its interest bill, the Bourke Street Company went into liquidation.
Although many shareholders attempted to escape their liability for calls by transferring their shares to ‘dummies’ or ‘men of straw’, WL Baillieu retained his shares until the company was wound up, and in July 1892 he owed the company £9,155 for ‘calls and promissory note’, this being his biggest single debt.

PROV holds files for over one hundred companies with which WL Baillieu was involved. These include land companies in the 1880s, newspaper, brewing, gold and coal companies in the 1890s, base metal mining companies and industrial companies after 1905 and pastoral and oil exploration companies in the 1920s. Much of the information in these files cannot be found anywhere else.

Another series of records held by PROV that are vital for understanding WL Baillieu’s career are the records of the secret compositions of the 1890s. Secret composition, or more correctly ‘Composition by Arrangement’, was one of four ways of dealing with insolvency under the Insolvency Act 1890. The process for a secret composition was that a debtor would call a meeting of his creditors at which a 75 per cent majority would bind all creditors to the arrangement to be accepted, provided that it was confirmed at a second creditors’ meeting. No trustee need be appointed and the debtor only had to deposit his statement of assets and liabilities, names and addresses of creditors and the resolution with the chief clerk of the Insolvency Court, who had very limited powers to query the composition. Once the clerk had registered the composition, he would provide the debtor with a certificate discharging him from his debts. The composition was private, with only creditors who had attended the meetings being informed of the details.

Making a secret composition had obvious advantages for the debtor as it released him from his debts without the public shame or legal disabilities of bankruptcy, but it was also attractive to many major creditors as it avoided publicity for their frequently reckless lending as well as speculation about the impact of the insolvency on their finances.

At the time little was known of the secret compositions other than rumour and innuendo, but the paperwork for them was carefully stored away and all it takes is some patience looking up the insolvency indexes and the full details of the compositions are revealed. WL Baillieu, Donald Munro, and the partnership of Munro & Baillieu made their secret compositions on the same day in July 1892.[10] The list of their debts is a catalogue of the disasters of the land boom. The partners were liable for calls on shares in the Spottiswoode Estate Co., the Brunswick Investment Co., Melbourne Trust Finance and Banking Co., the Centennial Land Bank Ltd, the Territorial Bank Ltd, the Real Estate Bank, the Chatsworth Estate Co., and many more failed relics of the boom. Unfortunately the full details of Baillieu’s personal composition are not entirely certain as the debtor’s statement is missing from the composition file held by PROV, although it can be largely reconstructed from other sources, notably the notes taken by historians before the statement disappeared.[11]
The files of the secret compositions show that WL Baillieu the auctioneer apparently believed his own spiel that the land boom was soundly based and would continue, and that he had backed this judgement not only with large amounts of his own money, but had also borrowed heavily to invest in land boom companies. As his financial position worsened, he continued to borrow heavily to refinance earlier loans, in the hope that the economy would turn around, and share and property markets would recover.

Baillieu's personal composition involved the payment of sixpence in the pound on proven debts of 22,400 pounds 11 shillings 4 pence, a total of £560. For the rest of his career he was haunted by the cry 'He paid sixpence in the pound'.

Baillieu's success in recovering from his secret composition and building a new fortune has led several historians to accuse him of giving an incomplete statement of his assets and therefore hiding them from his creditors. Most notably it has been alleged that he failed to disclose his ownership of a large parcel of shares in the Herald & Sportsman Newspaper Company, which became highly significant as the success of the Herald was an important factor in WL's recovery.[12] A careful study of company records held by PROV show that this accusation is based on a misapprehension.

The story of the Herald & Sportsman Newspaper Company during the late 1880s and early 1890s is complex and unclear. The essence of the story is that the Herald, Melbourne's leading evening newspaper, had been run since 1871 by a partnership of SV Winter and John Halfey. When Halfey died in 1889, Winter, who also owned the Sportsman, needed a business partner. Theodore Fink, a prominent young solicitor, was approached and he put together a syndicate consisting of himself, AH Massina, WJ Mitchell, Ignatius Feigl, Percy Halfey and WL Baillieu and formed the Herald and Sportsman Newspaper Company, which was incorporated in May 1889. Of the 30 shares in the new company, Winter received nine shares, Fink received six, and the other syndicate members three each. Winter's shares were fully paid-up, while the others were only paid-up to £200 with the holders liable to pay calls on their £1000 shares as required. By July 1891 these shares had been paid up to £263, a significant figure in the light of later events.[13]

In common with many businesses in the early 1890s, the Herald struggled and in November 1890 the Herald & Sportsman Company was sold to City Newspapers Co. Ltd, which was controlled by the owners of the Daily Telegraph and the Evening Standard, two long-forgotten Melbourne newspapers. Herald shareholders were to receive £3,500 for three Herald shares, made up of 500 fully paid £1 shares in City Newspapers and cash payments over three years. The first payment was made in November 1891, but City Newspapers was sold to a new company, Victorian Newspaper Co., in July 1892 and defaulted on the second payment in November 1892. When it went into voluntary liquidation in August 1893 it still owed £14,663 for the Herald shares. This default enabled Theodore Fink and the shareholders of the Herald & Sportsman, after a lengthy battle, to force the Victorian Newspaper Co. into liquidation and take over its remaining assets.[14]

Gardner is strong in his condemnation of Theodore Fink and WL Baillieu for not declaring their Herald shares as assets in their secret compositions, but the situation is not as clear as he presents it. The shares in the Herald were sold to City Newspapers in November 1890 and although the Herald company was not formally wound up until October 1894, the business and the shares were owned by City Newspapers – the former shareholders no longer owned the shares.[15] What they did own were shares in City Newspapers and the right to receive further cash payments. In his secret composition WL declared his shares in City Newspapers and the valuation of £200 was probably a realistic market price for shares in a struggling company in the depths of the depression – the fact that they later became much more valuable is as irrelevant as the fact that other assets proved to be worthless. When Baillieu and other former shareholders in the Herald did not receive the payments due to them, they took action to recover their shares.

In September 1892, following the secret compositions, the real estate firm of Munro & Baillieu was dissolved and Baillieu began his own business under the name WL Baillieu & Co.[16] In spite of the disastrous state of the economy, he made a success of this business, taking in his brother Arthur as a partner and developing it into one of the largest real estate agencies in Melbourne. At the same time he took over the failed stockbroking firm of WJ Malpas & Co. and built up a stockbroking business with his brothers Edward (Prince), Clive (Joe), Norman and Maurice (Jac), which as EL & C Baillieu has been one of the leading stockbrokers in Melbourne for over 100 years.[17]
In the gloom of the depression of the 1890s, when almost every industry was struggling to survive, mining was one of very few industries to grow strongly. Mining offered many opportunities for city entrepreneurs, from investing and speculating in shares and floating new companies to bankrolling prospectors, and even the mundane activity of acting as legal manager for mining companies. Baillieu had some success at all of these, making mining probably the most important single factor in the rebuilding of his fortunes. His two main areas of activity were in gold and coal, and the mining company records in PROV are a critical source of information on both.

Baillieu's first known involvement in Victorian gold mining was with the Duke mines at Timor, the richest deep alluvial mines in the Maryborough district, although underground water made them expensive to work. The first Duke mines opened in the 1860s and by the 1880s they were run-down and in need of capital to provide the machinery and equipment that would allow them to work effectively. In 1882 financier and entrepreneur BJ Fink attempted to begin this process by taking over the Duke Consols mine, but the mine remained unprofitable.[18] Fink then turned his attention to the main Duke mine and in 1890 he formed a syndicate, of which Baillieu was a member, to take over the mine. The Grand Duke Co. NL was registered in December 1890 with capital of £50,000 and, after spending large sums refurbishing the mine, the company began paying dividends in the first half of 1892.[19]

Deed of Association and Rules, The Grand Duke Company 1890. PROV, VPRS 567/P0, Unit 415, Item 4455.

Also in 1890, another local Maryborough syndicate established the North Duke Co. to operate a mine about a mile north of the Grand Duke mine. The mine had early difficulties because 'the ground driven through ... was excessively hard' and by 1891 Benjamin Fink had gained control of the company and the office was moved to Melbourne. Late in 1892, when Baillieu's financial situation was at its worst, he became the North Duke Co.'s legal manager and the company's registered office moved to the office of WL Baillieu & Co. at 243 Collins Street.

As legal manager Baillieu was responsible for such tasks as maintaining the share register, keeping the accounts and organising company meetings and reports. For this he was paid £4 per week and WL Baillieu & Co. received £2 per month for providing clerical assistance to the company – small amounts, but very handy in 1892 and 1893. In addition, Baillieu was able to put his brother Clive (Joe) on the payroll at £4 a month. Joe was 18 in 1892 and presumably this was his first job after leaving school. Percy Cook, a friend of the Baillieus from Queenscliff days, who had lost everything in the crash, was employed as the North Duke's accountant for a monthly salary of 12 pounds 10 shillings.[20]

Clearly Baillieu believed mine management was worthwhile as he also applied to be manager of at least one other gold mining company. In February 1893 he wrote to AE Clarke of Elizabeth Street: 'I beg to apply for the position of Manager to the West Sunlight Gold Mining Co. NL at a salary of £3 weekly'[21] This company had a mine at Cobar with its Melbourne office in the Rothschild Chambers at 360 Collins Street, later to be the headquarters of all the Baillieu enterprises. There is no further mention of the West Sunlight Co. in the records of WL Baillieu & Co. so presumably Baillieu's application was unsuccessful – the company itself won a small amount of gold in the 1890s before fading from view.[22]

After slow beginnings the North Duke's career was more successful. From 1890 to 1893 the company made regular calls on shareholders while the mine was being developed, but the June 1893 report claimed:

> The Mine is opening up exceedingly well. The Manager reports good payable wash in four different faces, and hopes to be able shortly to operate on same, and thus somewhat relieve shareholders ... We congratulate the shareholders on possessing a first-class property ... [The company had installed a large new pump] capable of coping with any difficulty that may be met with in this mine.[23]

In that year the expenditure on the mine was £5915 and receipts from calls and forfeited shares came to about £4000. The following year, however, while further calls were made of £6992, the first gold sales were made, bringing in £4684, and in the second half of 1894 the mine was enormously profitable, with gold sales for six months of £22,983 and a net profit of almost £10,000.
The success of the North Duke mine inspired the formation of more Duke companies such as the Duke of York, Royal Duke, Duke Extended and Duke United. PROV company records suggest that Baillieu was not the promoter of any of these companies, but he speculated heavily in the shares, particularly of the Duke United, in which he and his brothers accumulated about 50,000 of the 80,000 shares in the company with a view to selling them in London.[24] Reports of the mine, however, were bad and buyers were scarce, which meant that the Baillieus were still holding their shares when the mine suddenly began to win large quantities of gold and pay handsome dividends.[25] In 1901 the Baillieus converted the Duke United from a no liability to a limited liability company, as this was far more palatable to English investors, and successfully sold the shares in London. [26] The surviving records indicate that the Baillieu brothers made a profit of at least £20,000 on the sale of the Duke United mine.[27]

By far the most successful of Baillieu’s Victorian gold ventures was the Jubilee mine at Scarsdale. The mine had been started in 1887 as a co-operative venture and paid healthy dividends of £21,303 over its first twelve years, but by 1899 it was becoming run-down and was in need of new equipment. Baillieu, always on the lookout for good mines, asked Thomas Harvey and Herbert Daly [28] to look at the mine and Harvey reported that it was ‘a first class going concern which has paid dividends for the last 12 years to a cooperative party of miners.’ Following this report Baillieu went ahead and bought the mine, writing soon after to David Ham, MLC, a Ballarat stockbroker (and Arthur’s father-in-law):

Re Jubilee Mine
As you are aware this matter has now been completed and the Vendors have received the purchase money, viz:- £12,000.
It is intended to put the property into a No Liability Company of 32,000 shares of £1 each, fully paid and provide a nett working capital of £5,000. This sum it is estimated will be ample to do what is required at the mine to put it in first class order and in a position to pay regular dividends... I have put you down for £500 as arranged and this will carry 900 shares. Please forward cheque.
I feel this is a real good business and trust it will prove profitable to all of us as prospects indicate.[29]

Baillieu kept half the shares in the new Jubilee Company, with the other half being distributed among his friends and associates.[30] The share sales covered the costs of £16,231 involved in setting up the company and re-equipping the mine, and the shareholders then enjoyed over a decade of extraordinary returns before the mine closed in 1913. Gold output between 1901 and 1913 was 124,178 ounces worth £502,958, with total dividends and bonuses paid of £145,800, an enormous sum in those days.[31]

Baillieu’s successful ventures in Victoria inspired him to look further afield for promising mines. As well as a prospecting venture to the west, Baillieu is known to have financed a George Smyth to prospect for gold on the islands in Torres Strait and for copper in far west New South Wales, and he invested in some extremely remote mines.[32] Smyth gave a promising report on a gold mine on Horn Island in Torres Strait and he and Baillieu set up the Horn Island Gold Mining Company, with Baillieu investing £1000 for a half interest.[33] About 6000 ounces of gold worth £24,000 was mined before 1914, but it is not known if Baillieu kept his shares throughout this period. Further, the mine costs must have been high due to its remoteness, so profits were probably not great.

While Baillieu’s investments in gold mining proved highly profitable, PROV records show that his venture into coal mining was not so successful. In the 1880s and 1890s the Victorian Government was looking to reduce the dependence of Victoria’s railways and industry on black coal supplies from New South Wales, and potentially rich rewards awaited anybody who was able to develop new coal mines. Numerous coal companies were founded and foundered in the Korumburra district in the early 1890s, with only a handful lasting more than a few years, and WL Baillieu was involved with at least one of the failed companies, the Silkstone.[34]

In 1892 black coal was discovered at Outtrim in the hills ten kilometres south of Korumburra and the Outtrim Coal Mining Company was formed in November of that year.[35] The company appears to have been undercapitalised for the scale of work required to open up the mine and in 1894 it amalgamated with the two other companies with adjacent leases to form the Outtrim, Howitt & British Consolidated Coal Mining Company.[36]

This was the most serious attempt by a private company to develop a large-scale black coal mine in Victoria, but the mine was never more than marginally profitable. As with other Victorian black coal mines, the Outtrim mine could never overcome the poor quality of the coalfields, particularly the fractured and erratic coal seams, or the poisonous relations between miners and management. The Outtrim company struggled on until World War I, with steadily falling production and profits, but its last dividend was paid in 1903.[37] Baillieu gradually sold down his shareholding, although he remained a director until 1908, by which time he clearly saw that there was no money to be made in the Victorian black coal industry. In its lifetime the Outtrim mine paid dividends of £41,129, a poor return on the shareholders’ investment of £75,000.[38]
As well as Baillieu’s interests in gold and coal mining, PROV records also help give insights into his successful investments in newspapers, brewing, rubber, and base metal mining and processing.[39] In particular they provide valuable information on Baillieu’s role in the revitalisation of Australia’s richest mining area, Broken Hill, in the years after 1904. He took control of the North Broken Hill Mining Company, with Herbert Hoover, Lionel and WS Robinson and Francis Govett, he established the Zinc Corporation, and with Montague Cohen set up Amalgamated Zinc. The Zinc Corporation and Amalgamated Zinc developed innovative minerals flotation processes to separate zinc from the complex Broken Hill ores, which made the Broken Hill mines highly profitable for another seventy years.[40]

The mining and minerals processing companies formed the core of the Collins House Group, an informal but close alliance of companies (of which Baillieu was the unofficial but unquestioned leader), most of which had their head offices in the Baillieu-owned Collins House at 360 Collins Street that was completed in 1912. Closely associated companies included Carlton & United Breweries – put together by Baillieu and Monty Cohen in 1907 – the Herald & Weekly Times, Dunlop, Yarra Falls textiles, Melbourne City Electric Company, and numerous other mining, refining and smelting companies.

During World War I the Collins House Group led the way in refining and smelting ores in Australia, taking over BHP’s run-down lead smelter at Port Pirie, which was modernised and became the largest lead smelter in the world, and building the zinc refinery at Risdon near Hobart, one of the world’s first refineries to use electrolysis rather than distillation (and still one of the most efficient zinc refineries in the world). The Collins House Group also took over the copper refining works of Electrolytic Refining & Smelting at Port Kembla – previously one-third German owned – and set up Metal Manufactures Ltd, one of Australia’s largest manufacturers. By the end of World War I the Collins House Group controlled three of the four enterprises at the heart of Australia’s heavy industry – Port Pirie, Risdon, and Port Kembla, as well as the largest and most profitable mines in Australia at Broken Hill.[41]

In the 1920s the Collins House Group drove Australia’s industrial expansion with new ventures in paper manufacture, textiles, cotton growing and many other areas. New companies formed by or closely associated with the Collins House Group included Associated Pulp & Paper Manufacturers, Western Mining, Gold Mines of Australia, British Australian Lead Manufacturers, ICIANZ, and the Commonwealth Aircraft Corporation. [42]

Partly due to the success of the Collins House Group, Melbourne was until recent years the business capital of Australia. A useful consequence of this for historians is that a high proportion of significant Australian companies were registered in Melbourne and consequently they have files in VPRS 932 or VPRS 567 held at PROV. While the information in these files varies greatly, they form a vital resource for students of Australian business history. For a business leader of the stature of WL Baillieu, the depth of information available at PROV appears almost inexhaustible – and that is without even beginning to investigate the material available on his parallel career as a politician and minister in several Victorian governments in the early twentieth century.
Endnotes


[4] Some indication of the extent of subdivisions on Melbourne’s fringes in 1887 and 1888 can be gleaned from the subdivision plans and advertising posters in the Baillieu Allard Papers, University of Melbourne Archives (hereafter BAP), 14/5.


[6] WL Baillieu was the liquidator of the Chatsworth Estate and many details of the estate’s history can be found in BAP, 14/1, 14/2, 14/4, 14/7, 14/8, 14/9.


[8] Bourke Street Freehold & Investment Co., PROV, VPRS 932/P0, Unit 88, Item 1477.


[10] Munro & Baillieu, PROV, VPRS 763/P0, Unit 6, Item 70; WL Baillieu, PROV, VPRS 763/P0, Unit 6, Item 70B.


[14] This paragraph is based primarily on the PROV files for the Herald & Sportsman Newspaper Co., the Herald & Standard Newspaper Co. (PROV, VPRS 932/P0, Unit 142, Item 2981), City Newspaper Co. (PROV, VPRS 932/P0, Unit 113, Item 2512) and the Victorian Newspaper Company Ltd (PROV, VPRS 932/P0, Unit 130, Item 2765).

[15] Garden and Gardner rely on the fact that the 1892 and 1893 returns of the Herald & Sportsman Co. show no change in the shareholdings following the sale of the business, but after the sale of the company the responsibility for maintaining the register lay with City Newspapers and not with the former management of the Herald & Sportsman. It certainly does not override the clear fact that the business had been sold. This is supported by the company’s final return on 31 Oct 1894: ‘The Herald and Sportsman Newspapers Company Limited … has long since ceased to carry on business and is now in cause of winding up and dissolution.’

[16] In spite of the name, WL Baillieu & Co. was a partnership rather than a company and therefore there are no company returns held by PROV.

[17] EL & C Baillieu was also a partnership and hence there are no records of it held by PROV. Incomplete and inaccurate accounts of the development of WL Baillieu & Co. and EL & C Baillieu are given in Richardson, ‘Collins House financiers’, pp. 230–1; and Graeme Adamson, A century of change: the first hundred years of the Stock Exchange of Melbourne, Currey O’Neill, Melbourne, 1988, pp. 118–21. There are few surviving records of EL & C Baillieu, but some records of WL Baillieu & Co. have recently been found and are currently privately held. These records have been used in this analysis of Baillieu’s recovery.

[18] Duke Consols NL, PROV, VPRS 567/P0, Unit 172, Item 2542.

[19] Grand Duke Company NL., PROV, VPRS 567/P0, Unit 415, Item 4455.


[22] PROV, VPRS 567/P0, Unit 436, Item 4585.

[23] PROV, VPRS 567/P0, Unit 413, Item 4441.


[25] For about ten years from 1897 the Duke United produced returns held by PROV.

[26] In spite of the name, WL Baillieu & Co. was a partnership rather than a company and therefore there are no company returns held by PROV.


[14] This paragraph is based primarily on the PROV files for the Herald & Sportsman Newspaper Co., the Herald & Standard Newspaper Co. (PROV, VPRS 932/P0, Unit 142, Item 2981), City Newspaper Co. (PROV, VPRS 932/P0, Unit 113, Item 2512) and the Victorian Newspaper Company Ltd (PROV, VPRS 932/P0, Unit 130, Item 2765).

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[18] Duke Consols NL, PROV, VPRS 567/P0, Unit 172, Item 2542.

[19] Grand Duke Company NL., PROV, VPRS 567/P0, Unit 415, Item 4455.


[22] PROV, VPRS 567/P0, Unit 436, Item 4585.

[23] PROV, VPRS 567/P0, Unit 413, Item 4441.


[25] For about ten years from 1897 the Duke United produced returns held by PROV.
Under the agreement setting up the company Prince was entitled to buy 16,000 shares for 12 shillings per share and 20,000 shares for 17 shillings 6 pence per share. The financial report for August 1901 shows that he exercised these rights and presumably he sold the shares for about 25 shillings, the prevailing London price. In addition Baillieu received a £1,335 commission for reconstructing the company.

Thomas Harvey was a leading mining investor and company director and Herbert Daly was a well-known figure in mining circles as a mine manager and assessor of mining properties.

WL Baillieu to Hon D Ham MLC, 5 October 1899, BAP, 5/58.

A list of the share distribution in Baillieu's handwriting is in BAP, 5/58.

Jubilee Gold Mining Company NL, PROV, VPRS 932/P0, Unit 628, Item 6775.

BAP, 5/60.

See correspondence with Thomas Brentnall in ibid.

Outtrim Coal Mining Co. NL, PROV, VPRS 567/P0, Unit 459, Item 4792.

Outtrim, Howitt & British Consolidated Coal Mining Company, PROV, VPRS 567/P0, Unit 491, Item 5145.

The annual reports of the Outtrim company are in PROV, VPRS 567/P0, Unit 491, Item 5145.

Figures calculated from the annual reports of the Outtrim, Howitt & British Consolidated Coal Co. NL.

For Baillieu's brewing interests, see: PROV, Terry's West End Brewery Ltd, VPRS 932/P0, Unit 36, Item 615; Carlton & United Breweries Ltd, VPRS 932/P0, Unit 201, Item 4158; Carlton & United Breweries Ltd, VPRS 932/P1, Unit 50, Item 4158; Melbourne Brewing & Malting Company, VPRS 932/P0, Unit 33, Item 561; Carlton & West End Breweries Ltd, VPRS 932/P0, Unit 615, Item 36. For rubber, see Dunlop Pneumatic Tyre Co. of Australasia Ltd, VPRS 932/P0, Unit 162, Item 3313; Dunlop Australia, VPRS 932/P1, Unit 141, Item 7354. For base metals mining and processing, see: North Broken Hill Silver Mining Company NL, VPRS 567/P0, Unit 511, Item 5371; North Broken Hill Mining Company NL, VPRS 567/P0, Unit 679, Item 7641; Broken Hill Junction Silver Mining Company Ltd, VPRS 932/P0, Unit 59, Item 1017; Broken Hill Junction North Mining Company Ltd, VPRS 932/P0, Unit 151, Item 3133; Broken Hill Proprietary Block 14 Company Ltd, VPRS 932/P0, Unit 83, Item 1090; Victorian Mineral Development Company Pty Ltd, VPRS 932/P0, Unit 381, Item 7173; Broken Hill Junction North Silver Mining Company NL, VPRS 567/P0, Unit 684, Item 7739; Buchan-Murindal Silver Mining Company NL, VPRS 567/P0, Unit 535, Item 5674; Lyell, Tyndall & Dundas Prospecting Association NL, VPRS 567/P0, Unit 532, Item 6538; Mining & Treatment Company of Victoria NL, VPRS 567/P0, Unit 720, Item 8442; Lyell Dundas Silver Mining Company NL,
‘The most determined, sustained diggers’ resistance campaign’

Chinese protests against the Victorian Government’s anti-Chinese legislation 1855-1862

Anna Kyi

In 1982, Kathryn Cronin noted that the Chinese protests had ‘received scant attention in Australian history books’ – Geoffrey Serle’s The golden age being the exception. [2] Since then, historians have attempted to address the imbalance.[3] In this latest body of research there has been a trend towards identifying the influences that earlier miners’ protests against the goldfields licence had on Chinese protest methods, particularly during 1859.[4] This approach has the potential to facilitate new understandings by building on the familiar. Furthermore, by identifying how Chinese adopted Western constitutional forms of protest, this approach challenges cultural stereotypes that suggest Chinese were incapable of crossing cultural boundaries.

Despite these advances, other existing popular historical interpretations have the capacity to undermine the acceptance and appeal of this story. Elsewhere, I have indicated that the story of the Chinese protests conflicts with popular multicultural interpretations of democracy in the aftermath of the Eureka Rebellion, one of the protests against the goldfields licence.[5] Other obstacles include the appeal of an instant success story, combined with a narrow perception of the measures of success.[6] As Cronin explains, the Chinese protests ‘had been the most determined, sustained diggers’ resistance campaign’. [7] The protests started in 1856, in response to legislation enacted in 1855, and continued into 1861; the various taxes imposed on the Chinese were removed in 1862 and 1863.[8] This period of time makes it difficult to package the protests into an instant success story, especially when there is no direct correlation between the petitions and the immediate removal of the taxes. Valerie Lovejoy’s research on the Bendigo Chinese protests in 1859 has attempted to overcome this obstacle. She suggests that sustained avoidance of the taxes after the 1859 petitions eventually led to the removal of the taxes.[9]
A better appreciation of the Chinese protests has the potential to evolve if we adopt the concept of a sustained resistance campaign starting from 1855, when the immigration poll tax was introduced. While earlier studies by Cronin and Serle reflect this approach, more recent studies have detracted from this understanding by predominantly focusing on one specific phase of the Chinese protests in 1859 (discussed below).

By adopting the concept of a sustained resistance campaign, we can begin to recognise how the Chinese successfully used tax evasion to render anti-Chinese legislation ineffective throughout the latter half of the 1850s. Had this not been the case, the Victorian Government would have had little reason to amend the legislation in 1857 and 1859 in an attempt to force the desired outcome: to discourage the Chinese from entering and settling in Victoria. In effect, this perspective encourages us to broaden our preconceptions of the measures of success beyond the immediate removal of the taxes and to recognise the importance of perseverance.

The concept of the protests being a sustained resistance campaign is also useful when examining the various petitions against anti-Chinese legislation. Besides demonstrating that the Chinese were capable of and willing to adopt Western forms of constitutional protest, the petitions are also examples of Chinese agency, evidence that the Chinese chose not to be passive victims. They provide valuable insights into the grounds upon which the Chinese defended their rights, and themselves, as well as understandings of the impact that anti-Chinese legislation was having on their lives. Documents presenting Chinese perspectives and those who supported them during this era of Chinese-Australian history are rare.

By placing the petitions in the context of evolving anti-Chinese legislation, it is possible to gain a clearer understanding of the specific issues the Chinese were seeking to address during various phases of the protest campaign. Similarities and differences in argument between various Chinese groups can also be revealed when petitions from a particular phase are compared. Until now, most research on the petitions has focused on versions that were published in either newspapers or parliamentary papers. Original petitions located at Public Record Office Victoria (PROV) have been overlooked, possibly because of the challenges involved in locating these documents.[10] Consequently, a number of the petitions have escaped the attention of historians.

This article seeks to build a more complete picture of the Chinese protests and to cultivate an appreciation of their sustained resistance campaign. It considers both published and unpublished petitions and examines them within the context of evolving anti-Chinese legislation during the latter half of the 1850s. In doing so, the article also identifies how the Victorian Government repeatedly amended anti-Chinese legislation and eventually removed these laws in response to Chinese evasion of taxes. The terms ‘Chinese protests’ and ‘Chinese petitions’ are used consistently throughout this article; however, it is evident that the Chinese were not alone in their fight. Elsewhere, I have started to discuss some of the motivations behind European support of the Chinese.[11] This article draws attention to this support; however, further detailed examination of the nature and extent of this involvement is beyond the scope of this particular paper.

The 1856 Chinese protests

On 12 June 1855, the Victorian Government introduced An Act for the Provision of Certain Immigrants in response to concerns about increasing numbers of Chinese arriving in the colony.[12] In 1853, the number of Chinese arrivals by sea had been a paltry 140; in 1854 this figure jumped to 4920. It more than doubled the following year to 11,493.[13] Because they arrived in large numbers at a time when surface alluvial gold was becoming scarce, the Chinese were perceived by some as a cultural and economic threat. By June 1855 the Chinese population in the colony was estimated to be 17,000. Complete exclusion of the Chinese was not an option: this would have contravened the 1842 treaty resulting from the first Opium War between China and Britain and would have met with disapproval from the Colonial Office.[14] Instead, the government agreed to control Chinese immigration by placing restrictions on the number of Chinese each vessel was permitted to carry (one Chinese passenger to every ten tons) and by introducing a £10 poll tax for each Chinese migrant to be paid on arrival. The legislation was harsher than the recommendation made by the Commission into Condition of the Goldfields (1854-1855), which was wary of further increases in Chinese immigration with the abolition of the goldfields licence.[15] The Commission believed that restrictions on the number of Chinese passengers each vessel was permitted to carry (15-30 passengers or as many deemed necessary for a ship’s crew) would be sufficient in dealing with the matter. Those who exceeded the restrictions were to be fined no less than £10.[16]
Towards the end of 1856, Chinese in Victoria protested against the £10 poll tax. Andrew Messner has commented on the Bendigo Chinese petition and its significant level of support (5168 signatures).[17] However, until now the petition from the Chinese immigrants in Victoria – with 3089 signatures including one belonging to Ballarat’s Chinese Protector, William Henry Foster – has been overlooked.[18]

While there are similarities in the basic arguments of both 1856 petitions, the Bendigo Chinese framed their arguments in a more sophisticated manner. Both petitions asserted the law-abiding character of the Chinese community and questioned the perceived economic threat they posed to other miners, when they worked over abandoned ground. The Bendigo Chinese emphasised the positive character of the Chinese community, noting the financial benefits they had brought to mercantile interests. Both groups suggested the entry tax could be (and was) evaded by landing in South Australia; however, the Bendigo Chinese went further, noting that merchants and others would be financially disadvantaged if the Chinese did not land in Melbourne.

In arguing about the injustices of the law, the Bendigo Chinese adopted a broader, more global frame of reference to support their arguments. They referred to the absence of such laws in other British colonies, the removal of similar laws in California, and claimed the legislation was ‘a violation of the fundamental law of the British Constitution’. [19] In contrast, the petition from the Chinese immigrants in Victoria relied mainly on strong language and comparisons between the treatment of the Chinese and other people in the colony. Besides referring to the amount of the tax as being ‘obnoxious’, they identified the practice of singling them out as ‘invidious’. They claimed they had done nothing wrong ‘to be debarred from the same privileges freely accorded to other nations’. [20] Based on this understanding of the law, they interpreted the tax as a ‘penalty’ not a ‘subscription for revenue’. [21]

The 1857 Chinese protests

The 1856 Chinese petitions did not result in the removal of the immigration poll tax; however, the Chinese managed to render the legislation ineffective by landing in South Australia, and travelling overland to the Victorian goldfields. Their success was indicated in the census statistics: in 1854 the Chinese population was 2,341 and by 1857 it had increased to 25,424. [22] Unfortunately, local and global conditions in 1857 were not favourable to promoting acceptance of the increasing Chinese population, which was perceived as economic competition on the goldfields. Overseas, China and Britain were engaged in the second Opium War; locally, there was a slump in returns from mining and a growth in unemployment. Incidents of racial conflict on the goldfields, including the Buckland Riots, emerged against this backdrop. [23]

Within this racially-charged climate, the Victorian Government endeavoured to fix flaws in the existing anti-Chinese legislation. To discourage overland migration it urged the South Australian and New South Wales governments to introduce the £10 immigration poll tax. The former eventually agreed; the latter refused. The government also appointed a Select Committee into Chinese Immigration with the objective of framing ‘a Bill to control the flood of Chinese immigration setting in to this Colony and effectually prevent the Gold Fields of Australia Felix from becoming the property of the Emperor of China and the Mongolian and Tartar Hordes of Asia’. [24]

The 1857 Chinese petitions were presented in response to this bill. Where the immigration poll tax was supposed to target prospective Chinese gold seekers, the Bill to Regulate the Residence of the Chinese in Victoria was designed to discourage those already residing within the colony from settling, and to recover some of the revenue lost through evasion of the immigration poll tax. The proposed bill included the introduction of a Chinese residence tax of £1 per month (£12 per annum). The miners had protested against paying the same amount for a goldfields licence three years earlier.
On top of the residence tax, Chinese miners were still expected to pay £1 for an annual protection fee that was specific to the Chinese, and £1 for a miner’s right levied on all gold seekers. To address past and future evasion of the immigration poll tax, Chinese could only purchase a residence licence if they provided evidence that they had paid the £10 poll tax. Those who could not produce this evidence were required to pay the poll tax before they were allowed to purchase a residence licence. In total, a Chinese miner starting out on the goldfields would be expected to pay £24 in his first year. The proposed penalties for not paying were harsh. In addition to a fine of no more than £10, Chinese without a residence licence could be ‘apprehended without a warrant by any person whatsoever and detained’ [italics included in original text] and then taken before a justice of the peace, to be dealt with according to the act.’[25] As the Ballarat Star pointed out, this legislation ‘constitutes everyone not of a proscribed race a police officer, empowered to arrest a Chinaman whenever he fails to produce a license.’[26]

The 1857 Chinese petitions clearly reflect anxieties about the proposed Chinese residence tax and concerns about accusations made against the Chinese in newspapers, the Select Committee inquiry and anti-Chinese petitions, which were also presented around this time.[27] While there are six Chinese petitions that have been identified from this era, none of them match the high level of support evident in the earlier 1856 Chinese petitions. The Castlemaine Chinese petition has the highest number of signatures (2,873).[28] While some of the groups who presented petitions during this era are identifiable in terms of specific regions such as Bendigo, Castlemaine and Ballarat, others are more general and obscure, for example the petitioners of ‘Sitting on Chinese Business’, or ‘People of the Chinese Nations’. This makes it difficult to explore specific circumstances that may have caused variations between petitions. Further research of the signatures written on the original petitions might reveal more about the composition of these groups.

The Chinese argued against the proposed residence tax on the grounds of their inability to pay and their expectations to be treated equally. The ‘Natives of China’ petitioners claimed that paying the tax was ‘utterly impossible’: Chinese on the goldfields were ‘barely obtaining a livelihood and have no means of returning to their country’.[29] The Castlemaine Chinese were more explicit, listing all the financial burdens they were already struggling to pay. With the pressure to pay taxes such as the Chinese protection fee and the miner’s right, as well as the purchase of mining equipment and the ‘basic necessaries of life’, many were unable to send remittances back to China to support family members, ‘some of whom consequently died of want.’[30] The Ballarat Chinese outlined what they were willing to pay: ‘Chinamen want back again the old law, £1 a year protection ticket, £1 for a miner’s right. Chinamen do not like changes.’[31] In contrast, the petitioners signing ‘Residents of Victoria Belonging to the Chinese Nation’ wanted the government to appoint an inquiry into the allegations and accusations made against them before determining whether the tax should be introduced.[32]

The request for equality was common to most of the Chinese petitions from this and all other phases of the protest. It is this feature of the petitions that stands at odds with present-day multicultural memories of democracy in the aftermath of Eureka. Several of the 1857 petitions frame the request for equality as being consistent with British law, a right the Chinese were entitled to if they were obedient.[33] As such, the unjust treatment of the Chinese was not just interpreted as being contrary to British law, values and identity; it was also seen as an act of deception. The Castlemaine Chinese explained:

[N]early all of us left our native land at the solicitation of Europeans, to seek abroad that prosperity which we could not find at home, on the assurance that we should receive the protection of your laws so long as we remained obedient to them; and that we should be governed in that spirit of equity which we have been accustomed to associate with the English name; but that, since our arrival, we have been subjected to a series of insults and oppressions from the ignorant, the cruel, and the malicious, though we are not conscious of having merited such injustice.[34]
The petitioners of ‘Sitting on Chinese Business’ and the Ballarat Chinese noted a change from the initial kindness shown by the government. The Ballarat Chinese complained:

Every nation is allowed to come into this colony – why not the Chinese? At first the government was very good to our petitioners but now it is going to be different.[35]

As previously mentioned, the Chinese also used the 1857 petitions to defend themselves against accusations and allegations made against them in newspapers, the Select Committee inquiry and anti-Chinese petitions. The Chinese used at least three different strategies to defend themselves.

Firstly, they questioned the validity of the allegations and requested supporting evidence. This was evident in the People of the Chinese Nation’s request for an inquiry that would either prove or disprove the various accusations made against them. The Castlemaine Chinese took a similar line, saying court records would prove that ‘in proportion to our numbers, fewer Chinese have been convicted of, or charged with crime, than any other class of inhabitants of this Colony’. [36] They also claimed that accusations about Chinese being guilty of ‘unnatural vices’ and ‘abominable acts’ were unsubstantiated.[37]

The Chinese also used the petitions to correct the cultural misunderstandings behind accusations used to inspire racial hatred.[38] Petitions from the Castlemaine Chinese, the Ballarat Chinese and the petitioners of ‘Sitting on Chinese Business’ provide the strongest examples of this strategy.[39] These petitions countered claims that Chinese had an unfair advantage in gold seeking because of their mining practices. As the petitioners of ‘Sitting on Chinese Business’ explained, ‘We Chinamen who are here get no gold only by washing headings and tailings, and from old holes abandoned by Europeans, and from which we can but barely make a living. We having only the refuse cannot make as much as Europeans ...’[40] The Castlemaine Chinese believed this type of mining was only made profitable by their ‘co-operative mining practices’. [41]

Ballarat Chinese and the petitioners of ‘Sitting on Chinese Business’ addressed complaints that the Chinese were not contributing to the economic development of the colony by pointing out they could not afford to buy land and farms as this required ‘too much capital’.[42] Furthermore, the perception that they were sending lots of gold back to China was wrong. As the petitioners of ‘Sitting on Chinese Business’ explained,

Two or three pounds of gold is as much as we can get home; sometimes one man may appear to have plenty of gold, but it is because his friends each send a bit with him as we have no Post Office, to their parents, wives and children, for them very hungry.[43]

On the issue of evading the immigration poll tax, the Chinese petitioners sought to displace blame and claim ignorance. Those who organised the transport, either merchants, captains in Hong Kong, masters or supercargoes, were identified as the culprits. In China, distance and language barriers also contributed to ignorance of the tax.[44] By describing the hardships they endured during the overland journey – ‘weariness’, ‘faintness’, ‘hunger and thirst’, ‘disease’, ‘death’ and ‘suicide’ – the Castlemaine Chinese portrayed themselves as victims who had been ‘fearfully punished’. [45]

The Ballarat, Castlemaine and ‘Sitting on Chinese Business’ petitioners also endeavoured to explain why they did not bring their wives to Victoria. In effect, they tried to settle fears about their predominantly male community, including homosexuality, racial miscegenation and juvenile prostitution. The justifications the petitioners gave for leaving their wives at home were both cultural and practical. The cultural practice of Chinese women binding their feet made it difficult for them to travel. Added to this was the cost of the trip, fulfilling family obligations to care for the elderly who remained in China and the desire to protect their women from a foreign society, in which they might not cope.[46]

The third strategy the Chinese used to defend themselves moved beyond the negatives to identify positive economic contributions they made to the colony by paying taxes, importing Chinese goods and consuming European goods. First used in the 1856 Bendigo Chinese petition, this tactic was used by the Castlemaine Chinese and their European supporters in 1857.[47] It is a strategy that can also be read as a response to accusations that Chinese were not contributing to the economic development of the colony.

The 1857 petitions were not successful in preventing the introduction of the residence tax; however, the bill was altered before it was finally introduced as An Act to Regulate the Residence of the Chinese Population in Victoria.[48] The amount of the tax was reduced to £1 every second month (£6 per annum) and the penal clause was removed. Instead, Chinese without a residence licence were to be punished by losing the right to institute legal proceedings if anyone took their mining claim or business. In effect, the law legalised claim jumping and negated the functions of the miner’s right and Chinese protection ticket.[49]
The 1858 Chinese protests

On 21 January 1858 – two months after the Act to Regulate the Residence of Chinese in Victoria became operable – the Ballarat Chinese presented a petition to Governor Barkly, ‘on behalf of themselves and their fellow countrymen resident in the colony of Victoria’. [50] The petition revealed the impact the legislation was having on their lives.

Unprepared to meet this sudden imposition, they [Chinese without a residence licence] are in fact outlawed – their claims and their business premises are liable to be taken from them, not only by Englishmen but by any foreigner who may choose to take possession of them; for although by the law the miner’s right and business license make petitioners the bona fide owners of such claims and premises, yet now having failed to pay the first instalment of the new and sudden tax, the petitioners are deprived of their rights under these documents in which they never doubted they were by law secure from twelve months from this date.[51]

According to newspaper reports, the petition was signed by seven Chinese in English and about 1,400 individuals in Chinese characters.[52] Forty-five influential Ballarat Europeans, including Ballarat’s Chinese Protector, William Henry Foster, supported the Chinese petition with a testimonial to their good character.[53]

At this stage, the 1858 Ballarat Chinese petition appears to be the only one that was presented in the immediate aftermath of the Act to Regulate the Residence of Chinese in Victoria. Unlike the 1857 petitions which requested that the residence tax not be introduced, the 1858 Ballarat Chinese petition requested extra time (six months) to pay the first instalment. The Chinese were led to believe this was standard practice after legislation regarding the imposition of a tax had just been passed.[54] Chinese Protector William Foster believed the majority of Chinese would use the extra time to find a means of leaving the colony, while the rest would endeavour to make payment.[55]

To understand why the Ballarat Chinese made this request, it is necessary to consider the substantial losses they would have incurred because of the type of mining in which some were involved. By 1856, some Chinese in Ballarat were not just engaged in shallow alluvial mining and working over refuse, but were also working on the deep leads.[56] Compared to shallow alluvial mining, deep lead mining involved a greater commitment in both time and money. The penalty for not paying would have involved significant losses.

This was demonstrated the day after the Ballarat Chinese presented their petition to Governor Barkly, when some European miners took a claim belonging to a party of Chinese miners who did not have residence licences. This party of Chinese miners had obtained a ‘grant’ of a portion of worked-out ground on the Red Streak Lead. They had paid £90 for the claim, erected machinery at great expense and spent considerable time making the necessary preliminary arrangements. After unstable ground resulted in two unsuccessful attempts at sinking shafts, the party had finally managed to ‘bottom on gold’.[57] European miners, in a process legitimised by the Act, were then able to come along and take the hard-won Chinese claim.
When the Ballarat Chinese presented their petition to Governor Barkly, he seemed oblivious to the impact the new tax was having on the Chinese community. He was surprised to hear of their hardships, indicating that the original bill had been altered in their favour with a reduction in the tax. The Governor correctly predicted that Parliament would not sanction any departure from the legislation.[58] One of the ministers pointed out that the object of the Act was ‘to discourage the residence of Chinese in Victoria ... any interference with its operation would frustrate the intention of the legislation ... No doubt certain cases of apparent hardship may occasionally occur but did such cases not arise the whole act would be inoperative.’[59]

By mid-1859 the Chinese were protesting against the amended legislation. It is this particular phase of the Chinese protest campaign that has been the focus of recent research by historians.[66] No doubt the drama surrounding this phase has made it a matter of interest. As before, the Chinese held protest meetings and sent petitions, but the harsher methods of tax collection implemented on some goldfields together with the penal clause, inspired the Chinese to adopt stronger forms of protest as well. Acts of civil disobedience, such as Chinese refusing to do business with Europeans and choosing imprisonment over paying the taxes, feature in this period of protest as do threats of assassination. In contrast with earlier phases, historians have also recognised that the 1859 protests seem to be more organised, with the Chinese banding together under the banner of the United Confederacy.[67]

The Chinese protest movements in Castlemaine, Bendigo and to some extent Melbourne and Beechworth, have featured strongly in recent research. However, consideration of and comparison with the Ballarat context during this period provides an interesting insight into some of the variables that affected the protest campaign. The Ballarat Chinese sent a petition against the residence tax in mid-1859;[68] however, there was hardly any drama or disturbance compared to other goldfields such as Bendigo and Castlemaine.[69] According to the Ballarat Times this was ‘partly because the tax has not been resisted so determinedly as elsewhere, and partly because it has not been enforced with the same rigour’.[70] Melbourne Chinese, like merchant Lowe Kong Meng, were keen to distance themselves from the disturbances on the goldfields. In a letter to The Argus, which highlighted the absurdity and injustice of assuming that Melbourne Chinese were involved, Lowe Kong Meng made an astute comparison with the Eureka Rebellion.

Why should you, or the Chief Secretary, try to mix us up with proceedings of a tumultuous nature, of which it appears that some of the Chinese on the diggings have been guilty? Has anyone proved our connection with those proceedings? Would it have been just, when the riots at Ballaarat occurred a few years ago, and some European miners lost their lives in consequence, to connect the European merchants and traders of Melbourne with those riotous proceedings? Why should we be dealt with less fairly than others? [71]
The existence of the United Confederacy has probably played a part in overshadowing an appreciation of these differences, which are also revealed when comparing the content of petitions from Chinese in Melbourne with those on the goldfields. Petitions from Chinese on the Ballarat, Bendigo and Castlemaine goldfields all requested the cost of the residence licence be reduced from £4 to £2 per annum.[72] The Castlemaine and Ballarat Chinese believed this amount would be sufficient to cover government administration costs for the Chinese population. Because the Chinese would be more willing to pay £2 than £4, the Castlemaine Chinese argued it would actually provide a larger income for the government. As before, the Chinese outlined their inability to pay the existing tax: the Bendigo and Ballarat Chinese claimed they did not earn more than half a pennyweight in gold per day. The Ballarat Chinese also pointed out they had to pay the export duty on gold. In a further effort to persuade the Governor to accede to their request, they asked him to consider that the prosperity of the diggings had decreased since the law was made.

In their petition, the Melbourne Chinese differentiated themselves from Chinese miners, believing these differences were grounds for their exemption from the residence tax.[73] Because they did not live on the goldfields, they claimed they were not ‘occasioning’ the government any extra expense for Chinese protectors, headmen or interpreters. Furthermore, their particular circumstances meant they had to pay more taxes than Chinese miners. Melbourne Chinese who were merchants, traders and artisans regularly travelled between China and Victoria and had to pay the £10 poll tax every time they re-entered the colony. In addition, they incurred heavy expenses renting stores, offices and conducting their businesses, which made it difficult for them to pay the residence tax.

The desire to have the same social liberties as other immigrants in the colony remained strong among the goldfields Chinese, but was not so strongly expressed by the Melbourne Chinese. The Ballarat and Bendigo Chinese were quite deferential in making this request for equality, stressing their willingness to abide by the laws but also their inability to do so.[74] The Castlemaine Chinese were more forthright and sophisticated in their request.[75] They used a wider frame of reference to argue against the injustices of the legislation, by comparing Victorian legislation with the treatment of Chinese people in other parts of the world such as California, and by identifying how it was at odds with treaties signed between Britain and China.[76]

That the evident tendency of legislation in this colony for natives of China, has been to harass and oppress them, while in all other parts of the world, California and elsewhere, the Chinese have been received upon the same footing as other foreigners, and have not been debarred from any of the privileges which have been conceded as a matter of right or courtesy to other nations of the earth.[77]

So far, research on the 1859 Chinese protests has neglected the second round of petitions that the Chinese sent to the Legislative Assembly in late 1859.[78] Further amendments to anti-Chinese legislation did not trigger this second round of petitions. Instead, a new understanding as to who had the power to change the legislation seems to have been the main influence. Most of the mid-1859 petitions had been either addressed or forwarded to the Governor. Considering the 1859 legislation stipulated that the Governor had the power to alter the tax, this was undoubtedly a reasonable course of action.[79] The Governor’s responses to the petitions soon revealed, however, that he ‘was powerless in the matter without the consent of Parliament’.[80] When the Melbourne Chinese and a deputation from Bendigo presented their petitions to the Chief Secretary in late May 1859, he advised both groups to send their petitions to the legislature. [81] Chinese in Castlemaine, Bendigo and Melbourne followed this advice in late 1859.[82]
In addressing the Legislative Assembly, the petitions from the Bendigo and Castlemaine Chinese reflect an awareness of the differences in imperial and colonial power. The appeals within their petitions, including the request for social equality, were no longer framed within expectations of British law and values, or treaties between Britain and China. Instead, their requests were framed within understandings of the democratic origins of the Legislative Assembly and the influence of Christian values. The Castlemaine Chinese appealed to the Legislative Assembly's duty as supreme authority elected by the people of Victoria to legislate and watch over the welfare of its various inhabitants without distinction of creed, or nationality. The Bendigo Chinese also recognised that the Legislative Assembly had been 'entrusted' to look over the welfare of the people and asked 'that the God of the Christians, whom your petitioners recognise as Chief Legislator, may watch over you and guide your deliberations.

The late 1859 Chinese petitions continued to reflect the different interests and pressures of Chinese in Melbourne and on the goldfields. The Castlemaine and Bendigo Chinese now wanted the removal of the residence tax. They believed the revenue raised from the payment of the miner's right would be sufficient to cover the additional expenses the government incurred for administration of the Chinese. In contrast, the Melbourne Chinese were willing to stay with requests that goldfields Chinese had made during the middle of 1859. They asked for a reduction in the residence tax from £4 to £2, and expressed fears that if the tax continued it would 'reduce multitudes of Chinese to beggary'. The Melbourne Chinese continued to address matters that were specific to their interests. Once again, they asked the government to make the immigration poll tax less burdensome on Chinese involved in trade between China and Australia.

The Bendigo and Castlemaine Chinese were not just opposed to the tax, they were also opposed to the harsh methods of collection practised on these particular goldfields. The Bendigo Chinese went so far as to claim 'The old license tax system with all its degrading attributes, has been re-enacted amongst us'. In contrast to the petitions presented in the middle of the year, those presented in late 1859 from the Castlemaine and Bendigo Chinese provide insights into the hardships endured and their demeaning effects on the Chinese.

Policemen daily meet us at our work, and demand a sight of our residence tickets. Hundreds of our unfortunate countrymen have been taken away from their daily avocations and marched through the public streets in custody of police officers, like common felons, to prison because they were too poor to pay for a license.

Although many of your petitioners were men of respectability in their own country, and had never been in the company of criminals, no mercy or consideration has been shown towards them. Hundreds of your petitioners have been sent in company with the most abandoned criminals to sweep pathways and other similar degrading occupations, with policemen standing sentry over them with fixed bayonets.

Police treatment of Castlemaine Chinese was not much better.

The 1859 Chinese petitions did not lead to the immediate removal of the Chinese residence tax. Lovejoy suggests that Chinese evasion of the tax and weaknesses within the legislation led to the eventual removal of the residence tax in 1862. Chinese resistance to paying the taxes, and the practice of not taxing Chinese in financial distress, meant there was not enough revenue to sustain the Chinese Protectorate System which was used to collect the taxes. Furthermore, inadequate jail accommodation and the need to summons Chinese for prosecution made it virtually impossible to implement the penalties for tax evasion.

No doubt these factors contributed to the eventual demise of the legislation, however a petition from Chinese and Europeans in Ararat to the Governor in June 1861 may have also played a part. The request to abolish the residence tax in this petition did not just rest upon calls for justice and equality for the Chinese; this petition suggests the abolition of the residence tax was closely linked to the survival of Ararat. Due to a downturn in mining, Ararat was suffering from a declining population. The European population had 'nearly disappeared' and the Chinese population had been reduced from 3,000 to 500. In requesting the removal of the Chinese residence tax, the petitioners were hoping to hold on to what remained of the Chinese population. The fact that 102 Europeans signed the same petition as 75 Chinese individuals, as opposed to sending a separate petition or a supporting testimonial of their good character, seems to add weight to the united interests behind this particular petition.
Conclusion

Recent studies of the Chinese protests during the latter half of the 1850s have been invaluable in terms of highlighting the influences of earlier protests against the goldfields licence on the strategies utilised by the Chinese protestors. Unfortunately, the tendency within these studies to focus on one particular phase of the Chinese protests, and usually one specific region, has detracted from the sustained nature of the Chinese resistance campaign. Consequently, Chinese success in using tax evasion to repeatedly render anti-Chinese legislation ineffective and eventually cause its removal has been hidden from view. Furthermore, the perseverance and determination of the Chinese protestors has been undervalued. In this article, the concept of a sustained resistance campaign has provided a useful framework for understanding the Chinese petitions. Not only has this framework revealed how the arguments of the Chinese changed over time and place, it has also drawn attention to some of the reasons for these changes and differences.

Endnotes


[6] This tendency is also reflected in the focus which has been given to the Eureka rebellion, which was soon followed by the removal of the goldfields licence, and the comparative lack of regard for other earlier protests against the goldfields licence in Bendigo and Mount Alexander.


[8] Serle, Golden age, p. 331. Since completing this article another Chinese petition has been identified in Antoine Fauchery, Letters from a Miner in Australia, (Paris, 1857) translated by AR Chisholm, Georgian House, Melbourne, 1965. This petition from Quang-Chew appears to have been presented to the Governor when the 1855 legislation was being debated and the Legislative Council was calling for the exclusion of the Chinese. Further research needs to be done to assess the validity and context of this petition.


[10] The original petitions held by PROV can be found in either the Legislative Assembly records or the Chinese Protectorate Records in the Chief Secretary’s Inward Correspondence, depending on who was being addressed. Further research of PROV records might uncover originals of petitions currently accessible only through newspapers and other petitions not identified in this article. The mid-1859 petitions are an example of this.


[16] ibid., pp. li-lii. The 1855 Act was also harsher than the original bill Governor Hotham had introduced. This bill proposed a £5 poll tax and restrictions on the number of Chinese per vessel of one to every two tons. Serle, Golden age, p. 324.

[17] Chinese Storekeepers Miners and Others Resident in Bendigo, petition to Legislative Assembly, received 26 November 1856, E1, PROV, VPRS 3253/P0, Unit 29, no. 19; Messner, ‘Popular Constitutionalism’, p. 71.

[18] Chinese in Victoria, petition to the Legislative Assembly, received 11 December 1856, PROV, VPRS 3253/P0, Unit 32. The presence of Foster’s signature suggests this particular petition had some connection with Ballarat and attests to Foster’s longstanding support of the Chinese against unjust taxation, despite working for the government which created the laws.


[22] Cronin, Colonial casualties, p. 136. Accurate population statistics for this era are difficult to obtain due to the mobility of the gold rush population.
The anti-Chinese petitions presented during this period, and now held at PROV as VPRS 3253/P0, are as follows: Petition of Members of the Local Court of Castlemaine, (E 38), received 17 July 1857, Unit 34, no. 407; Petition of Members of the Local Court of Fryer’s Creek (E 58), received 7 August 1857, Unit 40, no. 362; Petition of large influential meetings that have taken place at Castlemaine, Campbell’s Creek, Forest Creek etc. (E 61), ordered to lie on the table 7 August 1857, Unit 51, no. 453; Miners and others of the Jim Crow Goldfields (E 64), received 11 August 1857, Unit 49, no. 460; Petition of Inhabitants of Geelong in a Public Meeting Assembled (E 65), ordered to lie on the table 18 August 1857, Unit 49, no. 478; Petition of Miners and others, Inhabitants of Sandy Creek (E 72), ordered to lie on the table 1 September 1857, Unit 53, no. 509; Petition of Miners, Shopkeepers and other Residents of the McIvor goldfields (E 75), ordered to lie on the table 3 September 1857, Unit 53, no. 516. Petition of Gold Miners and Others, Residing on Campbell’s Creek, (E 77), ordered to lie on the table September 1857, Unit 53, no. 555.

The following petitions also form part of PROV, VPRS 3253/P0: Chinese Resident in Castlemaine, petition to the Legislative Assembly, (E 66), received 18 August 1857, Unit 51, no. 479; Natives of China residing in Victoria, petition to the Legislative Assembly (E 56), ordered to lie on table 4 August 1857, Unit 49, no. 499; Sitting on Chinese Business, petition to the Legislative Assembly (E 76), ordered to lie on the table 9 September 1857, Unit 53, no. 528; Residents in Victoria belonging to the Chinese Nation (E 57), petition to the Legislative Assembly, received 4 August 1857, Unit 49, no. 450; Petition from the Storekeepers and Traders Resident in the District of Castlemaine (E 68), ordered to lie on the table 18 August 1857, Unit 49, no. 482 (note this petition is from European supporters); Copy of Ballarat Chinese petition to the Governor in ‘Political Meeting of Chinese’, Ballarat Star, 14 August 1857, p. 3.

Natives of China residing in Victoria petition, 4 August 1857.

Chinese Resident in Castlemaine petition, 18 August 1857.

‘Political Meeting of Chinese’, Ballarat Star, 14 August 1857, p. 3.

Chinese Resident in Castlemaine petition, 18 August 1857.

ibid.

The Castlemaine Chinese were particularly conscious of how cultural misunderstandings could create conflict: ‘We feel that as strangers in a strange land, unacquainted in general with your laws, language and customs, and religion, our actions may be misconstrued, and that we may give unintentional offence’. Chinese Resident in Castlemaine petition, 18 August 1857.

Sitting on Chinese Business petition, 9 September 1857; Chinese Resident in Castlemaine petition, 18 August 1857; ‘Political Meeting of the Chinese’, Ballarat Star, 14 August 1857, p. 3.

Sitting on Chinese Business petition, 9 September 1857; ‘Political Meeting of the Chinese’, Ballarat Star, 14 August 1857, p. 3.


Sitting on Chinese Business petition, 9 September 1857;‘Political Meeting of Chinese’.

Chinese Resident in Castlemaine petition, 18 August 1857.

ibid.

Chinese Resident in Castlemaine petition, 18 August 1857.

Sitting on Chinese Business petition, 9 September 1857; Chinese Resident in Castlemaine petition, 18 August 1857; ‘Political Meeting of Chinese’, Ballarat Star, 14 August 1857, p. 3.

ibid.

Sitting on Chinese Business petition, 9 September 1857; Chinese Resident in Castlemaine petition, 18 August 1857; ‘Political Meeting of Chinese’, Ballarat Star, 14 August 1857, p. 3.

ibid.

Sitting on Chinese Business petition, 9 September 1857; Chinese Resident in Castlemaine petition, 18 August 1857; ‘Political Meeting of Chinese’, Ballarat Star, 14 August 1857, p. 3.

ibid.

Sitting on Chinese Business petition, 9 September 1857; Chinese Resident in Castlemaine petition, 18 August 1857; ‘Political Meeting of Chinese’, Ballarat Star, 14 August 1857, p. 3.

ibid.

Sitting on Chinese Business petition, 9 September 1857; Chinese Resident in Castlemaine petition, 18 August 1857; ‘Political Meeting of Chinese’, Ballarat Star, 14 August 1857, p. 3.
[54] Chinese Resident on Ballarat petition, 21 January 1858.

[55] Letter from William Henry Foster, Chinese Protector to the Resident Warden of Ballarat, 20 January 1858, attached to Chinese Resident on Ballarat petition to Governor Barkly (E 58), presented 21 January 1858. According to Foster, many were struggling to pay the first instalment of the tax at such short notice because those who couldn’t show proof that they had already paid the £10 immigration poll tax had to pay this tax before they were able to purchase a residence ticket. Letters, Reports and Diaries of William Foster, Chinese Protector, PROV, VPRS 751/P0, Vol. 1, pp. 707 and 711.

[56] Warden Sherard noted in 1856: ‘The change ... in character of mining operations ... by the Chinese is remarkable, the greater portion of them being employed in deep sinking ... in place of shallow sinking and washing of refuse stuff as formerly’. Resident Warden Sherard, ‘Forthnightly Report Ending 6 December’ quoted in H Ware, ‘The Chinese in Ballarat’, BA Honours Thesis, University of Melbourne, 1987, p. 18. According to Ballarat Star journalist Samuel Irwin, by 1857 Chinese were working on some of the deepest leads in Ballarat: Report of the Select Committee of the Legislative Council on the Subject of Chinese Immigration, p. 16.


[59] Comments and response written on Chinese Residents Ballarat, petition to Governor Barkly (E 58), presented 21 July 1858.


[61] ibid.

[62] ‘Jumping Chinese Claims’, Ballarat Times, 5 February 1858, p. 2; ‘Court of Mines’, Ballarat Times, 16 March 1858, p. 2. The idea for this successful strategy first appeared in the article in the Ballarat Times.


[64] An Act to Consolidate and Amend the Laws Affecting the Chinese Emigrating to or Resident in Victoria, 20 Victoria, no. 80, 24 February 1859.


[67] In addition to the authors identified in the preceding endnote, see also Serle, Golden age, pp. 330-31 and Cronin, Colonial casualties, pp. 98-100.

[68] Chinese Residents of Ballarat, petition to Governor Barkly, adopted at a meeting on 20 June 1859, PROV, VPRS 1189/P0, Unit 522, file no. 59/M7364.

[69] Ballarat Times, 31 May 1859, p. 2; Ballarat Times, 4 June 1859, p. 2; Ballarat Times, June 1859, p. 2.

[70] Ballarat Times, 4 June 1859, p. 2.


[76] ibid.

[77] ibid.

[78] Chinese Resident in the City of Melbourne, petition to the Legislative Assembly, ordered to lie on table 9 December 1859, PROV, VPRS 3253/P0, Unit 119, no. 67; Petition of Chinese Merchants, Miners and Others of Castlemaine, ordered to lie on table 18 October 1859, PROV, VPRS 3253/P0, Unit 122, no. 1; The Chinese Merchants, Miners and others of the town of Sandhurst and District of Bendigo, petition to the Legislative Assembly, ordered to lie on table 19 October 1859, PROV, VPRS 3253/P0, Unit 123, no. 27.

[79] Clause 19 outlined, ‘It shall be lawful for the Governor in Council to remit the whole or any part of any penalty or sum of whatever description due or payable under the provisions of this Act’, An Act to Consolidate and Amend the Laws Affecting the Chinese Emigrating to or Resident in Victoria, 22 Victoria, no. 80, 24 February 1859.
Mount Alexander Mail, 29 May 1859, quoted in C Gervasoni & D Wickham (comps), Castlemaine Petitions: Petitioners for a Castlemaine Municipality and Petitioners against the Chinese Residence Licence, Ballarat Heritage Services, 1998, p. 12. The Castlemaine Chinese addressed and presented their petition to the Resident Warden and Magistrates of the Castlemaine Mining District. The Head Warden, Captain Bull, advised them that he could only receive the petition 'as a subordinate officer of the Government'; his 'duty being simply to send it down ... The matter however, must ultimately rest with the Executive Council'; quoted from 'The Chinese Agitation', Mount Alexander Mail, 25 May 1859, p. 2. The Governor’s response noted in the Mount Alexander Mail, 29 May 1859 suggests that Captain Bull forwarded the petition to the Governor. When a deputation from Bendigo attempted to arrange a meeting to present their petition to Governor Barkly, they were advised by his secretary not to follow this course of action as ‘It might only encourage unfounded expectations if his Excellency received their petition in person, the best course therefore for you to adopt will be to hand the original memorial to the Honourable Chief Secretary, who will inform you of the intentions of Government in this matter.’ ‘The Chinese Residence Tax’, Age, 1 June 1859, p. 5. The Ballarat Chinese addressed their petition to Governor Barkly. Chinese Residents of Ballarat, petition to Governor Barkly, adopted at a meeting on 20 June 1859.

[81] 'The Chinese Residence Tax', Age, 1 June 1859, p. 5; Ballarat Times, 1 June 1859, p. 2.

[82] It is difficult to determine the level of support for petitions presented during mid and late 1859. In most of these petitions, one or a few people sign on behalf of a larger group. For example, the mid-1859 petition from Bendigo is signed by one person, the chairman Chuck Sam, on behalf of 4,000; while the Ballarat Chinese petition is signed by 9 people on behalf of a meeting of 5,000. In the late 1859 petitions, the Castlemaine Chinese petition is the only one that is signed by all 133 supporters.

[83] Chinese Merchants, Miners and Others of Castlemaine, petition to the Legislative Assembly, ordered to lie on table 18 October 1859, PROV, VPRS 3253/P0, Unit 122, no. 1; Chinese Merchants, Miners and others of the Town of Sandhurst and District of Bendigo, petition to the Legislative Assembly, ordered to lie on table 19 October 1859, PROV, VPRS 3253/P0, Unit 123, no. 27.

[84] Chinese Merchants, Miners and Others of Castlemaine petition, 18 October 1859.

[85] Chinese Merchants, Miners and others of the Town of Sandhurst and District of Bendigo petition, 19 October 1859.

[86] Chinese Merchants, Miners and Others of Castlemaine petition, 18 October 1859; Chinese Merchants, Miners and others of the Town of Sandhurst and District of Bendigo petition, 19 October 1859.

[87] Chinese Resident in the City of Melbourne, petition to the Legislative Assembly, ordered to lie on table 9 December 1859.

[88] ibid.

[89] Chinese Merchants, Miners and others of the Town of Sandhurst and District of Bendigo petition, 19 October 1859.

[90] Chinese Merchants, Miners and Others of Castlemaine petition, 18 October 1859; Chinese Merchants, Miners and others of the Town of Sandhurst and District of Bendigo petition, 19 October 1859.

[91] ibid.

[92] Chinese Merchants, Miners and Others of Castlemaine petition, 18 October 1859.

[93] Lovejoy, ‘Red Ribbon Revisited’.

[94] ibid.

[95] Members of Council Bankers, Merchants, Traders and Other European and Chinese Inhabitants of Ararat and its Vicinity, petition to the Governor in Council, 18 June 1861, PROV, VPRS 1189/P0, Unit 523, no. 61/4997.

[96] ibid.
The case of Peter Mungett

Born out of the allegiance of the Queen, belonging to a sovereign and independent tribe of Ballan

Dr Fred Cahir and Dr Ian D Clark

Abstract

This paper is concerned with the issue of the jurisdiction of the British colonial criminal law over Indigenous Australians, particularly in the area of serious offences such as murder and rape. In particular, the paper examines the attempted use in the 1860 case of Regina v Peter of the legal demurrer that the Aboriginal accused, known as Mungett or Mungit, a Marpeang buluk clansman of the Wathawurrung language group known by the name of Peter, was not subject to the jurisdiction of the court because he was not born a British subject and had never entered into allegiance to the British Queen. This paper complements previous studies on the issue of the amenability to British law by considering matters such as Mungett's apparent knowledge of legal procedures and attempts to provide greater understanding of the cultural milieu within which he lived. The paper also examines the question of whether or not Wathawurrung traditional systems had survived sufficiently by 1860 to warrant Peter's claim that he should be tried by his own people rather than the colonial courts.

Introduction

This paper is concerned with the jurisdiction of the British colonial criminal law over Indigenous Australians, particularly in the area of serious offences such as murder and rape. In particular, the paper examines the attempted use in the 1860 case of Regina v Peter of the legal demurrer that the accused Aboriginal man was not subject to the jurisdiction of the court because he was not born a British subject and had never entered into allegiance to the British Queen. The paper also discusses some of the difficulties which the legal authorities found in dealing with this issue, even as late as 1860. The issue of the amenability to British law was a significant one in the early colonial period; it then largely disappeared from serious public consideration but has resurfaced since the 1980s in the context of land rights, native title, and the status of Aboriginal customary law. Regina v Peter (henceforth R v Peter) has been known and referenced by historians with an interest in the issue of the jurisdiction of British law over Victorian Aboriginal people. The most detailed study has been by Simon Cooke, who provides a thorough examination of the origins, arguments, and outcomes of R v Peter and considers the implications of the arguments of counsel.[1]
This paper complements Cooke's study by considering matters such as Mungett’s apparent knowledge of legal procedures and attempts to provide greater understanding of the cultural milieu within which he lived. It is hypothesised that Mungett’s source of legal knowledge most probably came from local squatter Charles Griffith, an Irish trained barrister, who had been associated with Mungett’s family and clan since 1841. The paper also examines the question of whether or not Wathawurrung traditional systems had survived sufficiently by 1860 to warrant Peter’s claim that he should be tried by his own people rather than the colonial courts.

Peter, whose Aboriginal name was Mungett, was brought before the criminal sessions in Melbourne in February 1860 on a charge of rape of a child.[2] Mungett was a member of the Marpeang baluk clan whose lands extended over the Ballan and Bacchus Marsh areas (50–80 km west of Melbourne) of the Wathawurrung language group.[3] Mungett was found guilty on 20 February 1860 and the sentence of death was passed upon him. Execution, however, was deferred until after the argument before the full court on the special plea put in by Dr Mackay on his behalf.[4] In other words, ‘Peter asserted that he lived under an existing Aboriginal sovereignty that he had never given up, and by which sovereignty he could be tried for the crime of which he was accused.’[8] The legal ‘demurrer’ was ultimately unsuccessful and despite Mungett’s plea of not guilty, he was convicted and sentenced to death, though this was later commuted to fifteen years imprisonment.

The assault which led to this conviction took place on 30 December 1859 near the Pentland Hotel, Bacchus Marsh. Arrested that evening he was confined in the Bacchus Marsh lock-up until 17 January 1860 when was then transferred to Pentridge. A statement of evidence from the victim’s father Peter Garland was taken before justice of the peace Mordaunt Maclean in Bacchus Marsh on 31 December 1859. Other statements were taken from Isabella Garland (the victim), her mother Isabella Garland, Margaret Downey (a neighbour), Dr John Pearce Lane (a surgeon who examined the child), and Samuel Spencer Hanger (the landlord of the Pentland Hotel) on 12 January 1860 before justice of the peace Charles Shuter in Bacchus Marsh. Guardian of Aborigines William Thomas took Mungett’s statement on 24 January 1860.

**Mungett’s life: a reconstruction**

Some reconstruction of Mungett's life is possible through public records, newspapers and squatters’ journals. According to a statement made to William Thomas, in 1860 Mungett went by two names and identified with the Wathawurrung people of the Ballan district. As recorded in Thomas’s papers, he stated: ‘My name Peter – white man call me that – the Ballan Blacks: Mun-gett.’[9] From his entry in the Victorian prison register we learn that Mungett was born circa 1831.[10] He was possibly one of a group of seven Wathawurrung clanspeople seen in March 1840 at Bacchus’s station on the Werribee River by Edward Stone Parker, assistant protector of the Port Phillip Aboriginal Protectorate for the Loddon District.[11]
Mungett's prison register entry (Peter, an Aboriginal), number 3035, showing details of convictions for 1856 and 1857, PROV, VPRS 264/P0, Unit 5.

Among the group was Oondiat (Peter’s father) who is listed in a census taken by Parker in August 1841.[12] Oondiat’s father, Oondiat the senior, also known as Jack Mungit or ‘Captain’, is listed in several squatters’ diaries as being a ‘big man’, clan-head or elder.[13] Bacchus Marsh squatter Charles Griffith, considered Jack Mungit to be ‘the most civilized of them [his clan]’ and allowed only Jack Mungit and his family to remain on Glenmore station.[14] In Emma von Stieglitz’s sketch book spanning from 1839 to 1860 there is a sketch dated November 1852 titled ‘Poor Mungit’s grave Ballan’.[15] We believe this is Jack Mungit’s grave.

Further corroboration that Mungett’s country was the Bacchus Marsh region may be inferred from an inquest held into the death of Jimmy/Jemmy or James Mungett in April 1859, who is listed as being of the ‘Bacchus Marsh tribe of Aborigines’.[16] The relationship between James Mungett and Peter Mungett is unclear, but it is presumed that they were siblings. The second piece of corroboration is the many visits his Bacchus Marsh clanspeople (Marpeang baluk clan) paid him when he was incarcerated in Pentridge prison. Thomas noted three occasions in January and February 1860 when he saw ‘three Bacchus Marsh blacks, permit[ed] one to visit black in gaol’.[17]

Of the Marpeang baluk, Mungett’s local group, we know that in 1840 Bacchus’s men at Bacchus Marsh spoke well of them. John Gray on the upper Werribee River described them as ‘a quiet tribe that assisted the settlers’.[18] By 1858 there were about 29 adults and 12 children at Bacchus Marsh who police magistrate Charles Shuter described as being ‘in good health’. In 1857 a small supply of blankets, rugs, flour, tea, sugar, and tobacco was obtained from the government at the request of local resident Mrs Macleod and distributed by the clerk of the bench. Shuter noted that their principal means of living was through begging, although they only visited Bacchus Marsh once a year and were employed occasionally by settlers.

In 1860, Mordaunt Maclean and James Young were appointed local guardians by the Central Board for the Protection of Aborigines and a depot for the distribution of government rations was established at Bacchus Marsh. In the board’s first report of 1861, Maclean noted that the Aboriginal people in the neighbourhood of Bacchus Marsh spent much of their time ‘wandering about, generally in the vicinity of public houses. They occasionally sold a few fish, or wild fowl, and often performed corroboreys for the amusement of white spectators, after which one of the party carried a hat round to receive contributions, and [Maclean] believed almost every penny they collected was expended on intoxicating liquors’.[19]

A valuable source of information about Peter Mungett are records relating to his criminal convictions held by Public Record Office Victoria. The first prison register entry records that Mungett had two prior convictions in July 1856 and August 1857 for larceny and damaging property (for which he was discharged in April 1858). A later entry contains information relating to the rape conviction which is the basis of this study. [20] In his response to a circular question of the 1858-59 Legislative Council Select Committee on the Aborigines, Charles Shuter referred to Mungett’s earlier crimes, stating that he had ‘been in this district three years, and the only instance of stealing I remember was by a very intelligent aboriginal, who spoke English fluently; he was convicted and imprisoned for petty larceny twice within the year. I think that he learned this habit from the Europeans.'
I do not think it was his nature to steal'.[21] Mungett’s prison record gives his age in 1856 as 25, his native place as Melbourne, and states his connection to the ‘Port Phillip tribe’. [22] This connection is corroborated in Thomas’s weekly reports during 1860, among which there is a note that mentions he knew Mungett from ‘his frequenting Melbourne years back’. [23] Thomas added that he had given ‘him advice but fear that he is a bad one’ and also noted that Mungett ‘had been a bullock driver at good wages’. [24] In Mungett’s later prison register entry his religion is listed as Protestant (which again is corroborated by Thomas’s journal, which notes that Mungett was attending Protestant services whilst in Pentridge), and also records that he was illiterate, a claim that requires further scrutiny. [25] In terms of distinctive physical features, it is noted that he had ‘scars left shoulder left arm, right shoulder, left hip’, and that he was a ‘very hairy man’. It is possible these scars were cicatrices, or ceremonial scarring commonly resulting from initiation ceremonies practiced by many Victorian Aboriginal people in the nineteenth century. The earlier entry in the prisoner register records that Mungett had ‘been a stock driver for Mr McLeod of Bacchus Marsh’, [26] presumably a reference to Hector Macleod of Goodmans Creek with whom James Mungett was also associated. [27]

Mungett’s later prison register entry, for his 1860 conviction of ‘carnally abusing a child under age’ in 1859, at times seems to contradict the earlier entry which records details of his 1856 and 1857 convictions (religion listed as ‘pagan’, ‘breast and belly having scars’). More importantly, the later entry tells us a great deal about prison conditions and Mungett’s attitude towards imprisonment. For instance, we learn that commencing in 1860, frequent misdemeanors such as ‘quarreling’ or ‘has tobacco’ caused him to have seven more days added to his incarceration. Mungett’s lengthy list of transgressions against the prison regime included idleness, disobedience, taking a light, having a knife, insolence and having paper. There is one reference to being ‘illegally at large’, but there is no corresponding reference to the punishment he received for this. [28] Sadly, there are no photographs of Peter Mungett appended to either of his prison register entries.

The legal status of Aboriginal people of Port Phillip

Questions about policies regarding the legal status of Aboriginal people of the Port Phillip District (which later became the Colony of Victoria) were vigorously debated in London, Sydney and Melbourne when squatters began their usurpation of Peter Mungett’s country in 1837. When colonisation of the Port Phillip District began in earnest from 1835, the prickly issue of how to reconcile the rights of Aboriginal people and the wholesale dispossession of their land became a concern of imperial and colonial governments, and the public at large.
Prominent squatters who sought to pressure the colonial government to use ‘coercive measures’ so as to make Aboriginal people in the Port Phillip District ‘experimentally acquainted with our power and determination’[29] were reminded by the NSW colonial secretary that it was doubtlessly, only of late years that the British public has been awakened to a knowledge of what is owing to these ignorant barbarians on the part of their more civilized neighbours; but a deep feeling of their duties does now exist on the part both of the Government and the public, as may be proved by reference to the many inquiries which have been lately instituted on the subject, and particularly by the unanimous address of the House of Commons to his late Majesty, adopted in July 1834, and by a Report of a Committee of the same House, made in the very last sitting of Parliament, both of which documents are of easy access to the public.[30]

However much pressure the colonial government was under by the Imperial Government to cede human and legal rights to Aboriginal people, they were equally pressured by squatters to protect their rights and interests. Imperial and colonial governments conceded to them believing it was ‘now too late’ to refuse military protection to squatters ‘after having taken entire possession of the country, without any reference to the rights of the Aborigines.’[31] In its desire to establish law and order in outlying squatting districts, the British Government advised the NSW governor that ‘all the natives inhabiting those territories [New Holland] must be considered as subjects of the Queen, and as within Her Majesty’s allegiance.’ As a consequence, inquests were mandated in all cases where an Aboriginal person met with a violent death arising from conflict with European settlers.[32] To this end NSW Governor George Gipps issued an order on inquests, stressing the ‘equal right’ of Aboriginal people to the ‘protection and assistance of the Law of England’.[33] Moreover, a moral mandate was explicitly laid upon the colonial governor when exercising legal hegemony over the Aboriginal people of New South Wales as it is impossible that the Government should forget that the original aggression was our own, and that … you may calculate with the utmost confidence on the cordial support of the Crown in every well directed effort for securing to the aboriginal race of New Holland, protection against injustice, and the enjoyment of every social advantage which our superior wealth and knowledge at once confer on us the power, and impose on us the duty, of imparting to them.[34]

To assist in achieving this end the British Government established a comprehensive system of for an Aboriginal Protectorate at Port Phillip. This commenced in 1839 with the appointment of Chief Protector George Augustus Robinson and four Assistant Protectors, William Thomas, Charles Siewwright, Edward Stone Parker and James Dredge. The protectors’ general instructions from London were to guard Aboriginal people ‘from any encroachments on their property and from acts of cruelty, oppression or injustice’.[35] Almost immediately William Thomas, the assistant protector in the Melbourne or Westernport district, along with many of his contemporaries, was scathing of the perilous legal position of Aboriginal people in colonial society. In his journal, Thomas lamented the failure of police to interfere on behalf of Aboriginal people, on one occasion exclaiming ‘Oh my God what an awful picture is society without protecting laws.’[36]

By way of example, in July 1839 Thomas enquired into the case of Korum (alias Jack), one of Mungett’s Wathawurrung countrymen (Tooloora baluk clan), who had been seriously assaulted by a drunken European settler. Thomas was appalled that ‘although the man was taken into custody, because the constable did not exactly see the blow given the Magistrate would not interfere.’ According to Thomas, the police magistrate ultimately dismissed the case ‘as it was aboriginal and the constable [had] not exactly [seen] the bludgeon fall on the black.’[37] Interestingly, Thomas provides us with some insight into how Korum perceived the legal efficacy of the colonial justice system:

I was sorry at this species of injustice as the black was a most quiet man and well liked by the whites. Poor fellow, as we both came out of the Police Office he [Korum] says to me, ‘No wooglewoogle, white man only drunk.’ He was afraid we were going to hang the man. Little thought he was getting off without even a reproof.[38]

Thomas, the other protectors and other non-Indigenous people living in close quarters with Aboriginal people were aware of the differences between Aboriginal customary law and British law with regard to crimes such as murder and rape. On occasion they were placed under great duress by knowledge of this difference and the tensions that it created. For example, William Thomas described in his journal the desperation and rage of an Aboriginal man seeking redress from Police Magistrate William Lonsdale for the detention of his wife by European men.[39] He also noted the difficulty in prosecuting a European man that Thomas had apprehended close to his tent raping a Boonwurrung woman in November 1839.[40] Thomas was mortified to discover repeatedly that he was unable to obtain any legal redress from authorities if it was considered ‘an Aboriginal affair’.[41]
The shortcomings of the British legal system as it applied to Aboriginal people as described by Thomas sprang largely from ‘the blacks being incapacitated from taking an oath’. According to William Lonsdale, ‘their mere statement in a legal point of view is of course of no avail.’[42] This was a parlous state of affairs for both Aboriginal and non-Aboriginal people. The vexing issue of inadmissibility of Aboriginal evidence in a court had surfaced repeatedly among law enforcers, legal counsels, and the NSW colonial office, which in 1839 sought advice from WW Burton, a justice of the NSW Supreme Court. Burton replied that Aboriginal evidence had been rejected by NSW judges in cases where no interpreter could be found for the Aboriginal witness or it was considered the witness was ‘ignorant of a Supreme Being’.[43]

In September 1839, Governor Gipps introduced a new bill to the NSW Legislative Council to allow ‘the aboriginal natives of New South Wales to be received as competent witnesses in criminal cases, notwithstanding that they have not at present any distinct idea of religion, or any fixed belief in a future state of rewards and punishments.’[44] Gipps’s motive was to prevent a repeat of cases where Aboriginal and non-Indigenous criminals had escaped justice due to the inadmissibility of evidence given by Aboriginal people. The Act was disallowed in London as it was perceived to be ‘repugnant to the Laws of England’. [45]

Twenty years later the issue still had currency for the government [46] and the popular press, as seen in a report in the *Port Phillip Herald* of October 1858 concerning a murder trial where the victim and the murderers were Aboriginal.[47] Dr Mackay, the counsel for the Aboriginal defendants in this trial, was later appointed counsel in the case of *R v Peter* after an application from Thomas to the attorney general.[48] *R v Peter* caused a considerable stir in colonial and London legal circles [49] and was widely reported in the Melbourne newspapers. The *Port Phillip Herald* printed three articles in February and one lengthy article in June 1860, and the *Argus* printed five articles in February and one article in June 1860. Interestingly, it was not the racial or sexual nature of the case (involving the rape of a six-year-old European girl by an Aboriginal man) that was the focus of newspaper attention, but its legal implications.[50] B Bridges has discussed the distaste of the non-Aboriginal community for cases of inter-racial sexual crimes in colonial society.[51] Unfortunately it is not possible to gauge local sentiment towards the sexual assault as copies of Bacchus Marsh newspapers for the pre-1866 period have not survived. The *Herald* in its initial coverage of the case considered the defendant’s plea to be above his understanding, observing that an Aboriginal man, known by the name of Peter, was brought up at the Criminal Sessions yesterday, on a charge of abusing a child. He was defended by Dr. Mackay, who put in a plea to the effect that the court had no Jurisdiction over him, as he was born out of the allegiance of the Queen, and belonged to a sovereign and independent tribe residing in the district of Ballan, which had courts of their own, and to which alone he was answerable. The plea, which was verified by an affidavit by Mr. Thomas, J.P., Protector of the aborigines, will be found at length in our Sessions report. We venture to say that Peter was not the least astonished person in court at the extraordinary acquaintance he was represented as possessing of the forms of law and the titular addresses of ‘Our sovereign Lady the Queen, Defender of the Faith, and so forth.’ In order to afford the Crown Prosecutor an opportunity of considering what course he should pursue, the trial was postponed, and the prisoner accordingly remanded.[52]

The *Argus* in its coverage of the trial, and the *Herald* in subsequent reports, did not refer to Peter’s understanding of the point in law being argued by his counsel and the case was duly referred to the Supreme Court of Victoria.

### Mungett’s plea of non-allegiance to the Queen

Both the *Herald* and the *Argus* reported in some detail the serious legal questions surrounding Mungett’s plea of non-allegiance to the Queen and the citing of international precedents relating to the case:

Mungett, who is above informed against by the name of Peter, protesting that he is not guilty of the premises charged in the said information, for plea, nevertheless, saith that he ought not to be compelled to answer to the said information, because he saith that he is a native aboriginal of the island of New Holland, and born out of the allegiance of our Sovereign Lady Queen Victoria … and that the said Mungett did never become subject to, or submit himself or otherwise acknowledge allegiance to, our said Lady the Queen; and that at the time when the said offence in the said information mentioned is therein supposed to have been committed, and long before that time and since, the said tribe was and is still governed by its own laws and customs. And the said Mun-gett further saith, that there is a certain Court held within and by the said tribe, and that all and singular offences of murder, rape, and other felonies committed within the said tribe by any native aboriginal of the said tribe, at the time last aforesaid, before and since, have been, were, and are, and of right ought to be, inquired of, heard, and determined in the said last mentioned Court within the said tribe, and not in any of the Courts of the said United Kingdom, or its dependencies, or any of them, or of the said colony of Victoria, and this the said Mun-gett is ready to verify; wherefore the said Mun-gett prays judgment of the said Court of our said Lady the Queen here, will further proceed upon the information against him, and that he may be dismissed from the Court hereof, and upon the premises,[53]
Beginning on 17 February 1860, the Argus reported the legal consternation which a plea of non-allegiance had caused the colonial and British legal offices in the past, and how it revealed the inconsistencies and inadequacies of previous rulings:

His Honour asked if a similar case to the present had ever arisen in the colony. He had wished to consult the Chief Justice and Mr Justice Barry, who had a good deal of experience in these matters, having been for some time counsel for the aborigines, but he had not had the opportunity.

Dr Mackay had made inquiries, and found that a similar case had arisen before Mr Justice Willis, and had been argued at considerable length by Mr Justice Barry, as counsel for the aborigines. He could find no record, however, of judgment ever having been given in the matter.

Mr Martley could mention another instance somewhat similar, that had come before Mr Justice Willis at Ballarat; but in that case his Honour had ruled that the prisoner, having been for long associate of white men and left his tribe, the plea of avoidance on account of non-allegiance to Her Majesty was of no avail.[54]

The reference to Justice JW Willis is to his September 1841 ruling in a case concerning a Wathawurrung man known as Bonjon, who was accused of murdering another Aboriginal man.[55] Willis ruled that the court was not competent to decide on cases involving crimes committed by Aboriginal people upon an Aboriginal victim. Willis pointed out that the ‘colony stands on a different footing from some others, for it was neither an unoccupied place nor was it obtained by right of conquest and driving out of natives, nor by treaty … ’ He went on to argue that the frequent conflicts between colonists and Aboriginal people indicated that ‘the Aboriginal tribes are neither a conquered people nor have they tacitly acquiesced in the supremacy of the settlers’ and that they must therefore be defined not as full British citizens but ‘dependent tribes governed among themselves by their own rude laws and customs.’[56]

One implication of the newspaper report of proceedings is the issue of the absence in 1860 of formal law reports which led to the court searching around for any living person (such as Redmond Barry, who had been defence counsel for Bonjon in 1841) who might remember and be able to testify about these earlier decisions. This is a point well made by B Kercher who has commented on the ‘great paucity of law reporting in colonial Australia’ owing to the fact that ‘there were no continuous law reports until the commencement of the thirteen volume series’ entitled Reports of Cases Argued and Determined in the Supreme Court of New South Wales, covering cases decided between 1863 and 1879.[57]

Apart from the Herald, which expressed some initial concern with Mungett’s ability to comprehend the address to the court, there seems little evidence that colonial newspapers conceived the special plea as fantastically absurd. Indeed, as shown by the work of Kercher and Cooke, the jurisdiction of colonial law over Indigenous Australians and the recognition of Aboriginal customary law had been an issue in New South Wales since 1829 (R v Ballard, and especially R v Murrell 1836, and R v Bonjon 1841).[58] The outcome of R v Murrell was the decision that Aboriginal people ‘were fully responsible for their crimes under English law, even if the crime was committed against another Aborigine.’[59] Willis in R v Bonjon refused to follow the precedent set in R v Murrell and instead argued that Aboriginal people ‘had their own law and that the British courts should be directed to observe it’. Bridges has noted that Willis’s comments raised some doubts in some colonists’ minds as to the amenability of Aboriginal people to the law, and that the press took notice of the matters he had raised. For example, the Port Phillip Gazette argued that while Willis had to relinquish the crazy notion that Aboriginal people could indulge in every kind of wickedness and barbarity among themselves yet at same time be made amenable in their dealings with Europeans. The newspaper urged the government to likewise accept the folly of governing Aboriginal people by British law. [60]

Wathawurrung customary law and cultural continuity

Mungett’s plea was not only a challenge to the compulsion to bring Aboriginal people up under British law. The plea was also an assertion that Mungett had never acknowledged an allegiance to the Queen, that his tribe had its own laws and customs, and that it had a specific punishment for the crime of rape and attempted rape of a child. Furthermore, the plea asserted that Mungett be delivered up for traditional justice if there was a case to be heard against him, or if no case existed under such traditional justice that he be released immediately.
In Mungett’s confidential statement to Thomas about the rape charge he does not dispute sexually interfering with the child, indeed he claims that he digitally raped her and was adamant on a number of occasions that he ‘never touched her with my private [nineteenth century euphemism for penis] finding her too small.’[61] In Thomas’s papers we gain some insight into Wathawurrung customary law regarding rape. He observes that in instances where a ‘blackfellow violates or tries to violate, very young child – Girls father and old men talk about it, and father beats Young man over head with waddie – the Child is retained by the father till big enough, and then, given to the Young Black who tried to Ber-ket-tun-ner.’[62]

Peter Mungett did not want British legal protection; he wanted to live according to his own peoples’ law. This raises the question of whether the society to which Peter belonged had survived to be able to consider his crime. It has already been established that Peter was a member of the Marpeang baluk local group that belonged to the Bacchus Marsh and Ballan districts within the Wathawurrung language area. From available census data and estimations of population, we know that some 29 adults and 12 children were recorded as living at Bacchus Marsh, and in 1862 some 33 Aboriginal people were listed as being resident at Bacchus Marsh. In terms of the Bacchus Marsh, Ballarat, Buninyong, and Mt Emu districts, the combined Aboriginal population in 1861 was estimated to be 255.[63]

Certainly, some ‘traditional’ practices were still being adhered to. As noted earlier, Mordaunt Maclean reported to the Central Board for the Protection of Aborigines that at Bacchus Marsh the local Aboriginal people occasionally sold a few fish, or wild fowl, and often performed ‘corroborees’ for the amusement of Europeans, after which one of the party carried a hat round to receive contributions. Peter’s father Jack Mungit had died before 1852. Although a leading man in the Marpeang baluk, he was not its ngurunggoeta (clan-head or elder), that position was held by Worope, also known as Captain Malcolm, who was still alive in 1863. Other leading Wathawurrung ngurunggoeta known to be alive in the early 1860s included ‘King William’ (Beerequart baluk clan), ‘King Billy Phillips’ (Burrumbeet baluk), ‘King Billy’ (Pakeheneek baluk), and ‘King Johnathon’ (Tooloora baluk).[64] When Peter Mungett asserted his people were able to consider his crime according to traditional Aboriginal law, it would have been Wathawurrung men of the stature of Worope who would have heard his case.

**Mungett’s relationship with William Thomas**

William Thomas assumed a long-standing and sincere interest in Mungett’s case, a fact acknowledged in many of the newspaper reports [65] and confirmed by frequent references in Thomas’s and Mungett’s private correspondences. At Pentridge prison on 24 January 1860 Thomas transcribed a confidential statement from Mungett about his version of the assault and rape. This clearly demonstrated both Mungett’s firm trust in Thomas and Mungett’s knowledge of legal confidentiality. ‘Peter (alias Mun-gett),’ Thomas noted, ‘gives me the following statement, after stating to me Marminar [the Protectors and Thomas as Guardian were often referred to as Marminata or Father] I know you like Black fellows all about – me tell you no lies, you I know no tell another white man.’ In his journal, Thomas records visiting Mungett on an almost daily basis and that he attempted to assure him all legal avenues for his defence were being pursued, encouraging him by saying ‘I think I can get him Big one Wig to talk for him:’[66]

From Thomas’s viewpoint Mungett was very intelligent, [67] understood the precepts of Christianity, and was remarkably adept at understanding some of the legal nuances, processes and avenues available to him. Thomas, as noted earlier had arranged with the chaplain at Pentridge to instruct or minister to Mungett upon him receiving his death sentence. Thomas informed the chaplain that Mungett ‘has knowledge of a creator, where wicked and good go after death.’[68]

While awaiting the outcome of his appeal Thomas regularly visited Mungett in jail and kept him informed of the legal processes that were transpiring. Thomas noted Mungett’s anxiousness and his ‘critique of racism in the criminal justice system.’[69] On 8 May 1860 he noted in his diary that he visited Mungett in jail and told him ‘that his case has not been argued by the three judges – he fears the delay is ominous … he is very sensible and tells me that another is waiting like him, but he says white man death only recorded – but he death passed on him. I told him his crime tho’ not death with blacks, is death with the whites.’ A week later Thomas is able to relate to Mungett that the plea is in his favour regarding a remission of the death sentence. Thomas was impressed with Mungett’s response, noting that ‘he very sensibly replied I am afraid it will be heavy – in fact this black is as sensible and understands terms as correct as any white man of his age.’[70] Thomas’s journal and reports for the period from January to April 1860 contain many references to Peter Mungett’s anxious requests to receive appropriate representation.[71]
Between his sentencing in February and his appeal hearing in June 1860 further reports did not appear in the press. There was, however, a growing sense of unease reported when the appeal case progressed to the Supreme Court. The reportage of the trial took on the ever-more sombre tones of legal gridlock. Legal correspondents in June 1860 reported on the complexity of the case and the domestic and international precedents which the court heard in reference to *R v Peter*. The judgement of the Supreme Court in *R v Peter* was tested in Victoria three months later when an Aboriginal man known as Jemmy or Jimmy (*R v Jemmy/Jimmy*) was tried in the Castlemaine Circuit Court for killing his Aboriginal wife. At that time, the question before the court was whether ‘in the absence of evidence that either of these natives had become civilized, or had changed their habits or mode of life so as to be supposed voluntarily to have submitted themselves to British Law’.

Although the defence lawyer argued that a sovereign authority was able to sanction pre-existing laws and ‘to confine them in their operation to the race which was subject to them’ the court rejected this argument and confirmed the supremacy of its jurisdiction throughout the colony ‘and with regard to all persons within it’. Cooke has provided a fuller analysis of this case.

Peter Mungett’s death sentence was commuted to ‘15 years on the roads, first three years in irons, to serve one third beyond minimum’. Mungett remained in Pentridge prison and he continued to correspond with William Thomas seeking his assistance. His letters to Thomas reveal a great deal about his grasp of the British legal system, as evidenced by the following letter dated 7 January 1861:

Pentridge Stockade  
7 January 1861

Mr Thomas  
Aboriginal Protector  
Richmond

Sir, I would be very grateful if you could find time to come here to see me as soon as you conveniently could, as I have business of importance to consult you about, which I can only explain properly in a personal interview – By applying at the Inspector General’s Office in town you can procure an order to admit you into the Stockade at any time. With many apologies for troubling you, I remain

Your obedient servant  
Peter Mungett

Reg. No. 3035

At least three more letters were sent by Peter Mungett to Thomas asking and pleading with him to ‘do all he could’ on his behalf. The letters are remarkable, for all display the same degree of literacy and legal knowledge, yet according to Mungett’s 1856 and 1860 entries in the prison register he could ‘neither read nor write’. Given that Mungett’s letters are written by three different hands it seems likely that Mungett enlisted the assistance of Mr Stoddart, the Pentridge chaplain in 1860, and also another person within the stockade to act on his behalf. Thomas noted that immediately after Mungett’s sentence of execution had been passed down he went to see Peter and observed ‘Peter is very cast down – I use influence to get him liberty from the solitary cell to the open condemned yard – Mr [illegible] who is also [illegible] anxious on behalf of the Aborg’s – states he [illegible] give him liberty in the yard … make arrangements with Mr Stoddart the Chaplain of the jail for instructing Peter …’ The following letter serves as an example of Mungett’s apparent erudition:

Pentridge Stockade  
March 28th, 1863

Thomas Esq. Black Protector

Sir/- Having expected to hear from you for some time past relative to my liberation from here and not having heard whether you are interceding for me or not, I beg most respectfully to solicit that you will use your endeavour, to effect an early liberation for me. I have now been here upwards of three years which is a very long period to remain confined and during that period my conduct has been exemplary; and this ought in some measure to induce you to assist me as far as lay in your power.

Hoping you will send me a reply stating what I may expect, on this head as soon as convenient.

I remain Yours Respectfully  
Black Peter Munget

Thomas wrote in 1864 to his superiors with a hint of exasperation that ‘I have generally three letters from him during the year, all to the same purpose’. After this note our knowledge of Mungett is fragmentary. From notations on his entry in the prison register we learn that he was released from Pentridge on 25 February 1871 with a ticket-of-leave and that he was to depart for the County of Bourke and report at Mornington. It is unclear why he would not be permitted to return to the Bacchus Marsh-Ballan region. Upon his release he ‘disappeared from official surveillance, remaining “illegally at large”’. What became of Mungett is not known, although Cooke suggests there is some evidence that he returned to his country.
Sources of Mungett’s legal knowledge

As has already been observed, an interesting aspect of this case is the apparent legal knowledge of Mungett. Cooke has noted that Mungett’s actions indicated that he had an understanding of English law. For example, it was his idea to retain counsel. During his second day in the Melbourne Gaol he dictated a letter to another prisoner ‘soliciting Council [sic] to plead his case’. How did he know to ask for counsel? How did he gain this knowledge of English law? Cooke suggests it may have been restricted to knowledge that counsel was an important part of persuading the judge of one’s case. He considers it less likely that Mungett had much to do with the argument put forward by his counsel. Cooke has noted that ‘Peter certainly had some understanding of the rituals of the criminal law, and also understood the distinction between the “passing” of a sentence of death and the “recording” of death. His knowledge of the law appears to have been exceptional’.[82]

It is to be expected that Wathawurrung people had a considerable knowledge about the colonisers’ laws and customs, especially as they related to sexual offences, considering their dealings in this sphere of law dated back to the first days of official occupation. [83] In addition, William Thomas frequently recorded his interactions with Aboriginal people incarcerated in Pentridge prison and also noted the occurrence of Aboriginal people visiting their kin. This frequent contact with colonial law and informal counsel from legal advocates such as Thomas would no doubt have informed Aboriginal communities and led to people such as Peter acquiring a good deal of knowledge about legal procedures available to them.

Peter certainly had gathered knowledge about colonial legal procedure through his own frequent dealings with the law and in all probability had accumulative knowledge of British legal rituals via his wider community’s extensive dealings with law and punishment in Victoria.[84] Ballan police magistrate Charles Shuter had noted in official correspondence that Mungett was ‘very intelligent’ and that he ‘spoke English fluently’. It is possible that he had been taken under his wing by Hector Macleod and his wife, for whom he had worked as a stock driver and bullock driver. Mrs Macleod had shown an interest in the welfare of the Marpeang baluk in 1857 seeking a government supply of rations. The other possibility is James and Jessie Young, James became a local guardian in 1860 and was instrumental in the establishment of early schools in the Bacchus Marsh district.

A more likely possibility, however, is Charles James Griffith (1808-1863), a squatter in the Bacchus Marsh district who had been associated with the Marpeang baluk since 1841. An Irish barrister, Griffith had studied at Trinity College at Dublin University, and graduated with a BA and MA. He immigrated to the Port Phillip District arriving on 31 October 1840 with close friend and partner James Moore (1807-95), who had also graduated with an MA in law.

Griffith was active in Aboriginal affairs in Port Phillip. In Melbourne, before leaving to visit some country stations, Griffith recorded in his diary that on 28 November 1840 he ‘visited the natives accused of the murder of a shepherd at the gaol’. He also noted that they were ‘the first natives whom I have seen’. On 13 December 1842 Griffith was one of three members of a board appointed to investigate the conduct of assistant protector William Le Souef who had replaced James Dredge in the Goulburn district.[85] The board was chaired by Commissioner for Crown Lands for the Geelong district GS Airey, and the third member was the coroner Dr WB Wilmot. Together with FA Powlett, Griffith conducted enquiries into the killing of two Aboriginal families who were sleeping beside a small tributary of Mustons Creek [86] on Smith’s and Osbrey’s Caramut run on 24 February 1842. The murders came to be known as the Lubra Creek massacre. Powlett and Griffith filed a report on their enquiries on 12 February 1843. Chief Protector George Augustus Robinson sent Griffith a note on 13 May 1843 regarding his assistance with the murder case. Powlett and Griffith filed a report on their enquiries on 12 February 1843. Chief Protector George Augustus Robinson sent Griffith a note on 13 May 1843 regarding his assistance with the murder case. Two days later Griffith assisted Robinson with taking depositions from the Crown informant in the murder case, Christopher McGuinness.[87] In 1845, Griffith provided evidence to the NSW Select Committee into the Port Phillip Aboriginal Protectorate.[88]
Griffith was also associated with some of the key officials in the Western District of the Protectorate. [89] His circle of friends included Samuel Pratt Winter who was renowned as a ‘champion and protector of the black race’, and Redmond Barry, the Standing Counsel for the Aboriginal people of Port Phillip. [90] Soon after Griffith and Moore arrived in Melbourne, both men sent their law books to Redmond Barry ‘having promised him the use of them until we may require them ourselves’. [91] Michael Christie has noted that writers such as Edward Parker, Thomas McCombie, Charles Griffith, William Westgarth, George Rusden, and Edward Wilson provided the information, arguments and catchcries necessary for the advancement of their cause. These were taken up by philanthropists, churchgoers, ethnologists, and a small group of ex-squatters, who were in sympathy with the Aboriginal cause. [92] What is important ‘about this group is that although they repudiated the racist claim that Aborigines were a type of non-men, whose extermination was a law of nature or a decree from heaven, they still believed that the Aborigines were inferior, and that it was therefore justifiable to take and “improve” their land in the interest of progress’. They professed the view that Aboriginal people ‘were not intrinsically inferior and that they could be civilised and incorporated into white society, and that their extinction was not inevitable’. From 1856 this group began to press the Victorian Government to do something for Victoria’s Aboriginal community, and urged the government to give top priority to the formulation of a positive Aboriginal policy. [93]

From 1841 Charles Griffith became intimately associated with Peter Mungett’s family when he acquired a pastoral run that centred on the Marpeang baluk clan estate. On 18 December 1840 while travelling to George Airey’s Lal Lal station, he met with his first natives ‘at large’ at a halfway house. Airey showed Griffith the Weiraby Vale run, which he had previously owned, albeit for six months. Weiraby Vale, Gorrockburkghap, or sometimes simply The Gully, was held by William McKenzie. [94] On 26 December 1840 Griffith and Moore purchased the run which they renamed Glenmore. The run comprised 55,000 acres (22,257 hectares) on the Parwan Creek; its northern boundary was the Werribee River, and the Little River formed part of its southern boundary.

Griffith’s first encounter with Mungett’s people, the Marpeang baluk and other members of the Wathawurrung, was on 1 February 1841 when he recorded that a number of them ‘came and settled here on Monday – they seem quite harmless’. [95] Griffith noted on 5 February 1841, that the ‘natives are still “quambying” here as they style it – Jack Mungit has made his appearance – he is the most civilized of them and was useful to Mackenzie [the former owner of the station] in getting bark to roof his huts etc. They are not all of the same tribe and so have pitched their misims or huts apart from each other’. In another entry he noted that they had decided ‘to give no more flour to anybody but Jack Mungit whom we make work a little carrying water etc. However this have had no effect tomorrow we intend telling him that unless they go tomorrow no more flour for Jack’. Griffith noted ‘Captain Malcolm, as he is called, and Jack Mungit are the best known persons in this tribe they are men of apparently from 40-45 years of age’.

In 1844 Charles Griffith left for Ireland where he stayed for three years, returning to Port Phillip in 1847. [96] In 1852 Griffith was appointed a magistrate for Bacchus Marsh, and from 1856 until 1858 he served as a member of the Victorian Legislative Assembly. In February 1858 he visited Britain, and returned to Victoria in 1862. [97] During his first year in Dublin he wrote his treatise Present State and Prospects of the Port Phillip District of New South Wales which was published in 1845. In this publication Griffith mentions Jack Mungit, referring to as ‘an old black friend of mine’. [98] Griffith also wanted the question of Aboriginal land rights out in the open: ‘if we have no right to occupy the country, no course of subsequent dealing can, in the form of conscience, cure the original defect of title; and the sooner that we retrace our steps, and that every European departs from the shores of Australia the sooner shall we have shown a sincere regret for the injury we have already caused to the natives’. [99] Griffith referred to the challenge of framing a code of laws that afforded protection to the native and security to the settler at the same time. ‘To hold the balance even between the two, is, however, by no means an easy task; and our rulers have eluded to the difficulty: “Declare them,” say they, “in the fullest sense of the words, British subjects; give them the rights of British citizens, and the protection of British law”. But, before doing this, they should have reflected, that the laws which are well suited to a civilized people, living in fixed abodes, may be totally inapplicable to hordes of wandering savages … And they should have considered what were their means of carrying the law into effect, in case their new subjects did not consider themselves bound by it’. [100]
Griffith offered several legal pathways that were open to the British government; one included the following:

- to allow them to remain in their present wild state, and so to modify the English law as to make it more suitable to the circumstances in which they are placed. Such modifications to include the securing to them the benefit of legal assistance upon their being brought to trial – the doing away with the necessity of proving their capacity to understand the proceedings of the court, and to exercise their right of challenge – the making their evidence receivable in a court of justice, without proof of their belief in a future state of rewards and punishments – the declaration that they should only be held responsible, either as regards the settler or each other, for those offences against the laws of England, which are also offences against the law of nature, or clearly incompatible with the welfare of society, and which should be clearly and simply defined – and lastly, the denying them, under certain restrictions, that indulgence, with respect to their persons, to which (according to my view of English jurisprudence) they have not entitled themselves.[101]

I have my residence in a part of the country where the natives are perfectly harmless – that I have never lost a single sheep, or any thing else, through their means, but, on the contrary, have frequently availed myself of their assistance in recovering such as were lost, and in other ways, and that I have always lived on the best terms with them.[102]

Entries in Griffith's diary and in his published work confirm the intimate association between Griffith and Jack Mungett, a leading man in the Marpeang baluk. Mungett, and presumably his family, were permitted to reside at Glenmore. Through this association Griffith was able to gain considerable insight into 'traditional' Aboriginal social customs and practices, as reflected in his chapter on Aboriginal society in his 1845 publication, and the collection of Wathawurrung vocabulary in his 1840-1841 diary.

In Griffith's 1845 publication he discusses: his amusement at watching preparations for corroborees (p. 157); having witnessed corroborees (p. 158); having once been present at the commencement of a ritual fight between two tribes to enact punishment (p. 160); his enquiries regarding the outcome of the punishment 'from an old black friend of mine, Jack Mungit' (p. 161); and the notion of resuscitation of black men as white men (p. 165). During his first two years at Glenmore, Griffith's diary records three pages of Wathawurrung vocabulary [103] and two sketches of two Wathawurrung men – Koram and Perninul. All this is evidence that he was interested in Aboriginal people and that Aboriginal people were receptive to his interest in them.

Leading men in Aboriginal groups sought to maintain close relationships with the holders of the pastoral stations that formed on their ancestral lands. By maintaining positive relationships with those station holders who permitted them to be on their stations, the Aboriginal people were guaranteeing that they would be able to continue to maintain their relationship with their lands. Many leading men formed long-standing friendships with the holders of pastoral stations and by maintaining a relationship with these families the Aboriginal people were able to guarantee an ongoing relationship with their traditional estates. This is one possible way of understanding Jack Mungett's relationship with Charles Griffith. It is possible to find in the 1840s and later numerous examples of a close connection forming between the European station holders and the families of these leading Aboriginal men (for example, Barringbittarney at Nareeb Nareeb, Billy Leigh at Woolamanata, and Thomas Ware at Challicum and Blythevale).[104] Furthermore, several squatters across Victoria were known to have fostered an educational interest in Aboriginal youths – for example, Colin Campbell at Buangor gave the son of ‘King Willam’ of the Ngutuwul baluk ‘a lesson in geography’. [105] During the first period at Glenmore (1841-44) before his first overseas absence, Griffith was a single man and although he married whilst in Ireland, he and his wife never had children. When Griffith purchased Glenmore, Peter Mungett was approximately 10 years of age. It is not that farfetched to imagine that Charles Griffith took an active interest in the welfare and education of young Peter Mungett, and it is probable that Griffith was the source of his knowledge of the British legal system.

**Conclusion**

Mungett's case was the second instance in which an Aboriginal prisoner before a Victorian court refused to plead, on the grounds of his not being a British subject and therefore subject only to Aboriginal customary law. This paper has assessed the doubts that existed in the British and colonial legal systems about jurisdiction over Aboriginal people by focusing on the importance of _R v Peter_, heard by the Supreme Court of Victoria in 1860. Although the case raised vexatious issues of the legal status of Aboriginal people and Aboriginal customary law, the special plea was overturned. The legal demurrer was ultimately unsuccessful and despite Mungett's plea of not guilty, he was convicted and sentenced to death, though later this was commuted to fifteen years imprisonment.
The paper highlights the legal implications of Aboriginal peoples’ standing before British law and also uncovers noteworthy information about issues of nineteenth-century Aboriginal customary law in regards to rape and sexual assault, and a small but significant linguistic contribution to this sensitive topic.

Peter did not want British legal protection rather it was his wish to live according to his people's own laws; this paper has considered Mungett's cultural milieu and confirmed that the traditional Wathawurrung Aboriginal social and legal system was present sufficiently in 1860 to warrant his claim that he should be tried by his own people rather than the colonial court. Moreover, this discussion has identified that the unequal position of Aboriginal people in white society (at law) had not improved in over two decades. By way of example the authors have uncovered that Mungett’s private statement of guilt about the sexual assault was deemed inadmissible despite the fact that the court ruled he was subject to British law. This inadmissibility is all the more striking in light of the evidence, such as Mungett's letters, private deposition and observations made by Thomas, that Mungett was seemingly cogent of the Christian notion of a 'Supreme Being'. This study complements Cooke's case notes published in 1999 by considering the cultural milieu in greater detail. Some attempt has been made to account for Mungett's apparent legal knowledge. Another issue that the case highlights is that of the paucity of legal reporting in colonial Australia which presented the Victorian legal authorities with considerable difficulty when dealing with this case in 1860.

Endnotes


[2] Tracing Aboriginal people through colonial public records is often difficult because of the variation in the spelling of traditional Aboriginal names and by the various non-Indigenous names that were often bestowed upon Aboriginal people by Europeans. Furthermore, Aboriginal people themselves sometimes assumed different names. Mungett was variously referred to as: 'Peter, an Aboriginal' in criminal trial briefs (see PROV, VPRS 30/P0, Unit 230, case number 2 of Melbourne Criminal Court, 15 February 1860; 'Peter Munget', 'Black Peter', and 'Peter Mungit' in William Thomas's journals and in his correspondence with Mungett (see William Thomas papers, Mitchell Library MSS 214/5, item 3, microfilm CY 3128); and as 'Oondiat' in Assistant Protector Edward Stone Parker's reports (see PROV, VPRS 4410/P0, Unit 2, Item 53 – this can be accessed on the microfiche copy that is part of VPRS 4467).


[10] Peter, an Aboriginal, PROV, VPRS 515/P0, Unit 5, prisoner number 3035.

[11] Edward Stone Parker, statement of Aborigines fallen in with, January – March 1840, PROV, VPRS 12/P0, Unit 1 (this can be accessed as a microfiche copy as part of VPRS 4467).

[12] Report of Edward Stone Parker, August 1841, PROV, VPRS 4410/P0, Unit 2, Item 53 (this can be accessed on the microfiche copy that is part of VPRS 4467).


[15] KR Von Steiglitz (ed.), Emma von Stieglitz: Her Port Phillip and Victorian album, captions by PL Brown, Fullers, Hobart, 1964, p. 26. Brown’s caption suggests that the Mungett depicted in this sketch was a woman, however we have not uncovered any references to confirm that any Marpeang women ever had this name.

[16] Inquest of James Mungett, 8 April 1859, PROV, VPRS 24/P0, Unit 65, Item 1859/329.

[17] William Thomas, weekly report of Guardian of Aborigines, 16-22 January 1860, PROV, VPRS 2896/P0, Unit 4, A1860/368 (this can be accessed as a microfiche copy that is part of VPRS 4467).

[18] Clark, Aboriginal languages, p. 323.

[19] ibid, p. 301.

[20] Peter, an Aboriginal, PROV, VPRS 515/P0, Unit 5, prisoner number 3035, and Peter, an Aborigine, PROV, VPRS 515/P0, Unit 8, prisoner number 5160. See also the capital case file of Peter (an Aboriginal), PROV, VPRS 264/P0, Unit 2.


[22] Peter, an Aboriginal, PROV, VPRS 515/P0, unit 5, prisoner number 3035.

[23] William Thomas, weekly reports of Guardian of Aborigines, 30 January – 5 February and 20–26 February 1860, PROV, VPRS 2896/P0, Unit 4, B1860/591 and A1860/1007 (these can be accessed as a microfiche copy that is part of VPRS 4467). The reference to Mungett’s country as ‘Port Phillip tribe’, which usually refers to Woiwurrung or Boonwurrung, is indicative of the rapid demographic decline that had occurred among Aboriginal people across the Port Phillip District in the preceding 25 years. By the 1850s non-Indigenous commentators including William Thomas rarely recorded the clan or even the language name of Aboriginal people, referring to Aboriginal people in broad geographical terms such as ‘Murray Aboriginals’ or ‘Melbourne Blacks’.

[24] William Thomas, weekly report of Guardian of Aborigines to President of Land and Works, 26 August 1857, available as microfiche copy as part of PROV, VPRS 4467/P0.

[25] Peter, an Aborigine, PROV, VPRS 515/P0, Unit 8, prisoner number 5160; on 25 March 1860, In his journal (January – July 1860) Thomas noted ‘I see him regularly seated with the Protestants at 11 for service – he said he understood some part[s]’, William Thomas papers, Mitchell Library MSS 214/5, item 1, microfilm CY 3128. On 30 January 1860, Thomas notes in his journal that an Aboriginal named Timothy accompanied Thomas on his regular visits to Pentridge, and that he ‘reads again his New Testament’ to Mungett and ‘has a long conversation with prisoner Peter’. This could be evidence that Peter could not read but it is not conclusive. See William Thomas journal, Mitchell Library MSS 214/5, item 3, microfilm CY 3128.

[26] Peter, an Aboriginal, PROV, VPRS 515/P0, Unit 5, prisoner number 3035.

[27] Mungett noted to Thomas: ‘I have been with Mr Frances for twelve months at the time [of the sexual assault] I have been with Mr Macleod and others for many months breaking in horses and working’, William Thomas papers, Mitchell Library MSS 214/5, item 1, microfilm CY 3128.

[28] Peter, an Aborigine, PROV, VPRS 515/P0, unit 8, prisoner number 5160.


[31] ibid.


[34] ibid, pp. 754-5.


[37] ibid, p. 533.

[38] ibid, pp. 532-3. Wugel wugel is the eastern Kulin word for string, obviously a reference to the hangman’s rope or noose.


[40] ibid, p. 559.

[41] ibid, p. 562.


[45] ibid, p. 761.

[47] ‘Are the Aborigines British Subjects?’, Port Phillip Herald, 19 October 1858, p. 5.

[48] Thomas to Commissioner of Land and Survey regarding Mungett, 28 January 1860, PROV, VPRS 2896/P0, Unit 4, B1860/527 (this can be accessed as a microfiche copy that is part of VPRS 4467).

[49] In his notes, William Thomas wrote during October 1860 that ‘Dr Mackay informs me that Judge Pohlman tells him that the London Law Times – had a note of Peters trial February last – Says Dr Mackay is right & Court wrong – Dr Mackay says he is going to present Mungett to Queen’s Privy Council’, William Thomas papers, Mitchell Library MSS 214/5, item 3, microfilm CY 3128.

[50] In his role as Guardian of the Aborigines of Victoria, Thomas had acted as mediator on several occasions in the 1850s for Aboriginal people on charges of assault and rape involving European women. Thomas noted in his 1856 annual report for example that ‘Harry another Sydney black is committed for trial for an assault and attempt on a White woman, subsequently tried and sentenced to two years hard labor on the roads’, see William Thomas Guardian of Aborigines annual report to the Surveyor General, 31 December 1856, available as a microfiche copy as part of PROV, VPRS 4467/P0.


[53] Argus, 16 February 1860, p. 3.


[56] Criminal trial brief for ‘Queen versus Bon Jon’, PROV, VPRS 30/P0, Unit 185, NCR 9; Port Phillip Patriot, 20 September 1841; MF Christie Aborigines in colonial Victoria 1835–86, Sydney University Press, Sydney, 1979, p. 113.


[62] See Thomas journal for 1860, William Thomas papers, Mitchell Library MSS 214/5, item 3, microfilm CY 3128. It is possible that Ber-ket-tun-ner is the Wathawurrung lexicon.

[63] Clark, Aboriginal languages.

[64] Ibid.


[67] Thomas intimated on a number of occasions that while he abhorred Peter’s crime he found Peter quite likeable and after spending an entire afternoon with him on 20 February 1860 noted that ‘he is very intelligent’, journal of January – July 1860, William Thomas papers, Mitchell Library MSS 214/5, item 1, microfilm CY 3128.


[71] Guardian of Aborigines, weekly report of William Thomas, 27 February to 4 March 1860, PROV, VPRS 2896/P0, Unit 4, A1860/1248 (this can be accessed as a microfiche copy that is part of VPRS 4467).


[73] Argus, 7 September 1860, p. 6(a).


[75] Capital case file of Peter (an Aboriginal), PROV, VPRS 264/P0, Unit 2.

[76] Peter Mungit to Thomas, letter from Pentridge Stockade, 7 January 1861, William Thomas papers, Mitchell Library MSS 214/17, microfilm CY 3100.

[77] Capital case file of Peter (an Aboriginal), PROV, VPRS 264/P0, Unit 2; Thomas, entries for 22-23 February 1860 in journal January – July 1860, William Thomas papers, Mitchell Library MSS 214/5, item 1, microfilm CY 3128.

[78] Peter Mungit to Thomas, letter from Pentridge stockade, 28 March 1863, William Thomas papers, Mitchell Library MSS 214/19, microfilm CY 3104.

[79] Peter, an Aboriginal, PROV, VPRS 515/P0, unit 8, prisoner number 5160.


[81] ibid, p. 212. Cooke, ‘Arguments for the survival of Aboriginal customary law in Victoria’, notes that there is an oblique annotation in the prison register that Peter had returned to Bacchus Marsh. He disappeared five months after receiving his ticket-of-leave.

[82] ibid, p. 229.

[83] Before the arrival of magisterial authority at Port Phillip ‘an act of aggression … committed upon one of the [Aboriginal, probably Wathawurrung] women led to a party of about 150 Aboriginal people ‘demanding redress’ for the crime of ‘abusing her person’. According to local colonist John Fawkner, the Aboriginal people seemed satisfied that the matter had been resolved to their satisfaction by sending the offender away from the community to Tasmania. See Gellibrand in TF Bride (ed.), Letters from Victorian pioneers, Heinemann, Melbourne, 1898, pp. 6-32. See also Fawkner diary, 12-15 February 1836 in CP Billot (ed.), Melbourne’s Missing chronicle by John Pascoe Fawkner, Quartet Books, Melbourne, 1992, p. 38.

[84] Guardian of the Aborigines, weekly report of William Thomas, 15-21 November 1858, PROV, VPRS 2896/P0, Unit 2, C1858/2206 (this can be accessed as a microfiche copy that is part of VPRS 4467). Thomas recorded that some Aboriginal people from Bacchus Marsh had visited Tara Bobby and Billy Logan at Pentridge.

[85] The Board of Inquiry met in June and July and reconvened in December 1843. On 30 December 1843, the board confirmed that Le Souef had misused his appointment by embezzling government funds, stores and rations, and by using Protectorate servants, equipment and land for his own profit. La Trobe subsequently dismissed Le Souef.


[87] Ian D Clark (ed.), The journals of George Augustus Robinson Chief Protector, Port Phillip Aboriginal Protectorate, Vol. 3, Heritage Matters, Clarendon, 2000. A group of six Europeans comprised of Robert Whitehead, the licensee of the adjoining Spring Creek run, and several of his employees, and two employees of the Caramut run, attacked the Aboriginal families. Four women and a male child were killed. Griffith’s good friend Redmond Barry, standing counsel for the Aborigines, conducted the prosecution. Three of the men, Richard Hill, Joseph Betts, and John Beswicke, were tried in July and August 1843 and found not guilty. Whitehead, Boursiquot, and Smith absented themselves temporarily from Port Phillip.

Griffith visited the Mount Rouse Aboriginal protectorate station in July 1842 (see C Griffith, *Present state and prospects of the Port Phillip District of New South Wales*, William Curry, Jun. & Son, Dublin, 1845, p. 194). He refers to having conversed with Sievwright, the assistant protector, on the subject of cannibalism (p. 149). On 8 February 1842 James Moore married Harriet Watton, the daughter of Dr John Watton of Exford station (see B Osborn, *The Bacchus story: A history of Captain WH Bacchus, of Bacchus Marsh, and his son*, Bacchus Marsh & District Historical Society, Bacchus Marsh, 1973, p. 99). Watton had held Exford station on the Werribee River, sometimes known as Mount Cottrell, from 1839 until 1842 when he transferred ownership to Simon Staughton (p. 31). Exford adjoined Glenmore, and Watton’s hut was near the confluence of the Toolam Toolern Creek and the Djerrywarrh Creek. Acheson French, who later married Anna Watton, one of Watton’s daughters, was living at Exford in January 1841. French approached the Chief Protector George Robinson in January 1841 and applied for the position of assistant protector for the Goulburn district which had been vacated by James Dredge. This is another Aboriginal connection, for Dr Watton served as medical officer in charge of the Western District of the Port Phillip Aboriginal Protectorate from August 1842 until late 1849.


Griffith diary, 18 November 1840.


ibid.

Osborn, p. 31.

Griffith diary, 3 March 1841.


ibid, p. 161.

ibid, p. 168.
Superintendent La Trobe and the amenability of Aboriginal people to British law 1839-1846

Dr Frances Thiele

Abstract

In July 1846 the Superintendent of Port Phillip, Charles Joseph La Trobe, sent the Colonial Secretary in Sydney an extensive report about a matter of great importance to him – the effective prosecution of criminal cases involving Aboriginal people. By the mid-1840s the continual problems that beset prosecutions of this nature frustrated La Trobe to the extent that he decided to restate the issues clearly in a long letter, outlining the considerable confusion that existed about the legal status of Aboriginal people, evidentiary law and the role of magistrates in criminal cases. La Trobe expected that his presentation of ‘plain facts and past experience’ of the matter would enable the New South Wales Governor to ‘bring the subject more distinctly under the attention of the Home Government’. This was not the first time La Trobe had brought the problematic character of judicial proceedings to the attention of colonial authorities. As superintendent, he attempted to highlight what he thought were defects in the criminal justice system. Ultimately his efforts did little to change legal practice but are a valuable insight into his approach to Aboriginal issues and the difficulties he faced while attempting to fulfil one of his most important duties – the improvement of conditions for Aboriginal people and the resolution of conflict in a rapidly expanding white society.

Charles Joseph La Trobe arrived in the Port Phillip District in October 1839 he believed emphatically in a dual approach to improving conditions for those Aboriginal people who were suffering as a result of European settlement.[1] A Colonial Office appointment, La Trobe agreed with the British Secretary of State for War and the Colonies, Lord John Russell, that it was the government’s ‘sacred duty’ to compensate Aboriginal people for the taking of their land by giving them the ‘blessings of Christianity’ and the ‘advantages of civilized life’.[2] While a belief in God would take care of their spiritual well-being, La Trobe believed that the application of British law would protect Aboriginal people and settlers alike. He also agreed with the British Government policy that ‘English Law would be a means of civilising indigenous people’. [3] God and the law were the mainstays of La Trobe’s approach to ensuring a peaceful co-existence of Aboriginal people and Europeans in his District. Unfortunately, neither was particularly successful. While La Trobe could offer few ideas for the improvement of missionary endeavours towards the Aboriginal community, he repeatedly tried to draw attention to the problematic character of criminal cases involving Aboriginal people.
On taking up his appointment as Superintendent, La Trobe soon became aware of the extent of violence occurring between the settlers and the Aboriginal population. In October 1840 he reported to the Colonial Secretary the ‘continued and increasing acts of aggression by the natives on the property of the settlers, and the acts of reprisal to which they give rise in the Port Phillip district’. Armed with a heightened sense of right and wrong and an adherence to a notion of justice based on the revelatory power of the ‘truth’, La Trobe ordered the Chief Protector of Aborigines and his Assistants to investigate any acts of aggression. The varying success of the Protectors’ enquiries quickly brought to La Trobe’s attention the numerous challenges that inhibited the judiciary when bringing cases to trial.

Established as a result of the British Government’s Port Phillip Aboriginal Protectorate plan, the Protectors formed part of the Chief Protector’s Department in La Trobe’s public service. In 1835 the British Parliament had appointed a Select Committee to investigate the ‘condition of Aborigines’ in British colonies and develop appropriate policy. The Committee’s investigations prompted them to propose the trial of an experimental protectorate system in Australia. In its report of 1837 the Committee made some general statements about how the system would work and suggested the employment of ‘Protectors’ for Aboriginal people. By the end of 1837 the Colonial Office decided to adopt the system in the newly created Port Phillip District of New South Wales. The head of the Colonial Office at the time, Lord Glenelg, appointed four Assistant Protectors and one Chief Protector for this purpose. George Augustus Robinson, the Chief Protector, gave each of his Assistants a specific area of Port Phillip in which they were to settle and take responsibility for the welfare of the Aboriginal people who lived there. Glenelg advised the Governor of New South Wales, Sir George Gipps, about the plan at the beginning of 1838 and expected the New South Wales Government to fund it.[6] The Chief Protector was to undertake the actual daily management of the Protectorate under the cautious supervision of La Trobe.

The system adopted in Port Phillip was unique in an Australian context at this time. In 1839 the Colonial Office appointed a single Aboriginal Protector in South Australia, Matthew Moorhouse, but did not adopt a protectorate system on the scale of that initiated in Port Phillip. The Colonial Office believed that a single Protector was all that would be required in South Australia, given the small size of the proposed settlement on Kangaroo Island compared to the size and popularity with settlers of the Port Phillip District. The Colony of New South Wales did not appoint a ‘Protector of the Aborigines’ until 1881.[8]

As envisaged by the Select Committee, the duties of the Protectors included some legal responsibilities. The Protectors were to act as magistrates and initiate legal proceedings in the event of an attack on any member of the Aboriginal community or their property. If an Aboriginal person within their area was accused of a crime, it was the duty of the Protector to ‘undertake and superintend the defence of the accused party’. The Committee also suggested that the Protectors act as coroners and investigate all instances in which an Aboriginal person was ‘slain’. Finally, in recognition of some of the difficulties the Protectors might experience fulfilling these duties, the Select Committee proposed that the local government adopt ‘such short and simple rules as may form a temporary and provisional code for the regulation of the Aborigines, until advancing knowledge and civilization shall have superseded the necessity for any such special laws’. [10]
Unfortunately, most of the Protectors resented being asked to act in a magisterial capacity and, like other magistrates appointed in the Port Phillip District at this time, had little legal knowledge or experience.[11] Three of the Protectors, James Dredge, William Thomas and Edward Stone Parker, owed their appointment to their association with the Wesleyan Church. All three men accepted their positions in Port Phillip because of the opportunity they would have to convert Aboriginal people to Christianity. They were lay preachers with earnest missionary-like aspirations and the Colonial Office had led them to believe that this would be a major aspect of their role in Port Phillip. One of their earliest tasks upon arrival in Melbourne, however, had been to undertake criminal investigations. When James Dredge resigned his position in February 1840, he complained about the overemphasis of his work on secular rather than spiritual matters. Dredge believed his role as a Protector would be ‘as much as possible of a missionary character’. The reality of his situation was quite different:

Upon my arrival in this country, I was informed that the office would be one of an entirely civil character; and I was subsequently appointed a magistrate, a distinction I never coveted, but one, so far as I was concerned, almost entirely nominal, inasmuch as I received instructions that I was not to act in a magisterial capacity, not even to issue a warrant for the apprehension of an offender, should I be applied to for that purpose under the most urgent circumstances, unless the aborigines were concerned.[12]

The Protectors did not know how to act as magistrates. Their first efforts at investigating crimes involving Aboriginal people were disastrous, eroding La Trobe’s idealism about justice wrought from the rule of law.

In their magisterial role the Protectors were to assist in the determination of whether or not an offence had been committed, take any depositions required for prosecution of a case and make any necessary arrests. Just two months after arriving in Melbourne La Trobe had cause to question the Protectors’ capacity to undertake this aspect of their duties. In mid-1838 Chief Protector Robinson directed Assistant Protector Parker to investigate a possible ‘affair’ between the Mounted Police and a group of Aboriginal people on the Campaspe River. La Trobe forwarded Parker’s findings and the statements that he took in evidence to Sydney for review by the Attorney-General, who would prosecute the offenders if there was a case to answer. Parker believed that the Mounted Police shot as many as forty Aboriginal people during the incident, nearly the entire clan.

Parker cited the source of his knowledge as ‘private information’. The Attorney-General, however, questioned the reliability of this source and requested that Parker name his informant. Parker had to admit his information was second-hand from someone he trusted but that ‘a man whose veracity could not be depended on’ made the original statement. At this point the whole case began to fall apart. La Trobe lamented that ‘The proper measures to elicit the truth have evidently never been taken, and delay of seven or eight months in setting on such foot [sic], cannot be otherwise than productive’. The Superintendent sent Robinson to assist Parker in his magisterial duties and effectively begin the investigation again. No matter how badly the case had been dealt with, wrote La Trobe, ‘no time is now to be lost in bringing the circumstances of the case before the Attorney-General in such a form as may facilitate the ends of justice’. [15]

At the beginning of 1840 Robinson decided it was necessary to seek some clarification from La Trobe about the magisterial functions of the Protectors. La Trobe had attempted to avoid the embarrassment of Parker’s poor depositions in the 1839 case involving the Mounted Police by ordering that the Protectors send all their depositions initially to a local authority for review.
All papers connected with their magisterial duties were to be sent to the Crown Prosecutor James Croke who, wrote La Trobe, ‘will be able to judge if the papers are sufficiently complete and in such form as may render their transmission to the Attorney General advisable and proper’. Robinson sought official acknowledgement of this decision and also asked La Trobe ‘whether, in Judicial cases the Assistant Protectors are to take part in the defence of the Aboriginal natives of their respective districts?’. This was a more difficult question to answer and La Trobe’s response revealed the uncertainty surrounding the prosecution of Aboriginal cases at the time.

La Trobe argued that it was ‘unquestionably’ the responsibility of the Protector to present any evidence he had in favour of the accused where the latter were from his district. The Protector was not, however, to act as a legal representative. ‘I doubt the propriety or wisdom’, stated La Trobe, ‘of his considering himself in the same light as a lawyer who having received a fee, is bound to uphold or defend the cause in hand whether it be good or bad’. To what extent the Protector was able to interfere in a case beyond the presentation of evidence, La Trobe did not know and referred the matter to the Governor.

The lack of clarity about the magisterial role of the Protectors was particularly evident towards the end of 1840 when another of the four original Assistant Protectors, Charles W Sievwright, complained that the government had not prosecuted any individuals responsible for Aboriginal deaths in his district. Submitting his report for the months of June to October, Sievwright declared his outrage that ‘legal authorities have not yet thought fit to bring to trial . . . any of those implicated in the appalling sacrifices of life that have taken place among the aboriginal natives of the Western District’. La Trobe reported to the Colonial Secretary in November that much of this state of things was due to Sievwright’s own incapacity to undertake his duties and obstinacy in seeking advice.

Crown Prosecutor Croke declared that he had returned depositions taken by Sievwright because they were not ‘taken in accordance to the rules of law’. Under these rules a person confessing a crime could not give a deposition under oath and must confess voluntarily. As Croke explained: ‘The reason why principals should not be examined on oath is, because the dread of perjury, coupled with the apprehension of additional penalties, may create an influence on their minds which the law is particularly careful in avoiding’.


Siewwright had done just this, taking a deposition from two brothers who confessed to murdering several Aboriginal people. Croke warned that this evidence was inadmissible. Siewwright was not the only Protector to make this mistake but both the Attorney-General and Croke had consequently outlined to the Protectors the correct procedures they should follow when undertaking their magisterial functions. Siewwright did not act on this advice. La Trobe, at a loss to explain this behaviour, concluded that ‘No decided step has been taken by him in any of the lamentable cases of collision between the settlers and aboriginal natives of his district, although it appears to me that if his opinion of the character of the homicides in question were really that which he conveys, it was clearly and imperatively his duty to do so’.

In 1841 the Chief Protector reiterated the Select Committee’s recommendation that the government should initiate a special legal code for Aboriginal people. The Committee had suggested that this should be a duty of the Protectors but their lack of legal knowledge made this completely impractical.
This suggestion was part of a larger debate about the creation of ‘exceptional laws’ that would modify British law for Aboriginal peoples and ‘set provisos and exemptions from English criminal law, particularly in terms of procedure and penalties’. While La Trobe regretted that the ‘inexperience’ of the Protectors was creating some obstacles to the effective prosecution of cases, he understood that there were other issues as well. The size of the Port Phillip District, the large distances between squating runs, the small number of police, the difficulties of communication and problems with finding witnesses and interpreters all hampered the administration of justice. When it came to finding a reason for the low number of cases actually brought to trial, however, La Trobe cited the ‘manifest difficulty of securing an unbroken chain of unimpeachable evidence whether direct or circumstantial’ and the ‘inadmissibility of aboriginal evidence in any shape.’

In 1846 La Trobe drew attention to these issues in relation to Aboriginal criminal cases in a detailed report to the Colonial Secretary. He pointed out that the undefined nature of judicial proceedings gave judges considerable autonomy in the way they treated Aboriginal prisoners. In many cases a judge based the legitimacy of a trial on the level of ‘civilisation’ he thought the accused demonstrated. La Trobe referred to this as the ‘mental capacity question’. In such cases a judge measured the degree to which an Aboriginal person was ‘civilised’ by the extent to which they had become European. The ‘mental capacity question’ demonstrated the ubiquity of British cultural and racial assumptions about Aboriginal people. During the nineteenth century most Europeans thought black people were inferior to whites and positioned far below them on a ‘great chain of being’ or evolutionary scale. Justice was often only available to Aboriginal people who were able to show a capacity for the English language and way of life. In the case of Koort Kirrup, which La Trobe singled out as a rare example, many of the difficulties of prosecution were evident but eventually overcome, and La Trobe argued:

His character for [sic] intelligence, and long intercourse with Europeans, to which many bore witness in the District where the crime was perpetrated, would seem to set his mental capacity, as far as comprehending the nature of the crimes with which he stood charged, and the object and general intention of the form of proceedings to which he was subject, beyond doubt.

Initially, however, the judiciary found that Koort Kirrup was not ‘professed of sufficient degree of intelligence to comprehend the proceedings’ and set him free to return to his community even though he was later found guilty. La Trobe took issue with the ‘mental capacity question’, not because he questioned its validity but because it was not raised in all cases, and even in those in which it was, the accused was not always asked if they understood that they could cross-examine European witnesses. This resulted in several miscarriages of justice, prompting La Trobe’s attempts to put the whole subject under scrutiny. La Trobe was left with the ‘strong impression’ that the application of the law in such cases was of an ‘uncertain and varying mode’.

The admissibility of Aboriginal evidence was a corollary to the determination of ‘mental capacity’ and ‘civilisation’. The accused needed to comprehend the charges against them and be able to submit a plea, which ‘must be accompanied and verified on oath’. If an Aboriginal person could not swear an oath, determined by their belief in God and an afterlife, then their testimony was inadmissible. Institutionalised through British law, Christianity was the dominant religion of European settlers in Australia and contemporary commentators often described Aboriginal beliefs as crude and unenlightened in comparison. The acceptance of Aboriginal evidence would require an alteration of the law as it was applied in the Australian colonies and an understanding, or at least a tolerance, of Aboriginal spiritual beliefs. In such a circumstance the British Government needed to acknowledge that Aboriginal people were not subject to the law in the same way as other British citizens, and to take some account of Aboriginal customary law. The extent to which the Colonial Office accepted or ignored Aboriginal law was dependent upon the degree to which it assessed Aboriginal peoples as ‘civilised’ or ‘uncivilised’.

The British Government, aware of the need for the acceptance of Aboriginal evidence in legal cases, had been attempting to clarify this issue before La Trobe became Superintendent. Lobbying in the British Parliament and of the Colonial Office by the Aborigines Protection Society in London had brought the matter to the attention of the government. The membership of the Aborigines Protection Society included several parliamentarians who were able to bring the subject ‘under the notice’ of the British Parliament in 1838. By the beginning of 1839 a sub-committee of the Aborigines Protection Society had prepared a Bill for the acceptance of Aboriginal evidence that they planned to present in Parliament. In July the Society decided instead to allow the Colonial Office to deal with the matter after extracting a promise that measures for the adoption of the Bill would be pursued through the Colonial legislature.
The Society followed up Buxton’s communication with a letter arguing that:

> It is evident that the rejection of the evidence of these natives renders them virtually outlaws in their native land, which they have never alienated or forfeited. It seems to me a moral impossibility that their existence can be maintained when in the state of weakness and degradation which their want of civilization necessarily implies, they have to cope with some of the most cruel and atrocious of our species, who carry on their system or profession with almost perfect impunity so long as the evidence of native witnesses is excluded from our courts.[36]

In February the Marquess of Normanby took over from Glenelg as the Secretary of State for War and the Colonies, but the official Colonial Office policy remained the same and Normanby upheld Glenelg’s commitment to the Society. Normanby wrote to Gipps requesting that he present a Bill on the matter to the New South Wales Legislative Council.[37] The Aborigines Protection Society, still frustrated by the problems that beset the application of law in all the British colonies, decided to ask the lawyer Standish Motte to prepare an outline of proposed legislative changes they thought would protect Aboriginal people. The Society published Motte’s *Outline of a system of legislation for securing protection to the Aboriginal inhabitants of all countries colonized by Great Britain* in 1840.[38]

Pre-empting Normanby’s instructions, the New South Wales Attorney-General had already advised Gipps of the necessity of such legislation. At the end of 1838 he had introduced the Aborigines Evidence Bill into the Legislative Council to ‘allow the Aboriginal Natives of New South Wales to be received as competent witnesses in Criminal Cases’.[39] This legislation only ensured the acceptance of Aboriginal statements in court where circumstantial evidence or non-Aboriginal testimony supported it.[40] The Legislative Council passed the Bill but entered a clause requiring the British Government to sanction the legislation before it came into official operation.[41] Meanwhile in the Colonial Office Normanby sought further information about what was going on in colonial legal cases and confirmation of the claims of the Aborigines Protection Society.

The New South Wales Supreme Court Judge WW Burton informed the Colonial Office that the local judiciary could ignore Aboriginal evidence in two instances:

> First, where it has been impossible to communicate with a proposed witness on account of his ignorance of the English language and when no interpreter could be found to interpret between him and the court; and, secondly, where a proposed witness has been found to be ignorant of a Supreme Being and a future state.[42]
In October 1839 Gipps sent a copy of the Aborigines Evidence Bill to Normanby who referred the matter to the British Attorney and Solicitors General.[43] A year later the new head of the Colonial Office, Lord John Russell, wrote to Gipps stating that the Act had been ‘disallowed’ on legal advice because ‘to admit in a Criminal case the evidence of a witness acknowledged to be ignorant of the existence of a God or a future state would be contrary to the principles of British jurisprudence’. [44] The colonial law officers upheld a ‘strict application’ of British law at this time but a change of government and the appointment of a new Secretary of State for War and the Colonies in 1841 meant that similar Bills were allowed in Western Australia and South Australia.[45] The New South Wales Government narrowly missed the opportunity to have its Bill ratified and consequently improve the chances of a fair trial for Aboriginal people throughout the colony.

In 1844 the New South Wales Attorney-General tried to introduce the Bill a second time to the Legislative Council but to no avail. The Council was now partially composed of elected members, and the squatters, who were in effect occupying Aboriginal land, were able to exert more influence than before.[46] The councillors dismissed the Bill at a second reading following a ‘vociferous debate’ in which William Wentworth declared that ‘[i]t is quite as defensible [sic] to receive as evidence in a Court of Justice the errandings of the orang-outang as of this savage race’. [47] Not everybody was happy with this decision. As a local newspaper editor complained, the denouncement of the Bill was ‘an act of rank injustice’ and ‘until some law is passed to begin to give them access to the British version of justice they were subjects without enforceable rights’.[50]

The amenability of Aboriginal people to British law in New South Wales determined the admissibility of Aboriginal evidence. In 1842 Gipps proposed to present a Bill to the Legislative Council ‘to declare that the aborigines are amenable to our courts of law, like any other of Her Majesty’s Subjects’. [51] Gipps argued that the British had proclaimed the sovereignty of Great Britain over the Australian colonies and established the primacy of British law. As British subjects, Aboriginal people should be subject to this law. In rejecting the Aborigines Evidence Bill the British Government had already established that no special consideration would be made for the original inhabitants of the Colony of New South Wales. If Aboriginal people were British subjects then they had to abide by the British legal code, regardless of whether or not they understood it. If Aboriginal people could not swear an oath then their evidence was inadmissible. Only British law would prevail and there was no room for a separate legal code for Aboriginal people or other exceptional laws.

Gipps was responding specifically to cases in which Aboriginal people committed offences against each other. In September 1841 Justice John W Willis had questioned the legitimacy of a case brought before him at the recently established Supreme Court in Melbourne, giving his opinion that ‘aborigines are not amenable to our courts of justice for offences committed inter se, though they may be …, for offences committed on the person of white men’. [52] Gipps wanted the matter settled; either Aboriginal people were subject to the law or they were not. Chief Justice Dowling and the other Sydney judges had no hesitation in reassuring Gipps that in their legal opinion British law applied to Aboriginal people regardless of whether a crime was committed against a European or another Aboriginal person. [53] Willis’s Sydney colleagues saw him as a rogue who, in querying his own jurisdiction over matters between Aboriginal people, went against the legal precedent of the 1836 case of Jack Congo Murrell. In the Murrell case three Supreme Court judges ruled that Aboriginal people were subject to British law even in ‘tribal situations’. [54] The issue was finally resolved when the Colonial Office agreed with Gipps, stating that, as the Sydney judges of the Supreme Court all concurred, there was no need for a declaratory law or official statement of policy. Instead, the amenability of Aboriginal people to British law ‘must be held to be the law of the colony’. [55] Ultimately the argument derived from a difference of opinion about the nature of British settlement in Australia. For Willis, Aboriginal people were entitled to continue their own customary law because he believed it had not been ‘extinguished’ by ‘an express statutory provision, by conquest, or by the cession of jurisdiction from the Aborigines by treaty’. [56] Willis’s controversial views, which were so contrary to the prevailing opinion of the Colonial Government, were partly responsible for his dismissal as a judge of the Supreme Court in 1843.[57]
In practice, the robust assertion of the supremacy of British law in New South Wales to the exclusion of Aboriginal evidence or the consideration of an adapted legal code, meant that a fundamental obstruction to justice in Port Phillip remained. In August 1841 La Trobe decried the circumstance that in ‘scarcely a single instance have the parties implicated in these acts of violence, whether native or European, been brought to trial; and in not a single instance has conviction taken place’. Robinson similarly remonstrated against the futility of attempting to seek redress for violent crimes perpetrated against Aboriginal people. ‘Bringing the guilty to trial was almost “impossible”’, he wrote, when in nine out of ten cases the only witnesses to violence committed against Aboriginal people are Aboriginal people themselves whose ‘evidence is not admissible’.

During La Trobe’s superintendency of Port Phillip the judiciary did not convict a single European for the murder of an Aboriginal person, although the courts sentenced six Aboriginal people to death for attacks on whalers and settlers. In cases where a European was the accused, Aboriginal testimony was not recognised and any other witnesses were unlikely to inform on a fellow settler. Where an Aboriginal person was the accused there was the ready acceptance of testimony from settlers and little opportunity for an Aboriginal person to offer a defence. As La Trobe put it,

Were the murder committed by the blacks, there were no witnesses, or no chance of identifying the parties; and were the natives the sufferers, the settlers and their servants, who were the principals in the first or second degree, were the only persons from whom evidence could be obtained. Aboriginal evidence brought forward, in the existing state of the law, could not be received.

Saddened by the miscarriage of justice that was often the result, La Trobe tried to intervene. In 1842 he requested a reprieve for an Aboriginal man he thought the courts had wrongly convicted, while in other circumstances he objected to Gipps that people whom he believed had committed terrible crimes went free.

La Trobe deplored the violence that was occurring in Port Phillip and meted out his disapproval of Aboriginal and European criminals alike. He was a highly principled individual who abhorred the inequality of the legislative system and the lack of morality it inevitably highlighted. When La Trobe heard about an unprompted attack by settlers that left three Aboriginal women and a young child dead, he was appalled. More distressing was the request for protection from some of the settlers in the area, including those he knew were involved in the murder. In reply La Trobe called down ‘the wrath of God’ against those responsible for the murders. As to the others, he implored them to ‘purge yourselves, and your servants, from all knowledge of and participation in such a crime, never to repose until the murderers are declared, and your district relieved from the stain of harbouring them within its boundaries’. At the same time he knew that ‘some of the most startling instances of murder which the aboriginal natives may from time to time have perpetrated upon Europeans, have been perpetrated with the most perfect impunity’.

CJ La Trobe to the Colonial Secretary, 4 July 1846, PROV, VPRS 16/PO, Unit 16, Item 46/598.
By 1845 the violence between Aboriginal people and settlers began to decrease and the issue of Aboriginal evidence appeared less relevant. The following year the new Governor of New South Wales, Sir Charles FitzRoy, asked La Trobe to determine the fate of the British protectorate plan, which had failed to achieve any of the aims the Colonial Office had anticipated. La Trobe’s negative appraisal of the efforts of the Chief Protector’s Department, and questioning of the need for the Protectorate at all, weakened British control over local Aboriginal policy. In 1847 the head of the Colonial Office, Earl Grey, decided to respond to La Trobe’s extensive examination of criminal cases in Port Phillip written the year before.[65] The news was not encouraging. Grey pointed out that the British Parliament had already transferred jurisdiction to the New South Wales Legislative Council in its Act of 1843 and declared the ‘defective state’ of legal proceedings involving Aboriginal people the concern of the local legislature. Most disheartening of all were Grey’s final comments. He admitted that it was ‘to the care and vigilance of the Executive Authorities alone, that we can trust for such an application of the Law as may effectively ensure the Administration of justice and the prevention of those crimes of which the Natives are either the perpetrators or the victims’.[66] In reality, however, wrote Grey, ‘To exempt the administration of the Law from cumbersome formalities and superfluous rules is, as you are well aware, an attempt of almost hopeless difficulty’.[67]

La Trobe seems to have resigned himself to this response from the Colonial Office. He had done his duty in pointing out the inadequacies of the system but little had changed. Grey supported and understood La Trobe’s arguments but in the end it was the responsibility of the Colonial Government. Following the disappointment of the failure of the Protectorate experiment, the British Government gradually lessened its control over Aboriginal policy in New South Wales. In 1848 Grey wrote to FitzRoy about the acceptance of Aboriginal evidence: ‘This is a question of the first importance; but as I have already, in my Despatch No.176, of the 25th of June last, pointed out the remedy, which is within the power of the Local Legislature, [is to alter] the Law of Native Evidence.’[68] The Legislative Council, however, had made its position clear and a year later the councillors rejected yet another attempt to pass the Aborigines Evidence Bill.[69] Squatters in the New South Wales government were successfully able to block any legislative reforms in favour of Aboriginal people during the period of La Trobe’s superintendency.

Despite his failed attempts to alter the way the judiciary prosecuted individual criminal cases in Port Phillip, La Trobe upheld his belief in the pre-eminence of British law. He was confident that the pursuit of justice would lead to improved conditions for Aboriginal people and the ‘prevention as far as possible of collisions between them and the Colonists.’[70] In 1849 La Trobe reassured Governor FitzRoy that: ‘The terror of the law, also, undefined as it may be, is felt among many of the tribes and is in his favour. It is understood that … there are means at hand which may follow up the perpetuation of outrage, and how, or by what process it matter not, subject him to coercion, if not to severe punishment.’[71] By the 1850s the notion that Aboriginal people were British subjects fully amenable to British law was an established part of legal theory.[72] The Colonial Office had pursued this policy throughout La Trobe’s superintendency of Port Phillip, believing that an assertion of Aboriginal legal equality would elevate their status and situation in the Australian colonies. When La Trobe called for an improvement in legal process to make Aboriginal people ‘amenable as British subjects to British Law’, he did so as an adherent to a humanitarian ideal in which British law represented ‘civilisation’ and protection for Aboriginal people. While he acknowledged that there were many obstructions to the proper functioning of the law when Aboriginal people were involved, La Trobe never relinquished his belief in the efficacy of the British legal system.

Endnotes
[1] Research for this paper was made possible as a result of a La Trobe Society fellowship awarded in 2007. I would like to extend my sincere thanks to the Society for supporting my work and to La Trobe University, which appointed me an honorary research associate in the School of Historical and European Studies the same year.
[2] Lord John Russell to Sir George Gipps, 21 December 1839, in Copies or extracts from the despatches of the governors of the Australian Colonies, with the reports of the Protectors of Aborigines, and any other correspondence to illustrate the condition of the Aboriginal population of the said Colonies, from the date of the last papers laid before Parliament on the subject, (paper ordered by the House of Commons to be printed, 12 August 1839), Paper no. 627, House of Commons, London, 1844, p. 25.
[4] CJ La Trobe to the Colonial Secretary, 21 November 1840, in Copies or extracts from the despatches of the governors of the Australian Colonies, p. 139.


[9] Report from the Select Committee on Aborigines (British Settlements) with the minutes of evidence, appendix and index, Paper no. 425, House of Commons, London, 1837, p. 84.


[11] In 1841 Judge Willis complained that the magistrates in Port Phillip were not doing their duty or taking depositions correctly, causing problems when cases came to court. See Shaw, Gipps–La Trobe correspondence 1839-1846, p. 77.

[12] James Dredge to GR Robinson, 17 February 1840, in Copies or extracts from the despatches of the governors of the Australian Colonies, p. 54.

[13] CJ La Trobe to GA Robinson, 31 December 1839, PROV, VPRS 16/P0 Superintendent, Port Phillip District Outward Registered Correspondence, 1839-1851, Unit 1, Item 39/210.


[15] CJ La Trobe to FB Russell, 31 December 1839, PROV, VPRS 16/P0, Unit 1, Item 39/211.

[16] CJ La Trobe to GA Robinson, 30 March 1840, PROV, VPRS 16/P0, Unit 1, Item 40/126.


[18] ibid.

[19] CJ La Trobe to Colonial Secretary, 26 November 1840, in Copies or extracts from the despatches of the governors of the Australian Colonies, p. 140.


[21] James Croke to CJ La Trobe, 17 June 1840, in Copies or extracts from the despatches of the governors of the Australian Colonies, p. 142.

[22] CJ La Trobe to Colonial Secretary, 26 November 1840, in Copies or extracts from the despatches of the governors of the Australian Colonies, p. 141.


[24] CJ La Trobe to the Colonial Secretary, 4 July 1846, PROV, VPRS 16/P0, Unit 16, Item 46/598.

[25] CJ La Trobe to Colonial Secretary, 28 August 1841, in Copies or extracts from the despatches of the governors of the Australian Colonies, p. 134; CJ La Trobe to the Colonial Secretary, 4 July 1846, PROV, VPRS 16/P0, Unit 16, Item 46/598.

[26] CJ La Trobe to the Colonial Secretary, 4 July 1846, PROV, VPRS 16/P0, Unit 16, Item 46/598.


[28] ibid.

[29] ibid.


[31] ibid.


[38] Standish Motte, Outline of a system of legislation for securing protection to the Aboriginal inhabitants of all countries colonized by Great Britain; extending to them political and social rights, ameliorating their condition, and promoting their civilization, John Murray, London, 1840.

[40] ibid.


[43] Sir George Gipps to Marquess of Normanby, 14 October 1839, in ibid., p. 368.


[49] ‘An Act to authorize the Legislatures of certain of Her Majesty’s Colonies to pass Laws for the admission in certain cases of unworn testimony in Civil and Criminal proceedings’, 6 Vict., ch. 22.


[51] E Deas Thomson to Sir James Dowling, 4 January 1842, in Copies or extracts from the despatches of the governors of the Australian Colonies, p. 144.


[53] James Dowling to Sir George Gipps, 8 January 1842, in ibid., p. 145.


[55] Lord Stanley to Sir George Gipps, 2 July 1842, in Copies or extracts from the despatches of the governors of the Australian Colonies, p. 156.


[58] CJ La Trobe to Colonial Secretary, 28 August 1841, in Copies or extracts from the despatches of the governors of the Australian Colonies, p. 134.

[59] GA Robinson to CJ La Trobe, 11 December 1841, in ibid., p. 169.


[61] CJ La Trobe to Colonial Secretary, 28 August 1841, in Copies or extracts from the despatches of the governors of the Australian Colonies, p. 134.

[62] Shaw, Gipps–La Trobe Correspondence, pp. 150, 335.

[63] CJ La Trobe to the Gentlemen signing a representation without date, to His Honour the Superintendent, received by the hands of Dr Kilgour, 26 March 1842, in Copies or extracts from the despatches of the governors of the Australian Colonies, p. 215.

[64] CJ La Trobe to Colonial Secretary, 4 July 1846, PROV, VPRS 16/P0, Unit 16, Item 46/598.


[67] ibid.


[70] CJ La Trobe to Colonial Secretary, 18 November 1848, Report from the Select Committee on the Aborigines and Protectorate, p. 6.

[71] ibid.

Forum articles
Finding the Chinese perspective

Locating Chinese petitions against anti-Chinese legislation during the mid to late 1850s

Anna Kyi

Abstract

This paper complements my article on petitions against taxes that were imposed on the Chinese during the latter half of the 1850s in Victoria. It seeks to encourage further research on this topic and hopefully the discovery of more petitions. Towards these ends, this article provides a guide to where those petitions that have been discovered can be located in Public Record Office Victoria, Votes and Proceedings of the Legislative Assembly (Victoria), newspapers and books. No single source contains a comprehensive collection of the petitions from all phases of the Chinese protest campaign and each type of source has particular limitations and benefits.

One of the challenges facing researchers of nineteenth-century Chinese-Australian history is the dearth of sources reflecting the Chinese perspective. Part of the difficulty in gaining a better understanding of the Chinese protests against the various taxes imposed on them during the mid to late 1850s has been locating the petitions from the Chinese and their supporters. The accompanying article also published in this issue of Provenance puts the petitions that have been located into the context of evolving anti-Chinese legislation. The present article seeks to encourage further research into this topic by identifying where the petitions can be found at Public Record Office Victoria (PROV) as well as in published sources such as the Votes and Proceedings of the Legislative Assembly (Victoria), newspapers and books. Towards this end, it also considers some of the benefits and limitations of these sources. No one source contains all of the petitions from all of the various phases of the Chinese protest campaign. To consult only one source can create the risk of interpreting an incomplete picture. Further research might uncover more petitions. For researchers interested in locating other petitions held by PROV, this article will provide some useful ideas on how to approach this search.

Votes and Proceedings of the Legislative Assembly

If you are trying to access petitions from the early phases of the protests against the £10 immigration poll tax and the proposed Chinese residence tax in 1857, the Votes and Proceedings of the Legislative Assembly are worth consulting. However, they are not comprehensive in relation to these particular phases and prove to be inadequate in relation to later phases (1859). There are two main reasons for this. First, not all papers tabled at the Legislative Assembly were printed. This is the case with petitions that were tabled in late 1859 from Chinese in Castlemaine, Bendigo and Melbourne [1] and it is also relevant to the petition against the immigration poll tax from Chinese in Victoria tabled in 1856. Second, not all petitions were addressed to the Legislative Assembly and so they could not be tabled in this forum.

Petitions in the Votes and Proceedings of the Legislative Assembly are accessible on microfilm at the State Library of Victoria. This source also contains the 1857 petitions against the Chinese influx.[2] When read together these petitions become a dialogue: you can see the accusations that were made against the Chinese as well as how the Chinese chose to defend themselves. It is also possible to get an understanding of the level of support for the petitions from this source. All but one of the petitions against the Chinese taxes identifies the number of signatures that were attached to the originals.
Table 1: Petitions against the 1855 immigration poll tax

<table>
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<tr>
<th>Authors</th>
<th>Petition No.</th>
<th>Page No.</th>
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<tr>
<td>Chinese storekeepers, Miners and others resident in Bendigo, 1856</td>
<td>E1</td>
<td>p.865</td>
<td>5168</td>
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Table 2: Petitions against the proposed Chinese residence tax 1857

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<tbody>
<tr>
<td>Natives of China residing in the Colony of Victoria</td>
<td>E 56</td>
<td>p. 975</td>
<td>130</td>
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<tr>
<td>Residents in Victoria belonging to the Chinese Nation</td>
<td>E 57</td>
<td>p. 977</td>
<td>238</td>
</tr>
<tr>
<td>Chinese Resident in Castlemaine</td>
<td>E 66</td>
<td>p. 995</td>
<td>2873</td>
</tr>
<tr>
<td>Storekeepers and Traders resident in the District of Castlemaine (Europeans)</td>
<td>E 68</td>
<td>p. 999</td>
<td>35</td>
</tr>
<tr>
<td>Sitting on Chinese Business</td>
<td>E 76</td>
<td>p. 1015</td>
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Table 3: Petitions against the Chinese influx 1857

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<th>Petition No.</th>
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<th>No. of Signatures</th>
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</thead>
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<tr>
<td>Members of the Local Court of Castlemaine</td>
<td>E 38</td>
<td>p. 939</td>
<td>JM Bull on behalf of court</td>
</tr>
<tr>
<td>Members of the Local Court of Fryer’s Creek</td>
<td>E 58</td>
<td>p. 979</td>
<td>9</td>
</tr>
<tr>
<td>Chairmen of large influential meetings that have taken place at Castlemaine, Campbell’s Creek, Forest Creek, etc.</td>
<td>E 61</td>
<td>p. 985</td>
<td>2</td>
</tr>
<tr>
<td>Miners and others of the Jim Crow Goldfields</td>
<td>E 64</td>
<td>p. 991</td>
<td>345</td>
</tr>
<tr>
<td>Inhabitants of Geelong in a Public Meeting Assembled</td>
<td>E 65</td>
<td>p. 993</td>
<td>Mayor on behalf of meeting</td>
</tr>
<tr>
<td>Miners and others, Inhabitants of Sandy Creek</td>
<td>E 72</td>
<td>p. 1007</td>
<td>250</td>
</tr>
<tr>
<td>Miners, Shopkeepers and others Residents of the McIvor goldfields</td>
<td>E 75</td>
<td>p. 1013</td>
<td>328</td>
</tr>
<tr>
<td>Gold Miners and Others, Residing on Campbell’s Creek</td>
<td>E 77</td>
<td>p. 1017</td>
<td>1601</td>
</tr>
</tbody>
</table>

Original petitions in the Legislative Assembly records

Accessing the original petitions held in the Legislative Assembly records at PROV is one way to address gaps in the Votes and Proceedings of the Legislative Assembly. So far, few researchers have considered looking at this source. This is not surprising as access is not particularly easy. It is necessary to seek permission from the Clerk of the Legislative Assembly before PROV is able to give researchers access, and until now there has been no index to locate which units the petitions are located in. The Legislative Assembly papers are kept in chronological order. You can narrow the search down by looking through the index to the Votes and Proceedings of the Legislative Assembly to find out when a particular petition was tabled.

Besides filling in gaps in the Votes and Proceedings of the Legislative Assembly, there are other reasons that might make consulting the originals worthwhile. The significance of the signatures on original petitions requires further examination to determine whether they can present any new insights into the Chinese presence. Can the 1857 Chinese Castlemaine petition, which contains names in both Chinese and English, be used to assist individuals who are researching their family history? Can the signatures on these petitions be used to track the movement of Chinese individuals around the goldfields? In his research on Chinese petitions against opium smoking in 1884, Dr Kok pointed out that ‘The symbolic grouping and arrangement of names and the very names themselves, indicated most retained much of their traditional Chinese beliefs, as well as their associations with lodges to which they belonged and as members of which they had worked for gold’. Can these petitions reveal the same type of information? A lot depends on the type of Chinese name used on the petition. A Chinese man can have up to five different names: the name he was given as a baby; the scholastic name his teacher gave him; the name he received after marriage and some men had honorific names which suggested their rank or generation.

In considering the signatures as a potential area of research, it is important to note that the petitions against Chinese taxes which were addressed to the Legislative Assembly in 1856 and 1857 are accompanied by more signatures than the petitions addressed to the Legislative Assembly in late 1859. In this later stage of the protest campaign there is a tendency for one individual or a small group to sign on behalf of a larger group. This trend was also common to petitions against the Chinese influx in 1857.
The European signatures on some of the original petitions also represent an important step towards gaining an understanding of the Europeans who supported the Chinese. We need to further our understanding of the range of different motives behind this support. This understanding will help to avoid simplistic ‘us against them’ interpretations of race relations, and may help us to understand what enabled some to possess a more inclusive sense of democracy.

[4] Two petitions against the Chinese residence taxes that were addressed to the Legislative Assembly contain European signatures (refer to tables 4 and 5). Original petitions addressed to the Governor contain more signatures of European supporters.

**Original petitions addressed to the Governor**

Most of the petitions that were not addressed to the Legislative Assembly were either addressed or forwarded to the Governor. In an era when responsible government was in its infancy, differing understandings over who had the power to alter legislation – the Governor as representative of the Queen’s imperial power or the newly formed government with its colonial power – are understandable. In 1859, the Act to Consolidate and Amend the Laws Affecting the Chinese Emigrating to or Resident in Victoria created confusion over who had the power to amend legislation. This law indicated that the Governor had the power to amend the legislation when in fact he did not. Consequently, some petitions were addressed or forwarded to the Governor in mid-1859.

When the Chief Secretary advised that petitions should be sent to the Legislative Assembly, some groups did so in late 1859.[5]
### Table 4: Petitions against the 1855 immigration poll tax

<table>
<thead>
<tr>
<th>Authors</th>
<th>PROV citation</th>
<th>Comment</th>
</tr>
</thead>
</table>
| Chinese Storekeepers, Miners and others now resident on, and in the neighbourhood of the Bendigo Gold Field in the said Colony (E 1), received 26 November 1856 | VPRS 3253/P0, Unit 29, File 19 | Includes 5168 Chinese signatures  
Published in Votes and Proceedings of the Legislative Assembly |
| Chinese in Victoria, received 11 December 1856                          | VPRS 3253/P0, Unit 32   | Bilingual  
Includes Chinese signatures 3089 and 1 European signature  
Published in Votes and Proceedings of the Legislative Assembly |

### Table 5: Petitions against the proposed Chinese residence tax 1857

<table>
<thead>
<tr>
<th>Authors</th>
<th>PROV citation</th>
<th>Comment</th>
</tr>
</thead>
</table>
| Natives of China residing in Victoria (E 56), ordered to lie on the table 4 August 1857 | VPRS 3253/P0, Unit 49, File 499 | Includes Chinese signatures 130  
Published in Votes and Proceedings of the Legislative Assembly |
| Residents in Victoria belonging to the Chinese Nation (E 57), ordered to lie on the table 4 August 1857 | VPRS 3253/P0, Unit 49, File 450 | Includes Chinese signatures 238  
Published in Votes and Proceedings of the Legislative Assembly |
| Chinese Resident in Castlemaine (E 66), received 18 August 1857         | VPRS 3253/P0, Unit 51, File 479 | Bilingual  
Includes 2879 Chinese signatures  
Published in Votes and Proceedings of the Legislative Assembly |
| Storekeepers and Traders Resident in the District of Castlemaine (E 68), ordered to lie on the table 18 August 1857 | VPRS 3253/P0, Unit 49, File 482 | Includes 35 European signatures  
Published in Votes and Proceedings of the Legislative Assembly |
| Sitting on Chinese Business (E 76), ordered to lie on the table 9 September 1857 | VPRS 3253/P0, Unit 53, File 528 | Number of signatures difficult to calculate due to lack of spacing  
Published in Votes and Proceedings of the Legislative Assembly |

### Table 6: Petitions against the 1859 Chinese Residence Tax (sent in late 1859)

<table>
<thead>
<tr>
<th>Authors</th>
<th>PROV citation</th>
<th>Comment</th>
</tr>
</thead>
</table>
| Petition of the Chinese Resident in the City of Melbourne in the public meeting assembled, adopted at a meeting of 110 Chinese held on Emerald Hill, 6 December 1859, ordered to lie on the table 9 December 1859 | VPRS 3253/P0, Unit 119, File 67 | Signed by Chairman on behalf of meeting  
Not published in Votes and Proceedings of the Legislative Assembly |
| Chinese Merchants, Miners and Others of Castlemaine, ordered to lie on the table 18 October 1859 | VPRS 3253/P0, Unit 122, File 1 | Includes 133 Chinese signatures  
Not published in Votes and Proceedings of the Legislative Assembly |
| The Chinese Merchants, Miners and others of the town of Sandhurst and District of Bendigo, ordered to lie on the table 19 October 1859 | VPRS 3253/P0, Unit 123, File 27 | Signed by Chairman, Shem Chat, on behalf of a large meeting  
Not published in Votes and Proceedings of the Legislative Assembly |
Table 7: Petitions against the Chinese taxes sent to the Governor

<table>
<thead>
<tr>
<th>Authors</th>
<th>PROV citation</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chinese Resident in Ballarat, petition against the 1857 Chinese residence tax, presented to Governor Barkly 21 January 1858</td>
<td>VPRS 1189/P0, Unit 502, File 58/E898</td>
<td>(Includes testimonial and 45 signatures from European supporters in Ballarat) Signatures from Chinese supporters missing Newspaper references suggest the petition was signed by 1407 individuals, <em>Ballarat Times</em>, 22 January 1858, p. 2</td>
</tr>
<tr>
<td>Chinese Residents of Ballarat, petition against the 1859 Chinese residence tax, adopted at a meeting on 20 June 1859</td>
<td>VPRS 1189/P0, Unit 522, File 59/M7364</td>
<td>Signed by 9 Chinese on behalf of a meeting of 5000</td>
</tr>
<tr>
<td>Members of Council Bankers, Merchants, Traders and Other European and Chinese Inhabitants of Ararat and its Vicinity to the Governor in Council, dated 18 June 1861</td>
<td>VPRS 1189, Unit 523, File 61/4997</td>
<td>102 non-Chinese 75 Chinese (names written in Chinese and English)</td>
</tr>
</tbody>
</table>

Table 8: Petition against proposals to exclude the Chinese from Victoria

<table>
<thead>
<tr>
<th>Authors</th>
<th>PROV citation</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quang Chew, petition to the Governor, circa mid 1855</td>
<td><em>Letters from a Miner in Australia</em>, by Antoine Fauchery, translated from French by AR Chisholm, Georgian House, Melbourne, pp. 100-103</td>
<td></td>
</tr>
</tbody>
</table>

Table 9: Petitions against the proposed 1857 Chinese residence tax

<table>
<thead>
<tr>
<th>Authors</th>
<th>PROV citation</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chinese Residents in Ballarat, petition addressed to the Governor, adopted at a meeting of approximately 800 people on 13 August 1857</td>
<td>‘Meeting of the Chinese’, <em>Ballarat Times</em>, 14 August 1857, pp. 1-2</td>
<td></td>
</tr>
</tbody>
</table>

Table 10: Petitions against the 1859 Chinese residence tax

<table>
<thead>
<tr>
<th>Authors</th>
<th>PROV citation</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chinese Residents of Sandhurst [Bendigo], petition addressed to the Governor, adopted at a meeting of 4000 Chinese on 21 May 1859</td>
<td><em>Bendigo Advertiser</em>, 23 May 1859, p. 2 See also a clearer version published in the <em>Age</em>, 24 May 1859, p. 5</td>
<td>Signed by Chuck Sam (Chairman) on behalf of the meeting</td>
</tr>
<tr>
<td>Chinese Residents in the Castlemaine Mining District, petition addressed to Resident Warden and Magistrates of the Castlemaine Mining District, presented to Head Warden, Captain Bull on 24 May 1859</td>
<td>‘The Chinese Agitation’, <em>Mount Alexander Mail</em>, 25 May 1859</td>
<td>Signed on behalf of the Chinese residents in the district of Castlemaine Specific signatories and number of signatures not identified Captain Bull appears to have forwarded the petition to the Governor</td>
</tr>
<tr>
<td>Chinese Residents in the City of Melbourne in public meeting assembled, petition addressed to Chief Secretary and the other Members of the Executive Council, adopted at a meeting on 26 May 1859</td>
<td><em>Age</em>, 31 May 1859, p. 1</td>
<td>Signed by the Chairman, Lowe Kong Meng on behalf of the meeting in accordance with a resolution passed to that effect</td>
</tr>
</tbody>
</table>
Table 9 identifies some of the original petitions that were addressed to the Governor. These are located in the Chinese Protectorate records, which form part of the Chief Secretary’s Inwards Correspondence (VPRS 1189) held by PROV. The list is not exhaustive. The Chief Secretary was the only means of communication between the public and the Governor as well as other government officials. Once the petitioned official had seen the petition, it was often sent back to the Chief Secretary’s Office. The records in this series are quite extensive, partly because the Chief Secretary was also responsible for communication between the various government departments.[6]

Newspapers can provide a means of accessing petitions when the originals are yet to be located in PROV records or elsewhere. This is currently the case with petitions that were sent during mid-1859, and the Ballarat Chinese petition sent to the Governor in 1857. Since completing the research for the accompanying article published in this issue of Provenance, I have also come across a petition from Quang Chew, which was sent to the Governor when the poll tax was being debated and some were proposing that the Chinese be excluded from Victoria. A copy of this petition is located in the published letters and diaries of French miner and photographer, Antoine Fauchery, who was on the goldfields during the first half of the 1850s. The original is yet to be located. The following tables identify where the copies of these petitions can be found.

**Newspapers and other published contemporary sources**

Newspapers can provide an understanding of the context in which the petitions were adopted and presented. In some instances, a newspaper reference can fill in information that is missing from the originals. For instance, the original petition that the Ballarat Chinese addressed to Governor Barkly in 1858 does not have any Chinese signatures attached to it, but the newspaper reference provides an insight into the level of support for the petition indicating that 1407 individuals had signed it.[7]

While there is the potential for newspapers to fill in gaps, they can at times prove to be unreliable. For example, the 1857 Ballarat Chinese petition against the proposed Chinese residence tax is not an exact copy, as the reporter had difficulty procuring an exact translation. Consequently it is written in a pidgin English, which contrasts with the formal, legal style evident in many of the other petitions.

Petitions from Chinese and their supporters against the various taxes imposed on them during the latter half of the 1850s have the potential to provide new perspectives and insights into the past. Considering the Chinese left so few records compared to other migrants during this era, these petitions present a rare resource. As more researchers start to examine these petitions in their various forms, and possibly uncover more petitions, our understanding and appreciation of this episode in our history and its broader significance will continue to evolve.

**Endnotes**


[5] For further explanation of what happened refer to my article, ‘[The most determined, sustained diggers’ resistance campaign]’, also published in this issue of Provenance.

[6] In regard to petitions addressing the Governor of Victoria, a brief explanation of the system of registering and forwarding petitions that are now located in PROV, VPRS 1189 is available in the series description for PROV, VPRS 1192, Petitions.


The surveying career of William Swan Urquhart, 1845-1864

Ken James

Abstract

I first became aware of surveyor William Swan Urquhart when researching a history of the Elphinstone district, Central Victoria, with a friend, Noel Davis, for it was Urquhart who surveyed the township and parish of Elphinstone. I started to investigate his background only to discover that information about him was almost non-existent. My interest in him was heightened when I discovered that he had laid out many other settlements, including Ballarat and Castlemaine, and that Urquhart Bluff on the Great Ocean Road was named after him.

By now I was determined to find more about the man and struck gold at Public Record Office Victoria where I discovered his Taradale Survey Office Outward Correspondence Register 1854-1856 in VPRS 1330/P0, Unit 1. It was there that I also found outward correspondence from survey headquarters in Melbourne to Urquhart in VPRS 6/P0. Fortunately the correspondence has been indexed so I was able to list all entries relating to Urquhart. I also discovered some of his correspondence to the Head Office in Melbourne for the period 1847 to 1852 in VPRS 97/P0 and for the late 1850s to 1862 in VPRS 44/P0. In addition, I was able to identify 231 of his map plans in VPRS 8168 Historic Plan Collection (a copy of which can be accessed on microfiche in PROV reading rooms as VPRS 15899).

William Swan Urquhart’s career surveying for the Victorian Government commenced in 1845 as an assistant surveyor and ended as a district surveyor. He retired in 1864 and died in 1881 in East Melbourne. Much of his early work involved surveying county boundaries and his skills were quickly recognised by Superintendent La Trobe who referred to him in 1849 as ‘a man of excellent character, diligent and able in the performance of his various branches of duty’. [1] Urquhart Bluff on the Great Ocean Road was named after him by fellow surveyor George Smyth. [2] Settlements laid out by Urquhart in the period up to 1853 include Ballarat, Carisbrook, Castlemaine, Elphinstone, Lockwood, Malmsbury, Sunbury and Taradale, and most of these have an Urquhart Street in recognition of his work.

As the district or senior surveyor of the central goldfields from mid-1853, Urquhart undertook very important work directing the layout of agricultural lands, towns, roads and reserves in 47 government parishes. Evidence of his career from 1845 to 1864 can be found throughout the 231 survey map plans bearing his name, accessible on microfiche at Public Record Office Victoria as part of VPRS 15899 Historic Plan Collection. These maps were prepared by other surveyors while working under Urquhart as assistant surveyors.[3] His is a story worth telling.
Born in Ross Shire, Scotland in 1818, Urquhart arrived in the colony of Victoria around 1840. He first worked as a private surveyor for squatters in the Western District, then as a contract surveyor for the colonial government. In December 1845 he was appointed to the public service as an assistant surveyor, then in 1853 promoted to the position of surveyor. In 1854 he is referred to in Melbourne Survey Office internal correspondence as the surveyor in charge of the Mt Alexander goldfield and the senior surveyor on the goldfields.[4] In 1861 he was granted leave and notifications of this in the Victoria Government Gazette refer to him as District Surveyor of Castlemaine.[5] His staff at one stage included six assistant surveyors. Urquhart was responsible for organising the surveying of township reserves, roads and agricultural lands, his assistant surveyors being responsible for carrying out the work. In 1857 his duties increased when he was one of two district surveyors appointed by the government as a census enumerator. In 1859 his duties further increased with his appointment as a Crown lands commissioner, then in 1860 as a Crown lands appraiser and collector of imposts.[6]

Appointed Assistant Surveyor, 1845

On 24 October 1845 Urquhart was informed by Robert Hoddle that there was a probability that an assistant surveyor might be required and could he be in Melbourne within ten days to a fortnight.[7] Hoddle followed up with further correspondence on 14 November, informing Urquhart that indeed an assistant surveyor was needed as he (Hoddle) had been instructed by the Surveyor-General to mark the boundaries of the counties of Bourke and Grant.[8]

The extent of the county boundary survey work accomplished by Urquhart is astonishing, but more so when one considers the conditions under which it was achieved. He was assisted by a team of four labourers, a bullock driver and a tent keeper, acquiring an assistant only in 1851. The men were with him for eight months of each year, the other four months being spent drawing up his maps. His surveying equipment consisted of theodolite and circumeter, ‘and the ranges and creeks were carefully traversed and corrected by back sights and trig points and all lines carefully checked so that no errors could occur’. [9]

Commencing his duties in December 1845, Urquhart surveyed the boundaries of the counties of Bourke and Grant between Mt Macedon and Mt Blackwood near the sources of the Loddon and Werribee rivers.[10] The following year involved a number of surveys including the boundary of the County of Grant between Cape Otway and the mouth of the Barwon River; part of the County of Bourke near the Mullum Mullum Creek; and a general survey of the Dandenong Ranges between the Yarra River and Westernport as well as a general survey of the ranges north of the Great Dividing Range, including the sources of the Lederberg River.

This work on county boundaries continued in 1847 and included a survey of the Lal Lal Creek and the sources of the Moorabool and Yarrowee rivers; the ranges of Mt Buninyong, Warraneep and Black Hill; and the Dividing Range between the Werribee and Yarrowee rivers, including the future site of Ballarat and its surrounding goldfields. Urquhart finished the year with a survey of part of the Great Swamp ‘Kooweeroop’ as far as ‘Buneep Buneep', Western Port.

In 1848 he surveyed about 2,000 acres of rich agricultural lands into suitably sized lots for farms of 80 to 200 acres each between Geelong and Point Richards; a line of road from Keilor to Pentland Hills through Bacchus Marsh; the Loddon River from Jim Crow Creek to the Murray River and the Avoca River rivulet; and the ranges between the Avoca and the Loddon. The following year (1849) he surveyed the Avoca River, Callums Creek, Deep Creek, Bullarook and Burrumbeet creeks and Lake Learmonth as well as the Dividing Range from the sources of the Yarrowee to Mt William in the Grampians including Mt Misery, Mt Cole, Mt Ararat and the ranges now known as the Pyrenees. Mt William became the northern boundary of the County of Ripon. He also surveyed the volcanic hills around Dowling Forest and Glendaruel.
This led to the experience in his career which forever touched him.

In 1849 I was deeply impressed with a circumstance that came under my notice. The subject has never escaped my memory and I trust never will. I was at the time surveying the general features of the rich volcanic hills around Dowling Forest, Learmonth, Burrumbeet and Glendaruel, the fine rich quality and beauty of which could not be surpassed. About 50,000 acres of this fine country lay before me, where I could have run a plough furrow without stump or stone to stop my progress for 8 or 10 miles either way. On this same rich land many thousands of Merino sheep were scarcely able to walk and were miserably poor from foot rot.

At the same time, Mr W Clarke of Dowling Forest was boiling down thousands of his big Leicester sheep, each weighing from 80 lbs to 120 lbs, for their tallow. At that very time I happened to peruse a copy of the London Times, and by it saw that thousands, both in the west of Ireland and the Highlands of Scotland were dying of starvation. I felt deeply for the poor creatures and their families, nay I am not ashamed to own it, I wept for them. This of itself is not much and is only what any individual situated as I was would have done.

But here I was in a land at that very time too rich for the sheep and thousands being melted for the fat. Seven years after I saw the same country waving with as fine and healthy fields of corn as any in Europe. And I also had the satisfaction of seeing that the new inhabitants really enjoyed the comforts of their new homes with renewed vigour, they have a fine country before them — long may they be blessed with health and peace and sweet content.[11]

In 1851 Urquhart surveyed 31,000 acres near Sunbury, known as Clark’s Survey, and marked sites for townships and building allotments at Sunbury, Woodend, Carlsruhe, Malmsbury and Carisbrook. At each of these places he marked both town and agricultural lots.

On 8 February 1850 Urquhart was instructed by Surveyor-General Hoddle to survey the Murray River from the confluence with the Campaspe River down to Swan Hill. Hoddle wrote: ‘I know no one more competent than yourself to undertake this duty and request you will at once finish the measuring of land now in hand and inform me by means of post when you will be able to start with your equipment and party.’[12] He then surveyed land for sales in the neighbourhood of Warrnambool and Belfast as well as Mt Hope Creek, Pyramid Creek and Pyramid Hill and the Terrick Terrick Ranges. Urquhart was lucky to escape with his life while undertaking this work when an Aboriginal man tried to murder him. The circumstances were that this person had been erroneously informed by someone on a station that Urquhart planned to take him to Melbourne to be hanged for stealing possessions belonging to Urquhart’s party.

I happened to be examining part of the County back from the River Murray for water, I was alone and it being the time of the full moon was not in a hurry to return to my encampment and just at dusk about three miles from my camp I came on a native encampment, an assembly of about 100 young and old who met for the ‘savage feast’ and corroboree. I was known to nearly all of them, we were always on the best of terms. My friend Tommy (who was then unknown to me to be accused of theft) walked up and looked wild and very excited felt me over the back made a jump and a wild holla, which roused the rest. Three of the principal leaders of the tribes immediately sprang up, and after a few seconds of the most exciting debate between them, Mr Tommy was turned about and ordered away. One of the three ‘Bonney’ in a very decided manner told me that Tommy was no good. We ultimately departed good friends, and I felt for the first time a little timid with a tribe of blacks around me. It was many days before I found out the cause of Tommy’s ire.[13]
While carrying out survey work at Carisbrook he was encamped at Mt Greenock Creek which was flooded at the time. One of his party informed him that the mailman who delivered settlers’ letters about once a week from Kyneton was on the other side of flooded creek with the official despatches for the electoral officer, Mr Hall of Glenmore near Amherst, but was not willing to cross the creek.

As soon as I was finished I examined the creek and found the current flowing very rapidly, and no likelihood of a fall that night. My party were engaged with a bottle fastened to a cord about 60 yards long endeavouring to through [sic] it to the opposite but failed in the attempt. This contrivance would not suit the purpose there was no alternative but to swim. I was confident that I had swum bigger and stronger currents before. I determined to make the effort and was soon in the water and gained the opposite bank. Mr Fitzmaurice Chief Constable tied the despatches round my head. I was soon on the west bank of the creek again. In half an hour I was on my way to Glenmona on a favourable Romeo mare. Mr Hall received the Governor’s official despatches with authority to act as the Returning Officer and Mr Wm. Campbell of Strath Loddon was returned the first member of Council for the Electoral District of the Loddon on the following day.[14]

During Uquhart’s work at Carisbrook gold was discovered at Clunes and Ballarat and in early October he went to Ballarat and completed a general survey of Golden Point, Black Hill and neighbourhood and marked the site of Ballarat including about 40 building allotments. He later wrote: ‘Ballarat was the first gold fields town surveyed by me in Victoria, and was always my favourite; commanding a fine position; a bracing fine climate equal to any in the colony; about 1,400 feet above sea level, with rich lands on all sides, in some places second to none in Victoria.[15] At the same time he marked out 20,000 acres of agricultural lands that could be found near the goldfields of Ballarat in the localities of Dowling Forest, Lake Learnmonth and Lake Burrumbeet, Miners Rest and Glendaruel in lots varying in size from 80 to 320 acres each. On one occasion he and his men were confronted by a bushfire started when some diggers left a fire burning and the surrounding grass was set ablaze by embers blown by the strong wind. Urquhart found refuge for himself and his surveying equipment in a waterhole while his men escaped to safety on ground which had already been burnt. They were fortunate only to lose the men’s tent and not the whole encampment.

Urquhart spent the first six weeks of 1852 finishing his maps as his party left him for the goldfields and no reasonable wages would be accepted by anyone in the vicinity of the goldfields.

During Uquhart’s work at Carisbrook gold was discovered at Clunes and Ballarat and in early October he went to Ballarat and completed a general survey of Golden Point, Black Hill and neighbourhood and marked the site of Ballarat including about 40 building allotments. He later wrote: ‘Ballarat was the first gold fields town surveyed by me in Victoria, and was always my favourite; commanding a fine position; a bracing fine climate equal to any in the colony; about 1,400 feet above sea level, with rich lands on all sides, in some places second to none in Victoria.[15] At the same time he marked out 20,000 acres of agricultural lands that could be found near the goldfields of Ballarat in the localities of Dowling Forest, Lake Learmonth and Lake Burrumbeet, Miners Rest and Glendaruel in lots varying in size from 80 to 320 acres each. On one occasion he and his men were confronted by a bushfire started when some diggers left a fire burning and the surrounding grass was set ablaze by embers blown by the strong wind. Urquhart found refuge for himself and his surveying equipment in a waterhole while his men escaped to safety on ground which had already been burnt. They were fortunate only to lose the men’s tent and not the whole encampment.

Urquhart spent the first six weeks of 1852 finishing his maps as his party left him for the goldfields and no reasonable wages would be accepted by anyone in the vicinity of the goldfields.

Plan of Ballarat township reserve in the County of Grenville, PROV, VPRS 8168/P2, Unit 1493, Feature 553.

Marking the road to the Mt Alexander Goldfields, 1852

In February 1852, Urquhart was instructed by Hoddle to make up a team of five men including a bullock driver and proceed to Mt Alexander for the purpose of surveying Forest, Friar’s (sic) and other creeks not yet laid down. He was instructed to mark a township reserve at the junction of Forest and Barker’s creeks and lay off some half acre allotments for sale, and to report as to other sites most suitable for townships. He was informed that draftsman Edward Bagshawe would be placed under his direction and would afford him any assistance.[16] But first he had to mark a road through the Black Forest to the goldfields of Mt Alexander, a task he started in March.
Instructions were always arriving from Robert Hoddle. For example, on 12 March 1852 Urquhart was instructed that on his arrival at Woodend he was to measure some half acre allotments for sale in that township. Then on 15 March that he was to forward a tracing of the road marked between Keilor and the Bush Inn at Gisborne through Mr John Aitken’s purchase and the road between the same points passing more to the north east, and to examine and report on both roads. On 24 March 1852 he was given a notice to pass on to squatter James Orr giving him 14 days to remove any obstructions or encumbrances on that portion of the line of roads from the Coliban Bridge to Mt Alexander diggings where it passed through his paddock. On 3 April 1852 he was given permission to temporarily increase the size of his party and to immediately start marking a new line of road over the Mt Macedon Ranges. On 10 April 1852 Hoddle acknowledged receipt of tracings and reports and informed Urquhart that ‘I highly approve of your suggestions regarding the roads and will take early opportunity of laying the above before His Excellency’. On reaching the goldfields, Urquhart then made a general survey of Mt Alexander and surrounding ranges, and of the Bendigo and Castlemaine goldfields. He fixed the site of the townships of Sandhurst and Castlemaine and at the latter marked about 400 building allotments for sale. On 13 July 1852 Hoddle informed Urquhart that, as Lieutenant-Governor La Trobe wanted a tracing from his survey of the Mt Alexander gold workings on a reduced scale, he was to complete his plan and forward it to Melbourne, accompanied by a report, and that on arrival at the Bendigo Creek he was immediately to mark out a reserve at the junction of the Golden Gully with the Bendigo, being the site proclaimed for holding the court of petty sessions. It was to include the camp on the west side of the creek about a mile below the junction.

In late August 1852 Hoddle informed Urquhart that La Trobe wanted him to report upon the best position in the gold districts for agricultural reserves with as little delay as possible. Hoddle also requested to receive as soon as possible the descriptions of the township reserves marked at the junction of Forest and Barker’s creeks, and also those of Saw Pit Gully, Porcupine Inn at Mt Alexander and Campbell’s camping ground at Bullock Creek.
In his 1852 survey of the Bendigo Valley and its environs, Urquhart included township reserves at Bullock Creek, Ravenswood and Happy Jack where the nucleus of settlements already existed.[27] His plan was entitled ‘General Survey of the Bendigo Goldfields showing the proposed reserves for townships. Drawn by W.S. Urquhart, Melbourne, November 1852.’[28] On 10 January 1853 Hoddle forwarded the plan of the township of Castlemaine as marked by Urquhart to the Colonial Secretary John Foster.[29] When preparing plans of new townships, Urquhart was instructed to provide a full report as to the various sites recommended for national schools, churches, markets and other public purposes in order that they might be reserved from sale and to communicate these instructions to his assistant surveyors.[30]

A product of Urquhart’s survey of the goldfields was a map produced in 1853 by John Arrowsmith entitled ‘Trigonometrical Survey of the Gold Bearing Region near Mount Alexander in the Province of Victoria, Australia by W.S. Urquhart, Depy. Survr. Genl.’[31] The Victorian Government would have sent Urquhart’s tracings to Arrowsmith, a renowned English geographer and mapmaker based in London.

Mt Alexander Goldfields District Surveyor 1853-1864

Urquhart was appointed District Surveyor in early 1853. In October he selected for his survey office a site at Back Creek, later renamed Taradale, centrally located between the agricultural lands to be surveyed around Kyneton and Kilmore and convenient to the goldfields of Mt Alexander. On 19 April 1853 Robert Hoddle wrote to Urquhart: ‘With reference to your letter of the 19th ultimo enclosing a plan for a proposed Survey Office in the neighbourhood of the Gold Districts, I have to acquaint you that his Excellency the Lieut. Governor has been pleased to sanction the erection of the building in question, and to direct that the sum of £250 be appropriated for the purpose’. [32]

The site included a holding paddock for the bullocks and horses used by the survey teams and in total was an area of 50 acres (46.6 hectares) of Crown land fronting the Coliban River.[33] Urquhart’s initial depot staff included a bullock driver, clerk, cook, groom, housekeeper, labourer, two assistant surveyors and two draftsmen.[34]

All was well with the survey paddock until the discovery of gold near Taradale in August 1855 led to the miners demanding the right to prospect there. Miners also wanted to search for gold along sections of Back Creek and the Coliban River for which they needed access through the survey paddock.

In October 1855, a meeting at the Talbot Hotel, Taradale, attended by between seventy and eighty people saw a petition to Governor Sir Charles Hotham drawn up asking for access to the Coliban River through the survey paddock, as the water supply in Back Creek was inadequate for the needs of diggers and the general public, whereas the Coliban River had an unlimited supply.[35] Urquhart was accused by local storekeeper William Thwaites of behaviour ‘reprehensible in a public officer’, telling the meeting that he considered that Urquhart had made ‘a monopoly of the water for his exclusive benefit’ by purchasing land in early 1853 on either side of the survey paddock and on both sides of the Coliban River, thus cutting off public access to the river.

Matters escalated and on 6 January 1856, Urquhart wrote to Captain Bull, Resident Warden Castlemaine, suggesting a few police be stationed at the paddock that evening as a large body of men were preparing to rush the paddock the next morning.[36]
Ten days later, on 16 January, Captain Bull finally forwarded the miners’ petition to the Colonial Secretary in Melbourne.[37] On 18 January 1856, Urquhart sent another message to Captain Bull to the effect that ‘diggers again this morning entered the Survey Paddock and about 100 men started working the ground up. I cautioned the miners in the impropriety of their present course and they temporarily desisted. I shall be glad to be informed what is best to be done in the circumstances’. [38]

On 24 January, he received a letter from the Surveyor-General’s Office, Melbourne stating that mining could take place but setting out certain conditions, namely that all operations had to be confined initially to areas along the creek or gully considered by Bull likely to be worked with profit; a deposit of five pounds had to be paid to cover the expense of filling in the holes and making good any damage; and that if the mines turned out well, an arrangement was to be made with the miners to work the land systematically by removing the earth to bedrock so as to form a reservoir for water and, if the land permitted, construct a dam.[39]

Captain Bull also received this message and informed the diggers that he would meet at 11 am on 26 January with a committee chosen by the miners in order to identify the land to be mined and other matters. When Bull arrived, the miners’ committee met with him and expressed the opinion that they thought gold was plentiful in the paddock but that the fee of £5 was excessive. To the question of whether he had any further instructions, Captain Bull replied in the negative. The committee then set their own rules, namely that 200 feet (60 metres) each side of Back Creek and the whole of the flat on each side of the creek be open to the digging community; that any damages to the fence would be made good by a committee formed for that purpose; no trees would be wantonly injured and no tents erected in the paddock. Captain Bull accepted these terms and, after wishing the diggers well, sanctioned the opening of the paddock at 8 am the following day.[40] The next day, 27 January, more than one hundred holes were sunk by three hundred miners but not a speck of gold was found![41]

In the following week, a question was asked in parliament about the propriety of yielding government land to the miners. Captain Bull was later forced to admit he had departed from government policy over the issue ‘in a moment of embarrassment’. [42]

Regardless of the survey paddock controversy, Urquhart was a prominent member of the Taradale community. As already mentioned he surveyed the village of Taradale (later upgraded to the status of a township) and recommended the sites for such things as church and school reserves, a police station and police paddock. When a meeting was held in August 1853 to consider establishing a national school, he was one of six people appointed to the School Board.[43] He was a trustee of the Presbyterian Church which opened on 1 March 1861.

In September 1861 Urquhart played a prominent role in the proceedings associated with the laying of the foundation stone of the northern abutment of the Melbourne to Echuca railway viaduct. The foundation stone was lowered, laid and squared then christened by Urquhart with champagne. After a toast Urquhart presented the workmen with a ‘liberal donation’. [44] William married Margaret Finlason of Castlemaine in 1866, two years after retiring. He was 48, she was 37. They lived at Taradale for much of their married life and had no offspring.

Achievements as the District Surveyor

July 1853-1861

The laying out of town and village reserves and opening up agricultural land were Urquhart’s main priorities. Initially he had two assistant surveyors, one in the neighbourhood of Kyneton, the other between Castlemaine and Bendigo. But during his eleven years as district surveyor, Urquhart had at his disposal from four to seven assistant surveyors and two draftsmen, responsible for surveying the agricultural lands and town allotments in the goldfields, mostly in the counties of Talbot and Dalhousie. The approximate area of land surveyed by Urquhart and his assistant surveyors was 800,000 acres.[45]

On 6 March 1854, Urquhart reported that ‘every exertion on my part has been all along directed to the grand object of settling the Diggings population in certain localities, suitable for agriculture’. [46] Agricultural lands were laid out by him or under his direction in 47 government parishes. There was a sense of urgency to the laying out of settlements as can be seen in relation to Bendigo Creek when Urquhart was instructed by Hoddle ‘to cause every exertion to be made in completing the measurement of town and cultivation allotments at Sandhurst, Bendigo Creek which are most urgently required for sale’ and to forward ‘rough plans of both the township and suburban allotments from which the requisite descriptions can be prepared in order that as little delay as possible may take place in proclaiming the lots for sale’. [47]
In November 1854, Urquhart forwarded to Hoddle the boundary specifications for the townships of Castlemaine, Carisbrook, Daylesford, Elphinstone, Guildford, Maldon and Malmsbury and the villages of Taradale and Harcourt.[48] With respect to naming settlements Hoddle informed Urquhart on 12 May 1853 that the names of townships were given by the Lieutenant-Governor when township plans were laid before the Executive Council.[49] Over the next years the townships of Daylesford, Franklinford, Newstead, Guildford, Fryerstown, Maldon, Harcourt, Lockwood, Newbridge, Maryborough, Amherst, Back Creek, Dunolly, Bet Bet, Tarnagulla and Inglewood were marked out by under Urquhart’s instructions by his assistant surveyors.

Report for the period July 1853 to June 1854

Urquhart’s report for the year from 1 July 1853 to 30 June 1854 demonstrated the immense range of tasks he and his assistant surveyors had undertaken in one twelve-month period, and gives an indication of the nature of the work carried out over the next decade. In this twelve-month period (1853-4), Urquhart travelled about 5,000 miles (8,050 km) establishing the sites for towns and villages and identifying lands to be laid out for agricultural purposes. About 60 miles (97 km) of main roads were marked out as well as about 300 miles (483 km) of occupation roads which provided access to land marked off for gardens and other cultivation purposes. Over the year, 48,272 acres (19,550 hectares) were examined, surveyed and marked off for sale in 17 parishes on or near the goldfields. For example, in Elphinstone parish, 4000 acres of country lots, 400 acres of suburban lots as well as urban allotments in Elphinstone township and the village of Taradale were surveyed. In Maldon parish, 250 acres of township and suburban lots were surveyed. In the parish of Wombat, 3870 acres of suburban and country land were surveyed as well as 50 acres in the township of Apsley/Daylesford.[50]

Over his time as district surveyor, Urquhart directed his assistants to undertake a wide variety of tasks. For example, in July 1854 his assistant surveyors were given the following instructions: Henry Grimes was to mark off lands for agricultural purposes at Bullock Creek with Suburban lots in 5-20 acre lots and Country lands in 40 to 320 acre lots [51]; Richard Larritt was to mark out 25 acres which were then to be subdivided into quarter acre lots in the most suitable locality around or near the Commissioners Camp, Eaglehawk, in order that the storekeepers and others in the neighbourhood might have the opportunity of purchasing building sites; [52] C Russell was to lay out a village reserve on the Seventh White Hills on the main line of road to the racecourse at Sandhurst [53]; John Turner at Tarrangower was to mark off Donald Campbell’s section of 640 acres under the pre-emptive right Act [54]; Hugh Fraser was to mark out a reserve of 640 acres applied for by the Aborigines at Mt Franklin [55]; and J Willington was to lay out suburban and country lots as well as a township reserve at Sheep Wash Creek, Bendigo. Urquhart’s outward correspondence to his assistant surveyors for the period 1853-1856 provides a wonderful insight into the process by which farm lands, reserves and towns were laid out in the goldfields in this period. [56] Unfortunately correspondence for the subsequent years has not survived the ravages of time.

Retirement

William Swan Urquhart retired in 1864 and, in making application to retire on half pay, noted that he was the oldest surveyor in the service by three years, was the only one left of those engaged in the preliminary surveys of the remote parts of the colony, and was the first surveyor of the goldfields. He indicated he wanted to retire as the state of my health will no longer permit me to perform the duties required of a district surveyor. ... the frequent exposure to wet, heat & cold has rendered me very unfit for the duties required of me as a field officer; at the same time, that the life that I led for upwards of ten (10 years) under canvas in the bush has unfitted me constitutionally for the close confinement and duties of an office life, I find it absolutely necessary that I should retire before my system is broken up altogether.[57]

Surveyor-General Perry supported Urquhart’s request, writing on the cover of the file containing his letter, Mr Urquhart during the early period of his career, and especially during the first great rush to the Goldfields of Victoria displayed extraordinary energy and self denial in discharging the duties assigned to him – which however could not be held to be of a specific nature entitled to recognition under the 49th section of the Civil Service Act. I believe that Mr Urquhart’s health has suffered from the hardship and exposure encountered by him during the period alluded to, and think that he might be allowed to retire on the basis provided in the 44th section which would give him an annual allowance of about £160.[58]
In retirement William lived off his pension, dividends from bank shares, interest on mortgage loans and income from his land holdings. These included an allotment in Hawthorn, twelve allotments in the parish of Elphinstone including three in Taradale, one allotment in the parish of Metcalfe and nine in the parish of Muckleford, all purchased between 1850 and 1854. His probate papers show his real estate was valued at £19,395. His personal estate of £10,049 was mainly in shares. In his will, his wife Margaret was provided with an annuity of £500 a year.

Urquhart's Hawthorn allotment of 31 acres (12.5ha) fronted both Glenferrie and Auburn roads and contained five brick villa residences, each consisting of six rooms and a kitchen. He purchased his Hawthorn allotment in 1850 but never lived there. In 1885 a street, appropriately named Urquhart Street, was constructed through the allotment. However, the spelling of Urquhart caused a policeman such difficulty that when a horse died in the street, the policeman who attended the matter dragged it to Auburn Road, because it was easier to spell Auburn than Urquhart in his report.

In 1880 William and his wife moved from Taradale to East Melbourne where he died in 1881.

Endnotes

[3] PROV, VPRS 15899, microfiche copy of the original manuscript plan collection VPRS 8168.
[4] PROV, VA 2921 Surveyor-General's Department, VPRS 6/P0 Outward Letter Books, Unit 4, Item A54/180, submitting Mr Urquhart's application for increased pay, signed A. C., 20 April 1854.
[7] PROV, VPRS 6/P0, Unit 2, Item 45/79, Hoddle to Urquhart, 24 October 1845.
[8] PROV, VPRS 6/P0, Unit 2, Item 45/90, Hoddle to Urquhart, 14 November 1845.
[9] PROV, VA 2921 Surveyor-General's Department, VPRS 44/P0 Inward Registered and Unregistered Correspondence, Unit 560.
[10] PROV, VPRS 6/P0, Unit 2, Item 45/96, Hoddle to Urquhart, 1 December 1845.
[11] PROV, VPRS 44/P0, Unit 560, Item 62/11,082, correspondence from Urquhart, 4 December 1862.
[12] PROV, VPRS 6/P0, Unit 3, Item 50/73, Hoddle to Urquhart.
[13] PROV, VPRS 44/P0, Unit 560, Item 62/11,082, correspondence from Urquhart, 4 December 1862.
[16] PROV, VPRS 6/P0, Unit 5, Item 52/64, Hoddle to Urquhart, 16 February 1852.
[17] PROV, VPRS 6/P0, Unit 5, Item 52/115, Hoddle to Urquhart, 12 March 1854.
[18] PROV, VPRS 6/P0, Unit 5, Item 52/121, Hoddle to Urquhart, 15 March 1852.
[19] PROV, VPRS 6/P0, Unit 5, Item 52/131, Hoddle to Urquhart, 26 March 1852.
[20] PROV, VPRS 6/P0, Unit 5, Item 52/153, Hoddle to Urquhart, 3 April 1852.
[21] PROV, VPRS 6/P0, Unit 5, Item 52/165, Hoddle to Urquhart, 10 April 1852.
[22] PROV, VPRS 6/P0, Unit 5, Item 52/279, Hoddle to Urquhart, 10 July 1852.
[23] PROV, VPRS 6/P0, Unit 5, Item 52/338, Hoddle to Urquhart, 27 August 1852.
[24] PROV, VPRS 6/P0, Unit 5, Item 52/340, Hoddle to Urquhart, 27 August 1852.
[25] PROV, VPRS 6/P0, Unit 5, Item 52/518, Hoddle to Urquhart, 15 November 1852.
[26] PROV, VPRS 6/P0, Unit 5, Item 52/536, Hoddle to Urquhart, 26 November 1852.
[28] ibid., p. 35.
[29] PROV, VPRS 6/P0, Unit 4, Item A63/13, Forwarding plan of the township of Castlemaine for Approval, Robert Hoddle.
[30] PROV, VPRS 6/P0, Unit 5, Item 53/520, A.C. to Urquhart, 6 July 1853.
[31] WS Urquhart with additions by CR Read, *Trigonometrical survey of the gold bearing region near Mount Alexander in the Province of Victoria, Australia*, Published July 4th 1853 by John Arrowsmith, 10 Soho Square, London. Urquhart is wrongly described here as the Deputy Surveyor-General rather than Assistant Surveyor.

[32] PROV, VPRS 1330/P0, Unit 5, Hoddle to Urquhart, 19 April 1853.

[33] PROV, VPRS 6/P0, Unit 5, Item 53/772, W.H.B. to Urquhart, 8 September 1853.

[34] PROV, VPRS 1330/P0, Unit 1, Item 54/94, Urquhart to the Surveyor-General, 8 May 1854.


[36] PROV, VPRS 1330/P0, Unit 1, Item 56/5, Urquhart to Captain Bull, Resident Warden Castlemaine, 6 January 1856.


[38] PROV, VPRS 1330/P0, Unit 1, Item 56/18, Urquhart to Captain Bull, Resident Warden Castlemaine, 18 January 1856.


[40] ibid.


[42] ibid., p. 2.

[43] ibid., p. 10.


[45] PROV, VPRS 44/P0, Unit 560, Item 62/11,082, correspondence from Urquhart, 4 December 1862.

[46] PROV, VPRS 1330/P0, Unit 1, Item 54/273, Urquhart to the Surveyor-General, 30 November 1854.

[47] PROV, VPRS 6/P0, Unit 5, Item 53/789, W.H.B. to Urquhart, 12 September 1853.

[48] PROV, VPRS 1330/P0, Unit 1, Item 54/273, Urquhart to the Surveyor-General, 30 November 1854.

[49] PROV, VPRS 6/P0, Unit 5, Item 53/319, Hoddle to Urquhart, 12 May 1853.

[50] PROV, VPRS 1330/P0, Unit 1, Item 54/202, Urquhart to the Surveyor-General, 4 September 1854.

[51] PROV, VPRS 1330/P0, Unit 1, Item 39/154, Urquhart to Assistant Surveyor Grimes, 12 July 1854.

[52] PROV, VPRS 1330/P0, Unit 1, Item 51/64, Urquhart to Assistant Surveyor Larritt, 12 July 1854.

[53] PROV, VPRS 1330/P0, Unit 1, Item 0/64, Urquhart to Assistant Surveyor Russell, 11 July 1854.

[54] PROV, VPRS 1330/P0, Unit 1, Item 54/162, Urquhart to Assistant Surveyor Turner, 1 August 1854.

[55] PROV, VPRS 1330/P0, Unit 1, Item 54/164, Urquhart to Assistant Surveyor Fraser, 1 August 1854.

[56] Taradale Survey Office Outward Correspondence Register 1854-1856 in PROV, VPRS 1330/P0, Unit 1.

[57] PROV, VPRS 44/P0, Unit 560, Item 62/11,082, correspondence from Urquhart, 4 December 1862.

[58] ibid.

[59] PROV, VA Master in Equity, Supreme Court, VPRS 28/P2 Probate and Administration Files, Unit 115, Item 21/857; VPRS 28/P0, Unit 252, Item 21/857; *NSW Government Gazette*, 1851, p. 336.

[60] PROV, VPRS 7591/P0 Wills, Unit 62, Item 21/857.

[61] PROVVPRS 28/P2, Unit 115, Item 21/857.


The black sheep

Robert Herdman of Paisley, Scotland and Australia

Marilyn Kenny and Anne Herdman Martin

Abstract

Family historians often come up against brick walls in the shape of lost family members. In 2007, British family researcher, Anne Martin, challenged herself to find her great-uncle, Robert Herdman. Born in Scotland in 1861, Robert had gone to sea and no word of his destiny had reached the family. Fortunately, this lost sheep was also a black sheep and left traces of his activities in government records now held by Public Record Office Victoria (PROV). By using, firstly, a general family search list, Anne made contact with local researcher, Marilyn Kenny, who was able to elicit from PROV records that Robert had a criminal record. From that beginning, and using a variety of online sources, Anne and Marilyn were able to track Robert’s life journey from the time he left Scotland in 1891 as a shilling-a-month man working his passage to Australia. Robert, a baker by trade, travelled around south eastern Australia working as a shearsers’ cook. On at least two occasions, he was before the court and served a sentence at HM Gaol Pentridge. Marilyn Kenny sourced Robert’s prison photograph from PROV records and provided family members with their first sight of the lost sheep in over 100 years. Robert became a patient of Dr John Elder Butchart at the Austin Hospital and died there in 1914. The research demonstrates how much, and how varied, is the social and individual information available in public records.

Family historians frequently encounter lost ancestors, those who have dropped off the family tree. The Herdman family of Paisley had such a son, whose fate was still puzzled over more than one hundred years after he was last seen in Scotland. Fortunately this lost sheep was also a black sheep and so left traces of his doings in government records now held by Public Record Office Victoria (PROV).

In 2007 British family researcher Anne Martin, née Herdman, decided to try locating her great-uncle Robert Herdman, who was born on 18 February 1861 in Paisley. Robert Herdman was the second, but oldest surviving, son of Robert Herdman and Isabella Lockhart (1854–82). The Herdmans had been Paisley folk since 1801 and counted amongst their number a bagpipe reed maker and a silk shawl weaver. ‘Old’ Robert Herdman, born in 1829, made good as a baker and businessman. After training and working as a journeyman, he became a master baker and moved to Saltcoats to work at the bakery and granary, which he bought in 1875. Robert was a highly competent baker and a shrewd businessman. He built a quality bakery and tearoom business that was run successfully by his descendants until 1968.[1]

Old Robert was a respected member of Trinity United Presbyterian church and had such a good relationship with the Minister, George Philp, that he named one of his daughters after him and appointed the Minister as one of the trustees of his will. Robert and Isabella had eight children, four of whom, including young Robert, trained as bakers. Other daughters worked in the baker’s shop and tearooms. Young Robert shows up in the 1881 British census working as a baker in his father’s business. The next year his mother Isabella died an untimely death and Robert then seems to disappear from local records.
No detail about his fate had been passed down except that he was lost, perhaps ‘gone to sea’. Anne looked at all types of records in her efforts to find young Robert, with nil return. She then did what many searchers do: she googled the name. Amongst the 1,440 hits was one from the Index to Missing People found in Victoria Police correspondence records.[2] This indicated that solicitor James Campbell of Saltcoats, Scotland was seeking Robert to convey to him his share in Mr Herdman’s estate. Anne then posted a query on a Victorian mailing list with a family history focus. Several responses offered leads and amongst these was one that looked promising. This was for a Robert Herdman, born 1861 in Scotland, listed in the Victorian Prisoners’ Index.[3] Reference to the relevant volume in the Registers of Personal Descriptions of Prisoners [4] was critical in establishing that this was indeed her great-uncle.

The record stated that this man had arrived in Victoria in 1892 per the Loch Catherine. No such ship showed up in the PROV Index to Inward Passengers. [5] However, Nicholson’s Log of Logs [6] indicated the existence of a Loch Katrine, which was listed as arriving in Melbourne in February 1892. Robert’s name was not amongst the seven passengers, but Campbell’s letter had said that Robert was known to be a ship’s steward so it was possible that he had arrived as a member of the crew. The Loch Katrine was part of the Glasgow, Loch Line, Aitken, Lilburn & Co.[7] began operating a line of ironclad clipper sailing ships to Australia in 1870. The usual course was to take on cargo and passengers at Glasgow and then sail to Adelaide. In Melbourne or Sydney wool or grain was loaded and routed to London.

The company never changed to steamships but persisted with sail.[8] Passengers, however, preferred the speed and comfort of steamers and freight rates dropped. The ships usually managed one round voyage to Australia per year and half of this time was unprofitably spent in port. The Loch Line had the reputation of being unlucky, as eighteen vessels out of the fleet of twenty-five were wrecked, went missing, sunk in collisions, were destroyed by fire or were the casualty of wars. The Loch Katrine was built in 1869 and was a three-masted, 1,252 tonne ship. Robert certainly found the ship unlucky as he later complained of memory loss caused by head injuries sustained when a ship’s block fell on his head.[9]
Anne obtained the Agreement and Account of Ship’s Crew for this voyage of the Loch Katrine. This recorded that Robert had signed ship’s articles in November 1891 in Glasgow. He was one of a crew of twenty who agreed to conduct themselves in an orderly, faithful, honest and sober manner, be diligent in their duties, accept the scale of provisions [no spirits allowed] and use only safety matches on board. Robert claimed to have been previously a crew member on the SS Warwick, a 400 passenger vessel on the United Kingdom to North America run. The crew of the Loch Katrine signed on for an expected voyage of two years’ duration. Robert, however, made a mutual agreement with the Master to be discharged in Melbourne. He was paid only a shilling a month for his work as an assistant cook so this was the equivalent of working his passage. The ship departed November 1891 on its twenty-sixth trip with a cargo of iron for its 106-day voyage to Melbourne, arriving 21 February 1892. At the Mercantile Marine Office Robert received his wages and was discharged. His discharge certificate shows that Robert received a ‘very good’ stamp for ability and conduct.

Anne and Marilyn could not find any records relating to Robert’s movements until he is reported in 1894 at Deniliquin in New South Wales. On 1 September 1894 Robert was involved in the Wanganella riot, one of many civil disturbances in the 1894 Shearers’ Strike. This dispute was one of Australia’s most violent industrial conflicts. The Pastoralists Association attempted to cut pay and conditions and employ free or non-union labour and was strongly resisted by the Australian Workers’ Union representing the shearers.

The first trial ended with his acquittal on a technical point. He was then re-arrested, charged with riot or tumultuous assembly and affray, and committed for trial by a higher court. Robert was bailed with two sureties of £40 and stood trial at the Sessions Court on 5 October. The plea was not guilty. His evidence was that he was a baker and shearers’ cook and had left the camp with all the union shearers. The shearers had gone to blockade the bridge and deter the convoy of non-union labour. Robert however had gone first to the hotel, then down to observe the action. At the bridge he had invited one of the non-union men in the coach to come back to the hotel with him, which he had done. Herdman denied creating a disturbance and the man who went to the hotel with him testified that he was not frightened. The jury after deliberating from 6.30 pm to 8.40 pm delivered a not guilty verdict.

A week later on 12 October 1894 Robert arrived in Echuca with a gang of men travelling on the train from Deniliquin. They alighted to wait for the Bendigo train. Herdman asked one of the passengers, John White, whether he would shout drinks. White was then enticed to leave the railway station bar and come for a drink at another hotel in the town. Several witnesses stated that they observed Herdman trying to remove items from White’s pocket and roughing him up. White blacked out and when he came to he found his cash, pay cheques and personal items were missing. He went to the police station and it was while he was later searching the town with a constable that he came across Robert, who had been taken in charge, arrested for drunkenness in yet another of the town’s hotels.
There were reports from several of the town publicans that Robert had been one of the men trying to cash White's pay cheques. Robert was charged with feloniously taking and carrying away cheques to the value of £28, and £42 in cash and a number of other articles.[17] Robert stood trial before Judge Arthur Wolfe Chomley (1837–1914) at the Circuit Echuca General Sessions Court on 8 November. Chomley had been assistant Crown Prosecutor in the trial of Ned Kelly in 1880.

Robert was defended but his barrister was unsuccessful in the application that the £1 7s 6d found on Robert be handed over to assist with his defence. The prosecutor stated the £1 was part of the stolen goods. Robert could not give a clear account of events. He explained that while working on board ship a block had fallen on his skull and a drink or two caused him to lose his memory. He had been working but after getting his cheque he ‘scattered it broadcast’ and it was ‘hard to say what had become of it’. In his defence Robert seemed to indicate that others were involved but was unable to produce witnesses, ‘being but newly arrived’. The newspapers [18] reported that Judge Chomley ‘summed up greatly against the prisoner’ and the jury after a short retirement returned a guilty verdict. Robert was convicted of ‘larceny from the person’. He was sentenced to 18 months’ hard labour and transferred to the Bendigo Gaol and then Pentridge.

In the register of persons received as prisoners at Pentridge he is described as five feet five inches in height, with a stout build, 12 stone 12 lb in weight, a ruddy complexion and a round visage. He had hazel eyes and medium features; his dark brown hair was receding from his forehead. A scar on his forehead perhaps confirms his story of an accident at sea. The record gives his native place as Glasgow, his religion as Wesleyan and trade as baker. He was able to both read and write. His description highlights his previous maritime background, as under distinguishing marks he was noted to have tattoos of a tombstone engraved with ‘In memory of my mother’ on his right arm, a sailor on his lower right arm, a star on his right hand, a heart, cross and anchor and wreath on his left arm and an anchor on his left hand. His conduct in prison was described as only fair, and by committing three offences whilst in prison, including the use of improper language, he experienced a total of five days’ solitary confinement. He served the full term and was released on 7 March 1896.[19]

Herdman’s name appears on the 1903 Federal electoral rolls as a cook on a station ‘Ennerdale’ at Darlington in the Western District. There seems to have been frequent turnover of the staff employed there by the grazier, but Robert Herdman’s name is constant over the period 1903–1909. After this time he takes up the itinerant life that would have been common to many working men of the period. This lifestyle is detailed in records that date from September 1913.

When James Campbell wrote to the Chief Commissioner of Police in September 1913 he explained that he had attempted to trace Robert in 1910.[20] Robert’s father died in 1886, gifting the bakery business in its entirety to his eldest daughter Jeanie. This was an unusual move which may be linked to young Robert’s alienation from the family. Old Robert’s personal estate of £1260 [21] was to be divided among his children. The family had not heard from young Robert but had managed to track his discharge from the Loch Katrine in Melbourne. In 1910 the siblings applied to the Ayrshire Sheriff’s Court for an ‘assumed dead’ judgement and for Robert’s share in the estate to be distributed. The sheriff ordered that a search be made for Robert. An advertisement in the Argus resulted in a letter from Victoria indicating that Robert was working on a property at Woorndoo near Hamilton. Campbell had, however, come to a dead end in following this up.

Three years later, the siblings re-approached the Sheriff’s Court but were again ordered to advertise in Victoria and New South Wales. This advertisement resulted in a letter from the manager of ‘Warrowe’, Irrewarra near Colac. He wrote that from 1 March to 24 June 1912 Herdman had been working there as a cook/baker at a rate of 25 shillings, plus keep, per week. He enclosed a copy of an agreement between Robert and the owner Charles Lamond Forrest, MLC. Campbell as solicitor for the trustees then wrote to the Chief Commissioner in Melbourne requesting assistance. A ‘missing friend’ inquiry was put in place by Victoria Police. The police correspondence file indicates that from November 1913 to January 1914 police from four different districts instituted thorough inquiries. The matter was advertised in the Police Gazette [22] where it was noted that ‘a legacy awaits him in Scotland’.
The police at Beac interviewed the manager of ‘Warrowe’ and also a man who was supposed to have been on a train with Herdman in December 1912. However, this man was not acquainted with Herdman and was not sure whether it was him! The information obtained pointed to the Koroit district. Police there could find no current trace but they were informed that Herdman had been at Mundriwa Station near Deniliquin. He was reported to be in bad health and in October 1913 a mate had left him in Melbourne where he was attending one of the city hospitals. Robert then planned to go on to Mount Violet. When in Melbourne he normally stayed at Mr Watts’s Antonio’s Hotel. At this point Constable No. 4274 Thomas Henry Haigh at Bourke Street West police station took up the case. Haigh (1862–1928) had joined the force in 1890 [23] and was to prove most persistent with this inquiry. He established that Herdman was very well known at Antonio’s Hotel at 444 Flinders Street, his usual haunt whenever he came to town with a few pounds. Herdman was known as Scotty Bob, Aberdeen Lad or Ayrshire Lad and ‘spoke very Scotch’.

Before leaving Melbourne in October 1913 Robert had had an operation performed on him at the Melbourne Hospital. The file was transferred but Colac police could find no trace of Robert at Mount Violet, nor had he been treated at Colac Hospital. The file returned to Melbourne where Constable Haigh referred it to Ballarat police so that they could make enquiries of the Australian Workers’ Union. It was assumed that Herdman would have a union ticket and could be traced by that means. However, the name of the missing friend did not appear on the union rolls for Victoria and Herdman had not been treated by the Ballarat Hospital. By late January the Chief Commissioner was asking for a progress report on the matter. Constable Haigh was confident that Herdman would come to the hotel ‘any day and I am sure I will trace him before long’, but he suggested an advertisement in The Worker, a paper circulated amongst labouring men in town and country. On 6 February 1914 Haigh reported that ‘I have traced Robert Herdman. He is staying at Antonio’s Hotel, his fixed address. On being shown the [Mr Campbell’s letter he placed his affairs in the hands of Mr Evans and Masters, Queen St Melbourne.’

James Campbell was so informed by the Chief Commissioner. By 23 March Campbell was writing that he had heard from the Melbourne solicitors and offered to pay for any outlays in connection with the enquiries. Robert would have received at least £180 from the estate. This probably was used to make his last months comfortable for he had been diagnosed with cancer in August 1913. The Austin Hospital reports [24] show that Robert was admitted on 15 July 1914. At this time the Austin Hospital was for ‘incurables’, and was the only hospital to admit this category of patients. The medical superintendent Dr John Elder Butchart (1867–1927) examined applicants for admission each week at the Melbourne Hospital or visited them at home if they were bedridden.[25] There were at this time 214 patients at the Austin and Robert was one of 11 new patients who were admitted in that fortnight. Some of the Herdman legacy may have gone towards hospital expenses. At this time those patients who had means did pay fees. In the year 1914 patients contributed £917 to the hospital costs of £19,373.[26] The superintendent’s fortnightly report [27] indicates that Robert Herdman died on 18 October 1914, one of eight deaths in that period. He was buried in a private plot in the Presbyterian section of Pine Ridge Cemetery, Coburg.

Marion Button’s index indicated that there were two photographs of Robert Herdman included in the Central Register of Male Prisoners.[28] However at the time this research was being done this record was unavailable for ordering. Pam Sheers at PROV advised that this volume was being digitised and that it was only a matter of time before it could be accessed. A few months later the PROV newsletter announced that this volume was now online. Robert Herdman’s family were finally able to be re-united with him across time and hemispheres and could gaze at their black sheep. Bad Uncle Bob has used his time in gaol to grow his beard!
Endnotes

[1] The information in the foregoing paragraph is based on the recollections of Robert Herdman’s great-niece, Anne Herdman Martin. Anne was born in 1943 and until 1952 lived in the family bakery in Dockhead Street, Saltcoats. She now lives in Yorkshire, England. Oral family history and several photographs were passed down to her by Robert Herdman’s sister-in-law (Annie Crawford Currie Herdman, 1888–1962) and by his younger sister (Isabella Lockhart Herdman Baillie, 1871–1960). Following the death of her parents, the bakery business passed to Anne and her brother, Dougals. Anne’s second source of oral family history and photographs, Isabella Herdman (Aunt Belle), lived in the neighbouring town of Ardrossan, Ayrshire.

[2] A sequence of correspondence dating from 1912 to 1914 regarding Robert Herdman’s whereabouts can be found in PROV, VA 724 Victoria Police, VPRS 807/P0, Inward Correspondence Files, Unit 1297, File number O 11801. The index to missing persons was compiled by Helen Harris OAM, and is available online at <http://members.ozemail.com.au/~hdharris/>, accessed 30 August 2009.


[4] PROV, VPRS 10858/P0, Registers of Personal Descriptions of Prisoners Received, Unit 9, Folio 964, Prisoner Number 26757.


[6] Ian Nicholson, Log of logs: a catalogue of logs, journals, shipboard diaries, letters, and all forms of voyage narratives, 1788 to 1888, for Australia and New Zealand and surrounding oceans, Yarowamba, Qld, the author jointly with the Australian Association for Maritime History, 1990–98. A copy of this and many of the other publications cited in this article are held in the Victorian Archives Centre reading room library.


[9] These events were recalled by Anne Herdman Martin – see note 1 above.


[11] PROV, VA 606 Department of Trade and Customs, VPRS 558/P0, Seamen’s Discharge Certificates (Mercantile Marine Office), Unit 19, Book 213.

[12] Banjo Paterson composed ‘Waltzing Matilda’ in January 1895 when he was staying on a Queensland property where, in September 1894, a woolshed had been burnt down during the strike, and a shearer died.


[14] Pastoral Times, 15 September 1894, Deniliquin Police Court.

[15] Pastoral Times, 6 October 1894, Deniliquin Circuit Court.

[16] Echuca and Moama Advertiser, 10 November 1894, General Sessions. A microfilm copy of this newspaper is available at the State Library of Victoria.

[17] Echuca and Moama Advertiser, 8 November 1894, General Sessions.

[18] Unfortunately the brief relating to Robert’s trial in Victoria does not appear to be in PROV custody. Records created by the Echuca Courts, PROV, VPRS 3018/P0, Judges Note Books, Unit 16, or PROV, VPRS 3016/P1, Verdict Books, Unit 1, do not provide any details regarding the case.

[19] PROV, VPRS 10858/P0 Registers of Personal Descriptions of Prisoners Received, Unit 9, Folio 964, Prisoner Number 26757.

[20] James Campbell, Ayrshire, Scotland, to the Chief of Police, Melbourne, Australia, dated 25 September 1913, PROV, VPRS 807/P0, Unit 1297, File number O 11801.


[22] Victoria Police Gazette, no. 52, 24 December 1913, p. 646.

[23] Index to Members of the Victorian Police 1853–1953, Victoria Police Historical Society, Melbourne, 199–.

[24] PROV, VPRS 609/P0 Reports [Austin Hospital], Volume 3, Resident Medical Officer Reports, p. 223.


[27] PROV, VPRS 609/P0 Reports [Austin Hospital], Volume 3, Resident Medical Officer Reports, p. 237.

‘Woods Point is my dwelling place …’

Interpreting a family heirloom

Louise Blake


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**Abstract**

‘Margaret Knopp is my name, Victoria is my nation, Woods Point is my dwelling place and Heaven is my expectation’. This verse is one of many handwritten into a scrapbook that my great-grandmother, Margaret Hester (née Knopp) began compiling in 1884 in Woods Point, a goldmining township in the ranges east of Melbourne. Margaret was born on 25 July 1870 in Woods Point, and was the daughter of German miner Johann (John) Knopp and his Irish wife Catherine Foley.

Several years ago I was given custody of this scrapbook together with some photographs and newspaper clippings, that had been in my father’s family for several generations. On first glance the scrapbook had some visual appeal – beautiful cards featuring flowers, Christmas scenes and handwritten verse – but little biographical or family information, or so I thought.

When I looked at the scrapbook recently in order to take digital photographs of the pages, I found several items that puzzled me. On a page surrounded by scraps of flowers and birds Margaret had written ‘F B Deeming executed 23rd May 1892’, not once but twice. Alongside the record of Deeming’s execution was an unsourced newspaper clipping that referred to poetry about the Deeming case. I would have paid little attention to these items had I not been familiar with Public Record Office Victoria’s online exhibition on Frederick Bailey Deeming – the murderer, bigamist, thief and conman who had been executed in Melbourne on 23 May 1892. Margaret’s record of the event was an odd inclusion amongst the romantic poetry and religious verse. The other items that caught my attention were two verses, handwritten by Margaret but with the name ‘Thos Herlihy’ given as the author. The first verse laments the passing of Thomas’s friend John Foley with whom he immigrated in 1857; the second records the deaths of several of Thomas’s female relatives. On another page Margaret had included the death notices of two of Thomas’s daughters. I was not familiar with the Herlihy name in Margaret’s family history, but clearly the family meant something to Margaret. It seemed there was more to this scrapbook than the romantic fantasies of a 14-year-old girl.

The discovery of Margaret’s scrapbook and its intriguing contents led me to revisit what I knew of Margaret’s family history and her ‘dwelling place’ of Woods Point. What transpired is an investigation typical of many family historians. Using the private records our ancestors have left behind and the public record of their lives in archives such as PROV we can build up a better picture of the life and times of individuals and families who made Victoria their home.
Woods Point in the 1860s and 1870s

Margaret Knopp's scrapbook begins in the mid-1880s, but her family had been in the area since the initial gold rush of the 1860s. With few direct references in the scrapbook to Woods Point or Margaret's family history, it was necessary to revisit genealogical records, public archives, and the published histories of the region to learn more about the place where Margaret was born.

Adventurous prospectors along the Goulburn River discovered the Woods Point goldfield in the early 1860s. By August 1861 a small collection of huts and stores had been established to cater for the prospectors working the newly discovered reefs. The steep terrain made access difficult – the only way in was on foot or with a packhorse – but that didn't stop keen prospectors descending on the district hoping to make their fortune.

Margaret's father, John Knopp, and his older brother Peter were among the prospectors who arrived in Woods Point in the 1860s. The two men were born near the town of Nassau (then part of Prussia) and were the sons of farming couple Johann Knopp and Eva Kune. Leaving their homeland they travelled from Hamburg on the Magdalena and landed in Melbourne on 17 July 1860. The passenger list held at PROV reveals that most of their fellow passengers were single men aged in their 20s and 30s, some no doubt headed to the Victorian goldfields.[2] The Woods Point goldfield had not yet opened up when John and Peter arrived in Melbourne, so their initial destination is unknown. Perhaps they tried their luck at other goldfields before following the movement of miners to Woods Point. What is clear is that they were settled in Woods Point by 1864, when Peter died on 15 January after a short illness.

Eighteen months later John Knopp was recorded in the rate book of the newly formed Borough of Woods Point, but he did not remain long in the township itself.[3] New reefs had been found near Black River, east of Woods Point in December 1864 and by early 1865 numerous claims had been pegged out. Mining surveyor Alfred B Ainsworth visited the area in January and named the creek where many of the claims were situated Standers Creek.[4] Four mines were eventually established in the area – Royal Standard, Champion, Robert Burns, and Leviathan. John was one of the miners who joined this rush to Black River and was later associated with the Leviathan.

Access to the Black River mines was one of the initial concerns raised by the Borough of Woods Point in its meetings after the first council election was held on 6 July 1865. A Minute Book for the Borough survives in PROV's collection and includes transcripts of letters written to the Minister of Mines and Survey expressing concern about the expected traffic to Black River come spring, and the 'great necessity of immediately opening up the shortest route via Cherry's Point'. Not only would the route allow supplies to get through from Woods Point to Black River, but the improved access to the 'rich alluvial deposits would be a boost to the mining industry'.[5] Despite the request, access continued to be an issue, though it did not stop the expected influx of miners and the population of the region was soon estimated at around 500, enough to warrant the establishment of a police station near the Royal Standard.[6] Small townships developed around the mines with stores, hotels, butchers, bakeries and grog shanties to cater for the miners and the few families that joined them.

Just how John Knopp fared in his early years at Black River is unknown, but he was not on his own for long. Some time prior to 1868 he met Catherine Foley, an Irish girl from County Kerry who had also arrived in Victoria in the 1860s. The couple married in January 1868 and remained in the area for a number of years. The total number of women and children in the community is unknown, though Bailliere's Victorian Directory for 1868 lists 36 men at Black River, mostly miners with three storekeepers, one baker, and one blacksmith.[7] The settlement of Gooleys Creek, between Black River and Woods Point was slightly larger, and included two publicans and two violinists amongst the miners and traders.[8]
Two unidentified miners outside their cottage. Photographer unknown. Author’s collection. These two photographs were part of a collection of family photographs that were passed on to me with the scrapbook. Both locations are unknown, though they are likely to be either around Woods Point or Bendigo.

The winters were harsh and it is not surprising that of the six children Catherine gave birth to, only two survived infancy – three girls and a boy died. My great-grandmother Margaret was born at Royal Standard on 25 July 1870, but her birth was not registered until almost a year later, not by her parents, but by a neighbour from Black River. Margaret’s brother, John Patrick was born at Gooleys Creek on 14 May 1873 and a friend registered the birth some months later. Catherine’s experience of childbirth and motherhood was not unusual among the women living in the area. JG Rogers has noted that of the almost 300 people that were buried in Woods Point Cemetery between 1863 and 1880, more than half were infants, with the most infant deaths per year occurring between 1864 and 1868. Some infants were born prematurely or died soon after birth, while others died from conditions such as bronchitis, pneumonia or pleurisy, croup and whooping cough.[9] Living conditions, lack of medical knowledge and the difficulties in accessing medical help contributed to the infant mortality rate.

The Knopp family remained at Black River until approximately 1880, when John appears on the rate books as the owner of a cottage and garden in Miller Street, Woods Point.[10] John also maintained a hut at Black River where he worked the Leviathan mine, but his movements between the two are not known. [11] With the decline in the mining industry many of the mining townships did not last, and it is likely that the family – Catherine and the two children at least – moved to Woods Point to be closer to ‘civilisation’.

Woods Point remained the family’s ‘dwelling place’ for the next twenty years and it was at this time that Margaret began compiling her scrapbook.

The scrapbook

The keeping of a scrapbook filled with decorative ‘scraps’ (‘multi-colored illustrations on embossed paper that were die-cut into shapes’[12]), greeting cards, newspaper clippings, and other printed ephemera was popular among women and children in the late nineteenth century. Research on some scrapbooks held in public collections suggests that they may have been compiled as craft projects to teach children how to ‘organize and classify information and to develop an artistic sense’ while others were put together to preserve personal or family history.[13]

Birthday page from scrapbook, c. 1880-90s. Author’s collection.

Margaret was 14 years old when she began compiling her scrapbook, recording the date of October 1884 on the inside cover. Like the scrapbooks described above, it features a selection of greeting cards including Christmas cards, birthday cards, and a lace paper Valentine, some of which were published by well-known Belfast printing company Marcus Ward & Co.
There are decorative scraps of birds, flowers and courting couples. Several postcards and a number of religious cards complete the selection. A number of pages feature the silhouettes of ferns and other leaves that Margaret may have collected around Woods Point, and there is even a dried bouquet of flowers pressed between two pages, a wedding bouquet perhaps. Some pages have had cards and other items removed. Was Margaret censoring her scrapbook in later years, or were the decorative cards removed and used elsewhere? Poetic verse, handwritten and cut from newspapers or journals, suggests that Margaret was educated, and indeed had an interest in poetry. Love and romance is one of the recurring themes and some poetry may have been written or transcribed during her courtship with her future husband, Charles William Hester. Clearly, Margaret could read and write and this led me to question what she was reading and what educational opportunities she and other children her age had in Woods Point.

Margaret's education

Woods Point residents had access to books and reading material from the 1860s. Several local newspapers were published, sometimes in competition with one another, and newsagent S Collou & Co. advertised a delivery service between Woods Point and Black River, offering readers copies of the major daily newspapers, Government Gazette, books, stationery and overseas newspapers and periodicals. Collou's business also included a lending library and bookshop in Bridge Street. When Margaret began her scrapbook there was no locally published newspaper in Woods Point, leaving residents to rely upon the Jamieson & Woods Point Chronicle for their local news (which didn't include much Woods Point news) until the Gippsland Miners Standard began in 1896. The latter at least was on Margaret's reading list – news of her wedding was published in the paper on 28 September 1897 though the article is not included in her scrapbook. The only newspaper clipping in the scrapbook that identifies the region is an 'Ode to Marysville' written by 'Poor Pat' who was inspired by his stay at Keppel's Hotel in Marysville in January 1885 to write this poem of thanks. The first verse reads:

O MARYSVILLE; sweet Marysville!
Bedecked with wood, bedewed with rill,
I fondly love thy ev'ry hill,
And though we part I'll love thee still.[16]

Keppel's Hotel was a popular destination in Marysville, one of many attractions destroyed in the bushfires that occurred on 7 February 2009. The 'Ode' is a poignant reminder of the beauty that drew visitors to the area, and is typical of the romantic nature of Margaret's scrapbook.

Margaret did not preserve many contemporary news items. The exception to this is the page dealing with Frederick Deeming, which includes the date of his execution and a clipping referring to poetry about the case. The story of Deeming's crime, trial and execution appeared in many newspapers, including the Jamieson Chronicle and Margaret could have read about the story in this paper or others. The question of why she includes it is more puzzling. The clipping appears to be a critique of poetry about the case. In one section the writer states that 'most of this poetry is not original, but is built on well-known pieces, the local colouring being worked in to make it fit the case of the writer':[17] Read in context with the other poetry and newspaper clippings included in her scrapbook, the Deeming references may form part of the educational purpose of the scrapbook — learning how to organise and classify information.

Reading newspapers wasn't Margaret's only means of education. The first schools in Woods Point opened in the mid-1860s, one of which was run by the Catholic Church. When the Catholic school closed due to a decline in numbers, Woods Point State School No 789 became the only school in the township. A search of the school correspondence files held by PROV has so far failed to find a list of pupils or other evidence that Margaret attended the school but it seems likely that she did. The correspondence between the school and the Education Department provides little information on what the children were taught, but it does paint a picture of what the experience may have been like for the teachers. And in the absence of any local newspapers for the period, the correspondence is also a valuable source of information on the Woods Point community.

Looking at the period from the late 1870s through to the 1880s, the Education Department had difficulties recruiting and keeping teachers at Woods Point. The most common complaints were the harsh winters, the isolation, and the higher cost of living.
In January 1879 Assistant Teacher Mary Boyce wrote to the Department requesting a transfer:

> It is unfair to a teacher to be left in a place like the above for any length of time, as, although the salary is not greater, the expense of every thing here is considerable, and that of travelling excessive. There are no advantages of any kind whatever being figuratively buried alive. My predecessor remained here only five months, therefore, as I have been here a year, I sincerely trust that you will give me hopes of removal before the winter sets in.[18]

The Department replied that Mary would be transferred as soon as a suitable opportunity arose but she was still at the school in December. John Lucas, Head Teacher at the time was similarly disenchanted when he wrote to the Department in March 1879 asking to be removed ‘from this fearful place’ so that he could be ‘nearer to the haunts of civilization’. [19]

After a period of relative stability in the early 1880s under Head Teacher William Loughrey, who taught at the school with his wife Kate, there was another high turnover after the Loughreys departed, with many teachers reluctant to move to such an isolated community. The correspondence also reveals conflict over travel expenses between the Department and one of Loughrey's replacements. Relief teacher Ebenezer Alexander hired a buggy at a cost of four pounds when he transferred from Jamieson to Woods Point, attracting the attention of Inspector Eddy. Eddy wrote that though he had been informed that the cost of buggy hire had increased due to the poor conditions on the road,

> in my opinion the H. T. had no business to hire buggies on this occasion as he must have known well the dearness of travelling by such means, but rather that he should have hired a horse & ridden the journey & have had his effects brought down by a wagon.[20]

The conditions experienced by teachers at Woods Point were no different to those experienced by teachers in other remote communities, and no doubt the residents suffered similar feelings of isolation, particularly in winter.[21]

One of the teachers who lasted longer than some was Marion Miller, who commenced as a pupil teacher in 1879 at the age of 14. Marion, or Minnie as she referred to herself at the time, had at least one advantage over her transient colleagues in that she was born in Woods Point and lived there with her family. Marion’s father James Miller was a Councillor with the Borough of Woods Point and had a store and drapery in Bridge Street that sold boots, shoes, groceries, wines, spirits and ironmongery.

Marion became of interest to me when I read about her love of poetry and Irish literature, and her later career as a writer. According to Patrick Morgan, Marion drew inspiration from Irish literature and the Catholic Church, wrote about the virtues of Victoria’s mountains and forests, and based her first novel – the romance *Barbara Halliday* – on her childhood in Woods Point. [22] The themes Marion wrote about are the same themes that appear in Margaret’s scrapbook. Given that at one stage the two families were neighbours and that Marion taught at the school when Margaret began her scrapbook, it is possible that the two were known to one another. Marion was five years older than Margaret: was she an influence on the composition of Margaret’s scrapbook, or were romance, Catholicism and the natural world of interest to many young women living in Woods Point at the time? Their mutual interest in Irish heritage (both of Marion’s parents were Irish; Margaret’s mother was Irish) is reflected in Marion’s later writings and the Irish references in Margaret’s scrapbook.
Margaret's Irish heritage

Woods Point was a township of migrants and the Irish were well represented – in the population and in the names given to settlements, hotels, mines and reefs. Margaret’s mother Catherine Foley was born in County Kerry and arrived in Woods Point in the mid-1860s, though little else is known about her arrival and family connections. Catherine may have been one of many single Irish women who immigrated to Victoria and found work as domestic servants. In Woods Point she would have been surrounded by familiar accents from her native Kerry and elsewhere in Ireland.

As I stated in the introduction, among the references in Margaret’s scrapbook that interested me were the two poems or songs written by Thomas Herlihy. One was a lament for his friend John Foley with whom he immigrated in 1857. The first half of the poem reads,

I grieve for poor John Foley
For whose death I feel so lonely
In this southern land of glory
Of the freest of the free.

Though a long time separated
By distance and vocations,
Our friendship ever faithful
Since we crossed the Shiny sea

We left our native Kerry
In September fifty seven
Seeking for some treasure
In a big ship round the globe

We landed in Port Phillip
In the highest & best of spirits
In hopes to find some diggings,
To mine them on for gold [23]

After locating the Herlihy family – and John Foley – on the passenger list for the ‘British Trident’ which arrived in Victoria in December 1857, my initial research focused on finding a connection between John Foley and Margaret’s mother Catherine.[24] Though John Foley died the same year that Margaret began the scrapbook, I could find no direct link with Catherine. I then focused my research on Thomas Herlihy and soon found a connection.

A few years after arriving in Victoria in 1857, Thomas was a storekeeper at Gooleys Creek, a settlement south east of Woods Point where Irishman William Gooley had found gold in May 1861.[25] By 1865-66 several mines were established in the area, including the Shamrock and Never Mind. The Irish presence at Gooleys Creek no doubt inspired the names of several other mining companies – including the Erin GM Co. and the Rose, Thistle and Shamrock GM Co. – though according to Brian Lloyd both companies failed.[26] Thomas’s wife Catherine gave birth to three of their 13 children in Gooleys Creek, but in October 1865 their son Daniel died three days after he was born. When I looked at the inquest file on Daniel’s death I found that one of the witnesses at the inquest was a Catherine Foley. Catherine stated that she had been ‘with Mrs Herlihy from the birth of her child until his death.’[27] Though there was more than one Foley family living in the region at the time it is likely that this Catherine was Margaret’s mother, a friend or acquaintance of the family, thus providing some explanation for the connection between the two families.

Thomas and his family remained in Gooleys Creek until the early 1870s when many of the smaller mining townships disappeared as a result of the decline in the mining industry. They then moved to the Kilmore/Wandong district where they had a farm and Thomas worked for the Victorian Railways. According to one local history, the family was well known in the district.

Less formal entertainment was provided by the Herlihy family, who lived on a modest farm east of the railway reserve north of Wandong. A convenient square of ground was fenced and leveled and to it would come the townsfolk to dance by moonlight to the violin and accordion played by the Herlihy’s.[28]

Thomas’s position as Deputy Electoral Registrar for Kilmore, a position he was appointed to in 1885, no doubt contributed to the family’s profile in the district. [29]
Despite the Herlihys’ move to Wandong, Margaret’s family must have maintained some contact and interest in their welfare, as Margaret recorded the deaths of two of Thomas’s daughters – Ellen in 1883, Catherine in 1886 – in her scrapbook. Of interest on the same page is a poem in memory of Alexander Martin Sullivan, an Irish politician, lawyer and journalist who died on 17 October 1884. Sullivan’s notable career included the editing and ownership (with his brother, Timothy Daniel) of the Irish nationalist newspaper The Nation, as well as other writings. It is not clear if Margaret or her family read The Nation, but at least one newspaper clipping she included reprinted a poem by Timothy that first appeared in The Nation.

These references are just some of the inclusions that suggest Margaret’s Irish heritage was important to her, and gives some insight into the bonds that existed amongst the Irish community in Woods Point.

Leaving Woods Point

Margaret’s ties to Woods Point began to unravel after the death of her father in 1895. Her brother John sold the Leviathan mine to the owners of the Hope and Sir John Franklin mines, and in 1897 she married Charles William Hester, a miner from Bendigo living in Woods Point. The couple lived in the suburb of Piccadilly where three of their seven children were born, including my grandmother Catherine. Lloyd writes that the mining industry around Woods Point ‘was in the doldrums’ at the turn of the century and would not pick up for almost two decades. This is perhaps what prompted the family to leave Woods Point around 1903, following Margaret’s mother and brother who had moved to Gisborne a year or two earlier.
With the move to Gisborne a new chapter in Margaret's life began, but she still maintained some connection with her Woods Point childhood by keeping the scrapbook. Later additions are difficult to date, though a New Year card sent to 'Uncle Charlie' (Margaret's husband) from Mary (daughter of Charles's sister, Elizabeth Marchesi) in either 1905 or 1909 suggests that she – or other members of the family – may have added to it. The scrapbook was later passed down through Margaret's female descendants – her daughter Catherine, her granddaughter Margaret, and two great-granddaughters, of whom I am one. It was not the only family heirloom that she passed on, but it is perhaps the one that gives the clearest insight into Margaret's formative years and the place she called home. Without the information gathered from public records and published sources, the scrapbook may have remained simply a decorative family heirloom, but together with this research the scrapbook and the story of Margaret's family becomes a small part of the history of Victoria's goldfields.

Endnotes

[1] My thanks to Maureen Hester who did the initial research into the Knopp family that formed the basis of my research. Thanks also to the women in my family who have treasured the scrapbook and contributed to its history.


[3] PROV, VPRS 11458/P1, Unit 1, Borough of Woods Point Rate Book, 1865.


[5] Letter to Minister of Mines and Survey, PROV, VPRS 1277/P0, Unit 1, Minute Book of Borough of Woods Point, 4 August 1865.


[8] 'Goolleys Creek', in ibid.


[10] PROV, VPRS 11458/P1, Unit 1, Rate Book, 1880.


[16] 'Poor Pat,' Ode to Marysville', 5 January 1885, unsourced newspaper clipping in scrapbook.


[18] Mary Boyle to Secretary for Education, PROV, VPRS 640/P0, Unit 434, File 79/1883, 17 January 1879.

[19] John P Lucas to Secretary for Education, PROV, VPRS 640/P0, Unit 434, File 79/11541, 31 March 1879.

[20] Inspector Eddy to Secretary for Education, PROV, VPRS 640/P0, Unit 435, File 87/19126, 19 September 1887.


[27] PROV, VPRS 24/P0, Unit 162, File 1865/927, Daniel Herlihy.


[29] Victoria Government Gazette, no. 95, Friday 9 October 1885, p. 2811.


Nichola Cooke

Port Phillip District’s first headmistress

Dr Liz Rushen


Dr Liz Rushen completed a PhD in history at Monash University in 1999, and was then appointed executive director of the Royal Historical Society of Victoria. Now an independent scholar, she is a member of the Professional Historians’ Association and an adjunct research associate in the School of Historical Studies, Monash University. Liz is widely published and is currently working with Dr Perry McIntyre on a project which explores the experiences of pre-Famine Irish immigrants to Australia, particularly in the context of the wider diaspora of this period.

Abstract

Well-connected governess Nichola Anne Cooke established the first ladies’ seminary in Melbourne in 1838, just three years after the foundation of the settlement. Conditions were still very harsh and Nichola experienced devastating personal tragedy. She needed courage and enterprise for her school to be successful, and she demonstrated many times that she had both. With the deaths of her family and benefactor within nine months of her arrival in Melbourne, she used her education to provide a source of income, establishing Roxburgh Ladies Seminary on the Batman property, now the site of Young and Jackson’s Hotel in Melbourne.

Nichola upheld her right to stay on the property when the Batman executors tried to force her to leave, and provided stability in the lives of the Batman daughters. She actively engaged the civil courts in protecting her assets at a time when women were not even able to vote, and was one of the first women to own land in the Port Phillip District prior to its separation from the colony of New South Wales.

Nichola Cooke overcame many difficulties to earn her living as a single woman in the fledgling settlement. Her story is remarkable for her links with the development of Melbourne and is important to the history of education in the Port Phillip District.

Nichola was born in Ireland, circa 1800, the daughter of Agnes and Thomas Sargent, a Surveyor of Excise and a Sub-Commissioner for Great Britain and Ireland for 41 years.[2] In October 1816 Nichola married Benjamin Cooke, Esq. of Midleton, near Cork.[3] The couple made their home at Ann Street, Cork, but Benjamin died in May 1822, aged 29.[4] It appears that the couple had no children.

Following the subsequent death of her father in January 1828, Nichola moved with her mother and younger sisters to Bristol where in 1832 her mother wrote to the Commissioners for Emigration seeking assistance to emigrate. At this time, the British Government was encouraging impoverished women to migrate to the Australian colonies, but the Commissioners declined to assist the Sargent women, writing ‘it is quite out of their Power to make any further allowance in cases such as yours, than is stated in the accompanying Papers’. [5] The Emigration Commission encouraged the migration of women who had assistance from patrons, benefactors or charitable institutions: the Sargent women did not qualify for the government’s assistance under these provisions.

By 1836 there was renewed interest in the possibilities of emigration to the Australian colonies, and the London Emigration Committee had been established to assist women from all backgrounds to emigrate. Agnes and her daughters took this opportunity to establish a ladies’ school in Van Diemen’s Land. Recent research has shown that the ladies’ school enterprise provided a professional path and a livelihood for women without a male breadwinner. Women such as the Sargent family, with teaching experience and some capital, left behind the over-crowded education market in Britain and came to the colonies seeking new opportunities.[6]
On 28 April 1836, Agnes Sargent and her four daughters boarded the *Amelia Thompson* at Gravesend, arriving at Launceston on 26 August that year.[7] The ship's passenger lists describe the family as Mrs Agnes Sargent (also Sargeant/Seargeant) aged 50, and her four daughters, who all received the bounty for single women: Mrs MA Cooke a widow aged 28, Catherine A 23, Frances M 20 and Arabella 17.[8] The shipping lists show Nichola's name as Mrs MA Cooke, but following her arrival she was known as Mrs Nichola Ann/e Cook/e. The age requirement for women receiving the bounty was between 15 and 30 years, and it would appear that Nichola's age was reduced by a few years to meet the bounty requirements, thus only Agnes had to pay her passage.

Launceston

The arrival of the *Amelia Thompson* at Launceston was a desperate affair. Unable to find suitable accommodation for the 312 passengers, including 173 bounty women, the commandant in charge of the reception facility, Major Ryan, sent frantic messages to Lieut. Governor Arthur declaring that he had made many enquiries but could not obtain a place large enough for the women who were expected to arrive any day. His last message before the arrival of the ship stated: ‘There is a telegraph signal just made from George Town that a Bark [sic] is in sights from the Westwards and I fear this will prove to be the *Amelia Thompson*. If so, I am in a pretty mess’. [9] It was the *Amelia Thompson* and Major Ryan was forced to house the immigrants in a government-owned cottage.

Five weeks after their ship docked at Launceston, Mrs Sargent, her four daughters and Ann Rogers their maid, still remained at the government cottage provided for their reception.[10] The next month, Major Ryan wrote to the Colonial Secretary in Hobart stating that the Sargent women were planning ‘to establish a school for young ladies’, but had been unable to locate suitable premises:

> I could not possibly turn this family out in the streets. They are in expectation of getting into a house on the first of next month, after which day I propose ... to discontinue this party further on the bounty of Government.[11]

The women eventually moved out of the government cottage and it is believed that they opened a school for girls in Brisbane Street, Launceston. However, things were not going well for the Sargent women in Launceston. A year after their arrival, Agnes petitioned Lord Glenelg for a grant of land, to which she believed she was entitled on account of her husband's long government service. Writing from Moncton Cottage, Brisbane Street, she stated:

> Memoralist and four daughters, influenced by the glowing representations of this colony, emigrated from England ... in 1836 with the view of establishing a ladies seminary. That Memoralist on arriving in this “Land of Promise” after encountering all the dangers and disagreeables of a long sea voyage finds herself greatly disappointed in the encouragement held forth to emigrants, add to this house rent and every necessary of life is more than double the ratio here than in England.[12]

Governor Sir John Franklin annotated the letter ‘Answered that under the existing land regulations it is impossible to comply with this application’ and the response from England, when it came, was no surprise: ‘Cannot comply, Downing Street, 26 November 1837’. [13]

Despairing of opportunities in Van Diemen's Land, the women decided to move on again. They were used to relocating: from their various homes in southern Ireland, to Bristol, to Launceston; and they decided to establish a ladies' seminary in the new settlement of Melbourne in the Port Phillip District.
Roxburgh Ladies Seminary

Nichola paved the way for the family’s move. She sailed from Launceston on the Gem, arriving in Melbourne on 23 August 1838, (14) just in time to be included in the General Census of Port Phillip, taken on 12 September 1838, where she is listed with John, Catherine and Sarah Hennessy.[15]

Nichola immediately took up the position of governess to John Batman’s children at their home on Batman’s Hill, replacing Caroline Elizabeth Newcomb who had left the Batman employment over a year earlier, in April 1837. Together with Anne Drysdale, Newcomb later established ‘Boronggoop’ and ‘Coriyule’ pastoral properties located on the Bellarine Peninsula.[16]

On 1 November 1837, Batman purchased several blocks of land from the Crown, including a slightly swampy half-acre on the corner of Swanston and Flinders Streets to the east of the main settlement, part of Allotment 8 in Section 3 of the Town of Melbourne.[17] He built a seven-roomed cottage named ‘Roxburgh Cottage’ on the western end of the block, later becoming No. 35 Flinders Street, and now incorporated into Young and Jackson’s Hotel. With his business affairs rapidly declining, on 2 August 1838 Batman mortgaged the allotment to Captain Foster Fyans, Police Magistrate at Geelong, for 500 pounds.[18]

Three months later, on 1 November 1838, Nichola rented the cottage from Batman for five years at an annual rate of 100 pounds, [19] establishing Roxburgh (also known as Roxbegh or Rossbegh) Ladies Seminary, reputed to be the first school for girls in the Port Phillip District. The rental was little more than her basic quarterly fee as governess for the seven Batman daughters.[20] With boarding facilities available, the Batman girls were soon joined by other students, including the daughters of Robert Saunders Well, Collector of Customs, and Maria Matilda, daughter of Captain Benjamin Baxter, later to become Mrs John Edward Sage of ‘Eurutta’, at Baxter on the Mornington Peninsula.[21]

It was a discerning move to establish a school in the cottage, which was ideally located. As the township of Melbourne grew, first a punt was established across the Yarra River, and then a wooden bridge was built at the end of Swanston Street, giving the school a prominence which could not have been imagined in 1838.

Nichola loses her family and her benefactor

Encouraged by Nichola’s success in securing a suitable property, Agnes and her three youngest daughters boarded the schooner Yarra Yarra in September 1838. [22] Tragically, Captain Lancey, the crew and all 18 passengers were drowned when the 45-ton schooner, only built in 1837 in New South Wales, was lost without trace in Bass Strait.[23]

The news of the loss of the ship was a tragedy for Nichola and the new settlement at Melbourne. The *Port Phillip Gazette* for 24 November 1838 reported:

> We must give up ... all hopes of the arrival of the Yarra Yarra, for she has been due now some weeks and nothing has yet been heard of her. The loss of this vessel is made more distressing as she had several ladies on board, who have undoubtedly perished with the ill-fated craft. The Misses Sargents who were coming hither with the intention of opening a school, were amongst the number of unfortunates; and it is somewhat singular that the house which Mr John Batman had leased for a term of five years to Mr Howie, and on the protracted absence and supposed death of that gentleman and his family also by shipwreck, had again been leased to the Misses Sargents, is a second time vacant by the loss of the last.[24]

It must have been a devastating shock to Nichola, one which was exacerbated by the death of her benefactor just six months later. During 1838 Batman’s health and marriage were disintegrating rapidly. One commentator has remarked that ‘Christmas 1838 must have been a miserable affair for the Batman family. Eliza was by now totally estranged from John and the children held in the efficient care of Mrs. Cooke.’[25] Batman died five months later, on 6 May 1839.

Following Batman’s death, Nichola continued to operate her school on the site. She placed advertisements in the *Port Phillip Patriot* and the *Port Phillip Gazette* announcing the end of the Christmas vacation on Tuesday 1 January 1839.[26]
In May 1839 Nichola’s school was listed as the only one of four private schools established in 1838 still operating. Captain Lonsdale, in charge of establishing government in Melbourne, enumerated them on an official return:

- Ralph, Walton – 20 to 35 students in daily attendance; established about six months.
- Cockane – 10 to 20 students; about two months.
- Mrs Coghlan – 20 to 30 students; about five months.
- Mrs Cook – 6 to 15 students; about five months.

These schools were held towards the latter part of the year, and are now discontinued, except that of Mrs Cook. The number of scholars are as correct as I can now ascertain.[27]

Captain Lonsdale’s statement that the other three schools failed within a year is confirmed by a letter written on 19 June 1839 by Rev James Forbes stating that the only private place of education in Melbourne was ‘a small school for very young children taught by a female’. While 727 pupils attended church schools at that time, Forbes was lobbying for the government to support the salary of a schoolmaster.[29]

Port Phillip Gazette, 29 December 1838.

While Nichola was the only person operating a school exclusively for young ladies, newly-arrived settlers lamented the general lack of schools in the new settlement.[30] At the end of 1839 William Locke wrote to his father:

respecting schools here, I must say that Melbourne is not so well off in that point, as I think you could wish. There is one ladies’ school kept by a Mrs Cooke, who is here for some time, but from what I have heard of her, I believe her character is not what at least a schoolmistress’s should be, being what is commonly termed a little flighty, however, as this is only a report I cannot vouch for its correctness.[31]

In today’s terms, we would probably describe Nichola as suffering from ‘post-traumatic stress disorder’. Not only had she lost her mother and sisters in a tragic accident a month after she arrived in Melbourne, but eight months later her landlord and benefactor died. No doubt this created considerable uncertainty for this pioneering schoolmistress.

Mrs Cooke fights to retain occupation

Under the terms of John Batman’s will, the property occupied by Nichola, although mortgaged to Captain Fyans, was left to his eldest daughter Maria. Batman had seven daughters, yet Maria was left substantially more than her sisters. Batman had bequeathed life interest in three other town allotments to his next three eldest daughters, but in the final months of his illness his business affairs deteriorated rapidly and he was forced to sell the properties bequeathed to Lucy, Eliza Junior and Elizabeth Mary. To his three youngest daughters, Batman left only a share in the proceeds of the sale of his personal effects.[32]

On 16 August 1839 Nichola was paid 14 pounds 11 shillings 2 pence by the executors for the education costs of the Batman children.[33] With considerable debts to settle, the executors commenced selling Batman’s assets. In October 1840, the Port Phillip Gazette advertised that the Melbourne Auction Company would auction

by order of the mortgagee – the spacious premises and ground now occupied by Mrs. Cook, as a Seminary for Young Ladies, being corner Allotment 8 Block 5, having frontages to Flinders and Swanston-streets, and near to that part of the Yarra Yarra where the Bridge is to be immediately built.[34]

It appears that the sale did not take place and Nichola advertised the new school term in the Port Phillip Gazette on 2 January 1841. She is listed in Kerr’s Melbourne Almanac and Port Phillip Directory for 1841 as ‘Cook, Mrs., boarding school, Rossbegh Cottage, Flinders Street’. On 16 June 1841, the Gazette contained the following advertisement:

To Let, in the most desirable part of Melbourne – a commodious Residence, consisting of entrance Hall, drawing room, breakfast parlour, two bed chambers and store room, a detached kitchen with loft over, &c. Apply to Mrs. Cooke, Rossbegh Cottage, Flinders-street, or to Mr Reeves, Market-square.

Again, it appears that no-one rented the property and on 6 October that year another sale notice was placed in the Gazette, this time by auctioneer Samuel McDonnell. He stated that ‘this property is one of the most beautifully situated, as well as the most rapidly improving part of the town,[35] Nichola, however, asserted her right to occupy the property. Three days after the McDonnell advertisement, she inserted a notice in the paper stating:

Mrs. Cooke begs to intimate to the public, that she is fully determined to retain the possession of the cottage and allotment occupied by her, according to her original agreement with the late Mr Batman, and that two years of her time are yet unexpired.[36]
A week later on 13 October 1841, Edward Newton, one of the trustees of the Batman estate, placed a notice in the paper stating that ‘no such agreement, either written or verbal, ever existed’. He claimed that Nichola’s statement ‘if credence be given to it, will depreciate the value of the property at the time of sale … and thus hurt the interests of the family of the deceased.’[37]

The ‘interests of the family’ presumably relate to Maria Batman, to whom the allotment occupied by Nichola had been bequeathed by her father. Earlier in 1841, Maria then aged 16 had married John Kenny, a 26 year-old customs clerk. Within six months she had given birth to a baby who died, and this event was closely followed by the death of her husband in August that year.[38] It is apparent that Nichola and Maria retained a good relationship, as, after her husband’s death, Maria lived with Nichola at Flinders Street for more than a year.[39]

Nichola continued to operate her school on the property throughout the 1840s, and the older Batman daughters lodged with her during this time. When the outstanding accounts of the Batman estate were finally drawn up, it was revealed that for the period from 1 August 1839 until 25 March 1843 Nichola was owed 199 pounds 3 shillings ‘for board, maintenance, education and other expenses’ for the Batman children. The total amount expended on the children in this time had been 989 pounds 3 shillings and Nichola had received 790 pounds, leaving a balance due to her of 199 pounds 3 shillings. This amount of nearly 1,000 pounds included tuition and board for the Batman daughters, including board over Christmas vacations, books and shoes, tuning of piano, extra charges for Eliza Junior as a ‘parlour boarder’, Maria’s board, and the cost of a piano bought for Maria.[40]

These amounts were finally settled by PW Welsh, a Melbourne merchant who had been appointed the second trustee of the Batman estate.[41] The Port Phillip Gazette of 27 January 1844 notes that Nichola imported a case of fruit from Hobart per Lillias.

In a hearing regarding the progress of the Batman will held on 25 April 1842, it was noted: ‘No rent received from Mrs Cook the amount having been allowed in part payment of the education of family of the deceased. Payable quarterly … The tenant refusing to give up possession’. In another hearing on 10 September 1844, Welsh stated: ‘No rent has been paid to Receiver for this portion of the Estate … It was sold under the Mortgage but Title defective and Mrs. Cook [sic] refuses to give up possession. The settlement of the Batman will dragged on and Nichola stayed put. In a deposition the following year, she finally had a chance to outline her reasons for remaining at the property:

I took the House I now live in from the Testator during his lifetime. I took it on the 1st November 1838. I took it for five years and a Lease was to have been granted. The rental was £100 per annum. The rent was always to be settled in acct with the Testator quarterly. The account was for the education of the children. I have never paid any rent – it was always settled in a/c.[43]

It appears that Nichola won her fight to stay at the property, as in a further hearing on 1 May 1845, she was still stated to be the occupant at Flinders Street. [44]
Nichola Cooke, a long-term resident with a relatively high profile, demonstrated her determination many times. On one occasion, in November 1843, she was brought before the Petty Sessions for having an unregistered dog and was lucky to have the case dismissed. In other cases that day, one defendant under the same charge was fined 20 shillings with costs and six were fined 10 shillings. Nichola’s was one of only two cases to be dismissed.[45]

An early-twentieth-century writer has given us a colourful description of Nichola:

Mrs. Cooke ... seems to have been a woman of very strong personality and great determination. They tell of her that when the collection of municipal rates was first mooted she announced her intention never to pay them. ‘When they come to me,’ said this inflexible woman, ‘they will find Moll Thompson’s initials on my purse!’ On another occasion, when riding through ‘the village’ she met some unhappy man who had incurred her displeasure. Brandishing her horsewhip over his head, she said with more passion than humour, ‘Consider yourself horse-whipped, Sir!’[46]

With the opening of the bridge across the Yarra at the end of Swanston Street in October 1845, it is likely that Nichola had greater access to pupils living south of the river. She is listed in both Mouritz’s Almanac and Directory of 1847 and the Port Phillip Patriot Almanac for that year as ‘preceptress’.[47] The City of Melbourne Rate Books for 1843 to 1850 list her as the occupant at Flinders Street, in a property valued initially at 30 pounds, growing to a rated value of 36 pounds by 1850, when the property is stated as including a house of seven apartments and kitchen. In 1847–48, when the property was still valued at 30 pounds, the surrounding properties were valued between 28 and 140 pounds. In both 1847 and 1850, Foster Fyans (to whom John Batman had mortgaged the property in 1838) was stated to be the Agent.[48]

On 4 December 1850, Captain Fyans foreclosed the 1838 mortgage and sold the allotment to Thomas Herbert Power and Matthew Hervey for 1,500 pounds.[49] Nichola did not immediately vacate the property as she is listed in the 1851 Victoria Directory as still living at that address.[50] The 1851 report by HCE Childers, the first Inspector of Schools in Victoria, stated that there were 24 private (or dames) schools operating in the newly-declared colony of Victoria and it is likely that Nichola’s Roxburgh Ladies Seminary was one of these schools.[51]

By 1853 Nichola no longer occupied 35 Flinders Street, as the Melbourne Directory for that year lists this property under Geo M. Whitehead & Co., Merchants.[52]
Return to Ireland

In 1855 Nichola Cooke is listed in the Melbourne Commercial Directory as keeping a boarding house in Stephen (now Exhibition) Street, on the corner of Collins Street. She returned to Ireland after this time, as her name is not listed in any Melbourne directory after 1855, and by 1867, when she sold her land off Little Collins Street, Nichola was living at Armagh, Ireland. It is possible that she was the Mrs Cooke who sailed to London from Melbourne on the Copenhagen in February 1862.

On 18 October 1867, five months after the sale of her land, Nichola died at Enniskillen in the County of Fermanagh, leaving an estate in Melbourne valued at 538 pounds 17 shillings 5 pence. She had 283 pounds 12 shillings in the Victoria Life and General Insurance Company and Savings Institute, 55 shillings 5 pence outstanding rent from John Sleight, as well as 250 pounds in the hands of the administrator (most likely the proceeds from the sale of her land). She also had at least 100 pounds in the Enniskillen branch of the Bank of Belfast.

Under the terms of her will, drawn up just six days before her death, the first beneficiary was her nephew Thomas Blennerhassett Sargent, surgeon, who was to receive 270 pounds of the money remaining in the bank account in Melbourne. The executrix, Sarah Anne Blennerhassett, widow of Enniskillen, described by Nichola as her 'dear friend' was to receive 269 pounds which Nichola stated she 'shortly expect[ed] to arrive from Melbourne being the produce of a sale of property there and some interest money.' Sarah's son, Richard Henry Blennerhassett, also a surgeon, was executor and another beneficiary to the sum of 100 pounds. His wife, Elizabeth Anne was to receive Nichola's 'rings, trinkets and jewellery and all my personal effects'.

The Blennerhassetts were a well-connected Protestant Ascendancy family. In 1812, Nichola's elder sister, Mary Ann Sargent married Richard Balmer, a Lieutenant in the Armagh Militia. They had one son, Benjamin Blennerhassett Balmer whose name, along with that of Nichola's nephew Thomas Blennerhassett Sargent, indicates several connections to the wealthy Blennerhassett family.

Nichola's will was challenged by her nephew, Thomas Blennerhassett Sargent, on 26 May 1868 at the Probate Court in Dublin. He lost the case and the will was upheld. John Matthew Smith, a solicitor of Chancery Lane, Melbourne, was appointed the Melbourne administrator to realise Nichola's assets and the will was proved in the Supreme Court of Melbourne on 6 November 1868.

Endnotes

[1] PROV, VPRS 28/P1, Unit 17, Item 7/116.
[2] National Archives UK, CO 208/78, Sargent to Secretary of State, 10 March 1837.
[9] AOT, CSO 1/18447, Ryan to Colonial Secretary, 25 August 1836.
[12] National Archives UK, CO 208/78, Sargent to the Secretary of State, 10 March 1837.
[13] National Archives UK, CO 208/78, Sargent to the Secretary of State, 10 March 1837, Annotation, 26 November 1837.
[14] Launceston Advertiser, 30 August 1838. The Gem was owned by John Batman, and sold for 1,219 pounds following his death.
[16] According to Rankin, Newcomb initially taught the Batman children in their home on Batman's Hill, then at 'Roxburgh Cottage' (DH Rankin, The history of the development of education in Victoria 1836-1936, Arrow, Melbourne 1893, p. 25). However, as Batman bought the site in November 1837, the cottage was not built prior to Caroline's departure in April that year. Billot confirms the view that it was Nichola Cooke who turned the small cottage into a school: see CP Billot, The story of John Batman and the founding of Melbourne, Hyland House, Melbourne, 1979, pp. 265-8; see also Jean I Martin and PL Brown, Australian dictionary of biography – online edition entry for Anne Drysdale and Caroline Newcomb available at <http:/ /www.adb.online.anu.edu.au/biogs/A010556b.htm>, accessed 4 June 2009.
[18] ibid.
[19] PROV, VPRS 42/P0, Unit 2, Item 68, Statement of Tracts: real estate belonging to Batman [undated].


[22] Launceston Advertiser, 27 September 1838.


[24] See also Port Phillip Gazette, 30 August and 27 September 1838.


[29] Cannon, p. 634.


[31] Royal Historical Society of Victoria, m/s 17620, Letters from Melbourne, 7 December 1839.

[32] PROV, VPRS 42/P0, Unit 1, Item 1, Copy of late John Batman's Will, filed 24 March 1843.

[33] PROV, VPRS 42/P0, Unit 1, Item 1, Examination and breakdown of entitlements of Will.

[34] Port Phillip Gazette, 14 October 1840. With thanks to Ken Smith for this and the other Port Phillip Gazette references December 1838 – January 1844.

[35] Port Phillip Gazette, 6 October 1841.

[36] Port Phillip Gazette, 9 October 1841.

[37] Port Phillip Gazette, 13 October 1841.

[38] PROV, VPRS 42/P0, Unit 1, Item 71, Statement of Batman's debts and general costs, directions included to auction property; also Victorian Index to Births, Deaths & Marriages, registration nos 4334/933 (marriage, 1841), and 3610/1072 (death, 1841).


[40] PROV, VPRS 42/P0, Unit 2, Item 54, Affidavit and charge of N Cooke.

[41] PROV, VPRS 42/P0, Unit 3, Item 148, Answer of P Welsh.

[42] PROV, VPRS 42/P0, Unit 3, Item 6, Rental of estate of Batman and general account of receiver.

[43] PROV, VPRS 42/P0, Unit 2, Item 88, Masters book of proceedings under decree of 26 January 1843.

[44] PROV, VPRS 42/P0, Unit 1, Item 6, Rental of estate of Batman and general account of receiver.

[45] PROV, VPRS 51/P0, volume 3, Deposition Book and Petty Sessions Register No. 5.


[48] PROV, VPRS 3102/P2, Unit 1, City of Melbourne Rate Book 1843/44.

[49] PROV, VPRS 42/P0, Unit 1, Item 25, Account: money expended on Batman's children [undated].


[53] Land Victoria, E.2871 (October 1844); 97.85 (20 January 1859); 176.285 (24 May 1867).

[54] Joseph Butterfield (comp.), Melbourne commercial directory for 1855, James J Blundell, 1855. Further searches of Victorian directories after this date failed to locate her.


[56] PROV, VPRS 7591/P1, Unit 30, Item 7/116.

[57] PROV, VPRS 7591/P1, Unit 30, Item 7/116.


[60] PROV, VPRS 7591/P1, Unit 30, Item 7/116.
The Royal Oak Hotel, corner of South and Raglan streets, Ballarat

Dr Helen Dehn


Dr Helen Dehn is originally from Melbourne, where she worked as a property manager. She moved with her husband to Beremboke in 1985 and commenced studies at the University of Ballarat, gaining degrees in librarianship, literature and history. Researching Ballarat and its social history led to an interest in family history, particularly among families who immigrated to Victoria during the 1850s. Now in her 60s, Helen holds a voluntary position as research convenor for the Ballarat & District Genealogical Society Inc., a position allowing her to combine her research interests and provide assistance to other family researchers.

Abstract

The Royal Oak Hotel in Ballarat is today a clean and convivial spot to spend time with friends and colleagues. It was not always this way, however. In the nineteenth century it was not uncommon to see men and women ‘in a helpless state of drunkenness’ outside hotels, and these establishments were avoided by ‘respectable’ people.

Some of the changes to the hotel culture were driven by the temperance movement. Though many of Ballarat’s hotels resisted the push for change, public drunkenness had become a significant problem and various groups campaigned in the interests of wives and children. The hotel trade received a boost in 1926 with the launching of the Ballarat Bertie beer label, featuring Bertie the cellarman. The advertising campaign to popularise Bertie was inspired, and the advertisements were large and varied. The reformers fought back by insisting that meals must be served with drinks, and so the winner in this battle turned out to be the patron.

Since 1994 the Royal Oak’s patronage has increased, with the dining record standing at 102 meals served in one night. The hotel has become very much a home away from home for many, and is now a valued social asset.

Introduction

Ballarat’s early years were tumultuous. The town had been flooded with gold seekers during the 1850s and alcohol was both a social lubricant and an escape for those who found themselves in straitened circumstances far from home. In an effort to minimise the ill effects of alcohol, Governor La Trobe had imposed prohibition on the goldfields, but this action gave rise to numerous ‘sly grog’ outlets, which competed for trade with licensed premises. Police raids were frequent and large quantities of ‘grog’ were often seized.[1] According to historian WB Withers, cited in the centenary edition of the Courier, there were 477 licensed hotels in Ballarat in 1867 and all hotels remained open until 1.30 am.[2] Hotels were not then viewed as fit places to entertain respectable men, much less their families, and it took many years and the efforts of various groups before the situation was improved. One of Ballarat’s more substantial hotels was the Royal Oak and its first publican was John Ellis.

According to the rate book of 1858, John Ellis owned a store at 10 Raglan Street Ballarat that was rated at £6 5s per annum.[3] He was also shown as the owner of a brick house on the west side of Raglan Street with a net value of £126.[4] This house became the Royal Oak Hotel, although it was originally named the Sign of the Castle and Ball.
An application was filed by John Ellis of Raglan Street with the licensing registrar for a hearing on 2 October 1866 ‘for house situate at Raglan Street aforesaid, his own property, consisting of a brick building containing a bar, bar parlour, sitting room, six bedrooms, kitchen etc. and to be known as the Sign of the Castle and Ball Hotel.’ Ellis’s application was successful as his name was listed in the hotels index of 1866, although the index recorded the name wrongly as the Castle and Bowl Hotel. Ellis moved into the hotel, and the store at 10 Raglan Street, which appeared to have been his prior dwelling, was offered for private sale shortly afterwards with negotiations conducted at the hotel.

The 1867 rate book lists John Ellis as the owner of a brick hotel on the north side of South Street, but does not mention the hotel by name. It is evident, though, that entry to it was no longer from Raglan Street but from South Street. This was confirmed by the 1868 rate book, which listed Ellis as the keeper of a brick hotel consisting of a bar and eight rooms in South Street on the north-west corner of Raglan Street. Further along South Street was vacant land owned by the Kohinoor Gold Mining Company, while on the corner of South and Errard Streets was a site measuring approximately 101 x 117 links (approximately 66 x 77 ft or 20 x 23 metres), which was purchased by J Roberts and others, trustees of the United Methodist Free Church, in May 1889. A brick church was opened on this site in May 1890. These three properties, the hotel on one corner, the church on the other, and the mine in the middle, form the dynamic of interest to this historical sketch, and although the establishment of the hotel preceded that of the church by some decades, the two establishments represented a continuing and sometimes bitter division between different perceptions of respectability, New World (male) identity and manhood.

Sitting on gold

The Sign of the Castle and Ball Hotel had become the Royal Oak Hotel by the time the licence changed hands on 20 June 1873, going from John Ellis to Thomas Sanderson, who retained the licence until 21 October 1875. Gold was Ballarat’s primary attraction though, and a veritable army of male gold seekers gave rise to Ballarat’s many hotels. In 1867, there were 230 registered mining companies in Ballarat and on the north side of South Street, beside the Royal Oak, was the main shaft of the Great Eastern Company, which was registered as working the Malakoff Lead. Mining companies in the vicinity included the Sons of Freedom, the Great Western, the British Company, and Hawthorn’s. The Great Eastern Company of ninety-six shareholders was said to have held twelve claims on the Malakoff Lead, but only one of these appeared on Baragwanath’s geological and topographical map of 1917: the one adjacent to the Royal Oak Hotel. During the 1850s there was a lot of confusion as to which lead was being worked by which company, and lawsuits to resolve disputes were common.

A succession of licensees

After 1875 there was a succession of licensees trading from the Royal Oak. After Ellis and Sanderson came John Thomas, the licensee from 22 October 1875 until 20 June 1878, and after Thomas a woman named Winifred O’Meara traded from 21 June 1878 until 1889. Both Thomas and O’Meara were subject to unfortunate incidents during their tenures. In the case of Thomas, it was an incident that resulted in a man’s death. The man was an engineer named Edward O’Brien, aged 39, and employed at the works of Davey Brothers.

O’Brien was lodging at the Royal Oak Hotel in one of the bedrooms upstairs when he met with an accident on Tuesday 23 January 1877 at about 1.00 in the morning. According to a report in the Evening Post, O’Brien had retired to his room but feeling the atmosphere rather close, he proceeded to open the window from the top. A Venetian blind was fixed on the inside of the window, which precluded O’Brien from prising the sash open. For this purpose O’Brien got outside and while endeavouring to pull the sash down his hands slipped from the woodwork and he fell onto the pathway below...sustaining some very nasty cuts about the head and face together with some bruises and he suffers rather much from the shaking. He was picked up insensible some time after the accident and removed to hospital where he now remains, doing as well as could possibly be expected.

According to a Ballarat inquest held in 1877, O’Brien subsequently died of injuries sustained from falling out of a window.

John Thomas evidently offered lodgings to his patrons, and while it cannot be assumed that the patron was inebriated, his decision to open the upstairs window while perched on the narrow ledge outside (even if seated) is not one that many sober men would make.
Eleven months later, in December 1877, an objection was raised to the renewal of John Thomas’s publican licence on the grounds that the hotel was in a dilapidated condition and had insufficient accommodation.[12] The case was adjourned until 28 December 1877, by which time an inspection was to have been made. The licence was granted, but Thomas may have decided that he’d had enough, as he left the hotel in June 1878.

The incident involving O’Meara was merely a fine of 20s plus 10s in costs, which was levied by the licensing bench for having drunken persons on the premises.[13] O’Meara left shortly afterwards, and the licence was transferred to William Gordon, who was there for about a year to 1890. He was followed by John Noonan, who was the Royal Oak’s publican from 1890 to 1891. John Nicholls went in on 21 May 1891 and left on 22 February 1892. After Nicholls came John Adamthwaite from 23 February 1892 until 14 May 1895 and John Noonan came back again as the licensee from 15 May 1895 to 3 December 1900. Alexander McDonald followed Noonan but he was only there for seven months, from 4 December 1900 until 2 July 1901.

By the turn of the century the ‘pub’ had become part of Australia’s cultural iconography, encompassing an idealisation of the bush and the bushworker. Familiar constructs of mateship and typecasts of ‘larrikinism’ embodied in the practices of ‘skolling’ and ‘shouting’ came to be seen as characteristic of Australian male identity and much of this was centred on the local pub. Like the British tradition from which it emerged, the concept of the corner hotel catering to its nearby residents and/or workers, and accessible by foot, was realised in the early settlement of Victoria, and was strongly entrenched among gold seekers and other workmen in Ballarat.

Temperance in Ballarat

The common practice among men from Ballarat and elsewhere of proving themselves in front of their peers by exhibiting a tolerance for alcohol gave rise to concern in the community. This was often expressed through the temperance movement, because the habit was felt to be detrimental to the interests of wives and families. Numerous missionary societies, the Salvation Army, the Australian Natives Association and the Protestant churches, often spearheaded by ladies’ auxiliaries and coming to include suffragette groups, raised the issue on all platforms available to them.

According to historian Peter Mansfield, the temperance movement failed because it came to be confused with ‘teetotalism’, meaning abstention, rather than moderate consumption. While the movement won the moral high ground, it lost the support of the great majority of people who enjoyed alcoholic drinks in moderation.[14]

During the height of the gold rush, temperance advocates had stressed that public drunkenness was a particular problem in country areas where there were too many sly grog shops, most of them said to be avoiding the payment of taxes and duties, as well as ruining family life and destroying the health of many young men.[15] When it is considered that one of the most popular home brews was called ‘Blow my skull off’ and another ‘Strip me down naked’, the ready availability of ‘sly grog’ probably justified the fears of temperance advocates. Among the ingredients of “Blow my skull off” were spirits of wine, Turkey opium, rum, cayenne pepper, and water. After a few slugs of this formidable potion, a miner did not know whether he was in Ballarat or Bombay.[16]

The substantial reduction of hotel licence fees to £25 in 1857 was a factor that contributed to the mushroom growth of drinking shops. Early in 1860 the Victorian Government announced that it would inquire into all aspects of hotel licensing laws with the object of reducing the number of licences issued. This caused a flurry of activity in Ballarat where licensed hoteliers were called upon to help fight the legislation. The report of the Select Committee found that there was a strong link between crime and anti-social behaviour, and because it was felt that neither the parliament nor the police could stop sly grogging, it was proposed that no new licence should be granted if one-third of the neighbouring population appealed against it.

In 1870, Ballarat experienced a period of depression, which affected every section of the community and many hotels closed down. At the end of that decade, only 250 public houses remained in the district, being a decrease of 50% in ten years.[17] Despite this reduction in hotels, public drunkenness remained a problem for many people and it was commented on in an article published by the Miners Weekly:
From what we remarked in the course of only ten minutes walk along the Main Road on Monday, it would seem that the vice of drunkenness is by no means on the wane in Ballarat. Attracted by a crowd at the United States Hotel, we went up and saw, between the hotel and the adjoining store, a space of not more than twelve inches in width, a woman in a helpless state of drunkenness, her legs twisted under her, her face flattened against the store wall, her arms upraised, and the crowd hooting and yelling. A little below the Charlie Napier, people were at their doors gazing at a respectably dressed woman reeling to and fro, and narrowly avoiding a jeweller’s window nearby. Not far from Sweeney’s Auction Mart were two drunkards, stock still in the centre of the road, leaning on the other. A few yards farther on were two men reeling about, and hallowing at every passer by. Verily there is plenty of room for the efforts of temperance reformers.

By the 1880s the temperance movement had become very strong and associations were formed in every centre to energise a cause that demanded reduction of liquor licences and more stringent control of the liquor traffic. In Ballarat East, where there were 72 hotels, the temperance movement advocated reducing this number to 27 and a poll of registered electors was taken on 23 March 1888 to determine the number of hotels desired by each elector. The results disclosed that 995 votes were cast for 27 hotels and 590 votes for the retention of 72 hotels. There was a range of preferences for numbers between these two and 86 votes were informal, with one voter favouring 5,000 hotels! The Licensing Court decided that 45 hotels were to be deprived of their licences but one of the affected publicans lodged an objection on the grounds of irregularities in the appointment of the returning officer. His appeal was upheld and the poll was declared to be invalid and void.

Another poll was held in 1891 in Ballarat East where the licensed hotels now numbered 68. The outcome was problematic and a compromise was arrived at where the hotelkeepers agreed to the retention of 50 licences. Application was immediately made to test opinion in Ballarat West Licensing District, where 116 hotels were licensed in an area in which 41 constituted the statutory number. A keen and bitter contest was fought. Rowdy crowds interrupted the open-air temperance meetings and arrests were made of those throwing missiles at the speakers. The publicans again adopted a policy of modified reduction by concentrating on the retention of 90 hotels. By a process of elimination the election was determined to have favoured the retention of 90 licences, and in sitings commenced in March 1892 the 26 hotels to be delicensed were considered, with judgement delivered on the seventeenth of the month.

The Licensing Act was subsequently amended by investing a board with the authority to cancel the renewal of an existing licence, to award compensation to those affected, and the power to grant additional licences upon reasonable justification. The Licensing Reduction Board, which was established in 1906, had closed 19 hotels in Ballarat East and 47 in the West. Only 57 public houses remained under the control of the City Council, being nine less than the minimum desired by the temperance reformers fifty years earlier.[19] The Royal Oak was not delicensed, probably because it was by then tied to the Ballarat Brewing Company, which had made an effort to improve standards and encourage support for sporting, charitable and neighbourhood activities.

The Ballarat Brewing Company

On 12 January 1901 the Royal Oak Hotel was purchased from John Noonan by brewing partners William Tulloch and James Coghlan, directors of Ballarat Brewing Company Ltd, for the sum of £1200, and it is probable that Tulloch and Coghlan influenced the selection of licensees who followed McDonald.

The first of these was Ellen Jenkins, who was the Royal Oak’s publican from 3 July 1901 to 7 January 1902. Then came Frederick George Moore, who was there for sixteen months from 8 January 1902 to 5 May 1903. Moore was replaced by John Black for six months from 6 May 1903 until 10 November 1903, and he was followed by Bridget Kane, who was there from 11 November 1903 until 14 March 1912. Kane was selected over two competitors, the aforementioned Frederick George Moore and John Black.

Coghlan and Tulloch’s Ballarat Brewing Co Ltd, originally formed to amalgamate brewing and hotel interests in Ballarat owned by Phoenix Brewing of Magill and Coghlan, and Royal Standard Brewery of William Tulloch and Son, was registered in Victoria in 1895. Both the Phoenix and the Royal Standard Breweries operated until 1911 when the Phoenix Brewery was closed.[20] In 1911 the company name was changed to Ballarat Brewing Co. Pty Ltd and reconverted to a public company under the name The Ballarat Brewing Company Limited in 1936.
By 1903 the Royal Oak was listed as number 46 in South Street and the adjacent mineshaft had been fenced off. The land next door was recorded in the rate book as having a frontage to South Street that measured 200 ft or 60.9 metres, and the owner of the land was listed as the New Kohinoor. The association between the Great Eastern Company and the New Kohinoor Company is obscure, but by the turn of the century the Great Eastern shaft was known as the North Kohinoor Shaft.

The New Kohinoor also ceased operations in 1911 and this may have precipitated a change in patronage at the Royal Oak concomitant with a general concern by Ballarat Brewing Company for higher standards of public decorum and sobriety. From 1903 right up to 1926, when the Royal Oak was leased to the Jermyn family, there had been only two long-serving publicans at the hotel: Bridget Kane, who took over from 11 November 1903 until 14 March 1912, and Margaret Guelpa, who married and changed her name to Margaret Allen, and was the licensee from 15 March 1912 until 6 February 1926. On 22 February 1926 the licence was transferred to John E Jermyn who had come to the Royal Oak from the Globe Hotel. Female licensees had been no guarantee of good behaviour among patrons and public opinion ran in favour of temperance and family influence in neighbourhood pubs.

Methodists and the temperance movement

On Tuesday 28 January 1890 the foundation stone of the United Methodists Free Church in South Street was laid. According to the report in the Courier [21] the old wooden building had been found inadequate to meet the requirements of an increasing congregation. The new building was to measure 33 x 54 ft or 10 x 16 metres, with an attached vestry, and have a seating capacity of 400. The number of church members was 102 with an additional 12 ‘on trial’. There were 17 Sunday School teachers and 200 scholars. The Rev. JB Johnson made a speech at the laying of the foundation stone, saying that God had prepared the work, for during the past twelve months there had been in excess of 100 conversions, and while the ordinary congregation crowded the church to the very doors, on special occasions scores and scores could not obtain admission. After the Reverend had spoken, the stone was declared well and truly laid by Edward Morey, who congratulated the committee and went on to say that the church would be right in the centre of a working population and that working people supported their churches. Morey then started a subscription on the stone.
The Methodists were prominent among temperance advocates, and from their new church in South Street they may have viewed patrons of the Royal Oak and workers at the adjacent mine as a potentially rewarding challenge.

The Wesleyan church was sold to the Salvation Army in 1900, sold back to the Wesleyans in the mid-1980s and finally sold for want of parishioners in 2008. There were close parallels between the philosophy of Wesleyan Methodists and that of the Salvation Army. Both groups, in addition to engaging in evangelism and practical missionary activities, held frequent open-air meetings, and both eschewed alcohol as well as dance halls and attendance at the theatre – all viewed as diversions from the family hearth.

Ballarat Bertie

A turning point in the ongoing tussle between the hotel trade and the temperance movement was reached in April 1926, with the launching of the Ballarat Bertie beer label featuring ‘Bertie the cellarman’. According to a report in the Courier, Bertie was born following discussions between the managing director of Ballarat Brewery, Mr Coghlan, and an anonymous advertising man he met on a train journey. Max Harris and Peter Butters, however, have identified the advertising man as being from O’Brien Advertising, later Mooney Webb, and he was asked to create a character like ‘Johnnie Walker’. Bertie was to become as iconic as Johnnie Walker and he came to be regarded with great affection in Ballarat. In 1971, after the Ballarat Brewing Company had been taken over by Carlton and United Breweries (CUB) in 1958, a decision was made to remove Bertie from the beer labels. A massive outcry over the removal of Bertie from CUB beer labels ensued; Ballarat Bertie was returned, only to disappear again when brewing at Ballarat ceased altogether in 1987. Ballarat Bertie was incorporated into the Ballarat APEX logo in 1988, and he became the mascot for the new warship, HMAS Ballarat, which was launched in 2002.

Bertie was first introduced in the Ballarat Courier on 24 April 1926 as a rather quaint little man whose only thoughts were focused on Ballarat Lager and Bitter. He appeared weekly to begin with, drawn in different situations and confiding homespun tales to his drinking pals. On Saturday 1 May 1926 he appeared under the heading ‘Life has its tragedies’ in reference to having dropped and broken a bottle of beer. The copy reads: ‘bang goes more than a pint of enjoyment but a pint of sustenance that makes a gink feel he is boss of the roost instead of the missus. Every time I break a bottle of Ballarat I sort of feel that I have done the dirty to one of my pals.’ This was a wonderful campaign and it endeared Bertie to men of all classes and ages (and probably some women as well) although it was definitely aimed at Ballarat’s working-class men who, by the time of Bertie’s second appearance, were implied to be henpecked and were being enjoined to rule the roost.

Concomitant with the introduction and continuing appearances of Bertie, the Royal Oak ran its own campaign to soften the attitude of the general public towards drinking in hotels by installing a succession of licensees with families. John E Jermyn was the first licensee to reflect this more family-oriented policy. In 1919, John Jermyn was a grocer at 1009 Dana Street, and he later ran a tearoom in Sturt Street.
He may have continued one or both of these businesses because on 16 December 1929 he transferred his victualler’s licence at the Royal Oak to his wife, Margaret, at the same time as he applied for permission to sell and/or dispose of non-intoxicating liquor between 6.00 and 6.30 pm. Permission to sell non-intoxicating beverages was granted by the Licensing Court on condition that John had no further involvement in running the hotel. John Jermyn took over at the Royal Oak on 22 February 1926 and continued until 15 December 1929. His wife, Margaret, held the licence at the Royal Oak from 16 December 1929 until 15 February 1931, and on 16 February 1931 the licence was again transferred, this time to John and Margaret’s daughter, Ellen Elizabeth (Nellie) Jermyn. Nellie held the licence through the war years until 30 June 1953.

The Jermyns were followed by the Pells, who came to the Royal Oak on 1 July 1953 and remained there until 1976. George Arthur Pell, his wife Margaret Lilian, and their three children, George, Margaret and David, all served behind the bar and were ably assisted by Margaret’s sister, Molly Burke, who lived with the family. George Pell Jnr was to become a Cardinal and his sister, Margaret, a violinist with the Melbourne Symphony Orchestra. David attended the School of Mines and did a lot to help in the hotel after his siblings left home and his mother had a heart attack.

The Pell years saw a club-like atmosphere develop at the Royal Oak where patrons were well known to each other. A Social Club was formed and members engaged in games of euchre, and ran hooky competitions between the Royal Oak and other hotels. The club held its own picnics at Burrumbeet and members competed in foot races, egg and spoon races and sack races. A barrel of beer was taken out to the picnic, which was paid for by the Social Club, and they also had a Christmas party for children every year with presents from Santa. On Christmas Day, when patrons went home for lunch, Margaret played the violin for her family. No accommodation was offered at the hotel, however, and nor were meals served to patrons. The bar was divided into three small rooms at this point, the middle room forming the bar itself, a room to one side with a heater in it, and a room on the Raglan Street side, which was rarely used.

From 1976 to 1978, the licensees at the Royal Oak were Ian and Fay Baum, who instituted a lunch for 80 cents, and after the Baums came Bob and Ada Jelbart. The Jelbarts held the licence at the Royal Oak from 1978 until 1987 and became very popular during that time. As can be seen in the photograph below, entry to the bar was from a door on the right, which opened from the main entry door in South Street. Sporting trophies won by Social Club members can be seen lining the shelves, and the number of women in the bar, happily toasting farewell to the Jelbarts, is testament to the success of the family friendly policy, more fully developed during this period.

The Jelbarts were followed by Doug Penna and his wife, Jan, who held the licence from 19 January 1987 until 28 March 1988, and then came Adrian Patten and Shaun Duke, who were there for about twelve months from 1988 to 1990. Doug and Jan began the move towards making evening meals a feature of the Royal Oak, an initiative seized by Adrian and Shaun, particularly after Adrian married Shaun’s sister. People in the neighbourhood were encouraged to call in for evening meals as well as lunches, and a party atmosphere became the norm.
This set the stage for a licensee named Tasi Stampoultzis, who arrived with his family in 1990 and turned the Royal Oak into a Wild-West show, drawing on the American General Custer and his famous last stand. Stampoultzis covered the Royal Oak sign emblazoned in the hotel’s rendering with a metal wrap-around sign that read ‘Custer’s’ and advertised Western-style chow in authentic frontier surroundings. A report in *The News* in September 1991 described the atmosphere as follows:

Hewn timber beams, lintels, bows and arrows, muskets, wine barrel tables, tilley lamps, saddlery, General Custer cartoons and wanted posters set the scene for a rollicking good time. Permanently standing at one end of the hewn bar is General Custer himself (a fibreglass mannequin in full battle dress, fashioned by Ballarat artist Chris Pendlebury). Corrugated iron panelling and ‘Custer’ wallpaper...adds to the frontier feel. An open wood fire invites patrons to give up the comfort of their own homes and enjoy what Custer’s has to offer. The large L-shaped lounge has a saloon look: shuttered windows, a pool table and the open fire. A food servery with blackboard menu is located in the lounge, catering for both eat-in and take-away meals. Items consistent with the ‘Wild West’ theme include ‘prairie dogs’ (hot dogs with cheese and bacon and chilli sauce) and Custer burgers (prime beef or chicken breast burgers). Live entertainment featuring well-known bands is available at Custer’s every night from Thursday to Sunday. An extended beer garden is available for large outdoor functions.[29]

According to Stampoultzis, Custer’s was not like every other hotel and ‘we will give patrons better than they’ve got at home’.

The name Custer’s is still etched into the floorboards under the existing pool table, but the hotel has undergone such extensive restoration in the past thirteen years that no other trace of Custer remains. The neighbourhood had become used to a family-friendly hotel, so there was a sense of relief in May 1994 when Custer and the Wild-West left and the hotel was taken over by John and Karen Turner, who arrived together with their family. The Custer sign was removed from the front of the hotel and the Royal Oak sign restored to its former glory, much to the approval of neighbourhood patrons. Ballarat Bertie was also restored to pride of place above the bar where he still reminds patrons of his critical role in the promotion of Ballarat Bitter, along with community interests and values.
Meals could not be provided until the kitchen and bar had been renovated, so these areas were among the first to be attended to. Upon arrival there was no laundry, nothing upstairs and the kitchen had been closed. The new kitchen was opened early in July 1994 and the first meal served from it was part of a gala ceremony that was very well attended by workmen and locals. Once the outside areas had been brought to order, there were also functions held in the beer garden enjoyed by the hotel’s regular patrons.

Karen is still the honorary treasurer of the men’s and ladies’ darts teams, a post she has held since 1995. Darts teams compete in a competition organised by the Australian Hotels Association, but increasing transience among hotel licensees and the popularity of poker machines have contributed to a decline in darts team membership. The menu has been expanded with more main meals and more entrees, and a choice between salads or vegetables can be made from the buffet style servery. The Royal Oak has become very much a home away from home for many people in the neighbourhood, and John and Karen are both held in high esteem by their friends and regular patrons.

**Conclusion**

Today, there are over 50 pubs in Ballarat offering varied menus and entertainments, but central to a good pub is, and always has been, the publican who creates the atmosphere best suited to his patrons. These are now male and female, and they are intent, not on getting drunk or proving anything, but on enjoying well-prepared meals and convivial company. The Royal Oak is a traditional pub yet responsive to its environment and for these reasons it has become a valuable social asset.

**Endnotes**


[3] A rule of thumb for making very approximate conversions into today’s Australian dollars is: for 1850s pounds, multiply by 120; for 1900s pounds, multiply by 100. There were 20 shillings (symbol ‘s’) to the pound.

[4] Ballarat Rate Book 1858, PROV, VPRS 7259/P2 Rate Assessment Books, Unit 104, p. 239 (these records are held at the Ballarat Archives Centre).


[7] Ballarat Rate Book 1868, PROV, VPRS 7260/P1 Rate Assessment Books, Unit 5 (these records are held at the Ballarat Archives Centre).

[8] 1 link = 7.92 inches (or 20.1 cm); 100 links = 66 feet (or 20.1 m) = 1 chain.


[12] ‘City Licensing Court’, *Courier*, Ballarat, 19 December 1877, p. 3.


[21] ‘United Methodist Free Church, South Street: laying the foundation stone’, Courier, Ballarat, 29 January 1890, p. 4.


[28] PROV, VPRS 719/P24, Licensing Register, p. 57 (these records are held at the Ballarat Archives Centre).

‘A most difficult and protracted labour case’
Midwives, medical men, and coronial investigations into maternal deaths in nineteenth-century Victoria
Dr Madonna Grehan

"A most difficult and protracted labour case": Midwives, medical men, and coronial investigations into maternal deaths in nineteenth-century Victoria, Provenance: The Journal of Public Record Office Victoria, issue no. 8, 2009. ISSN 1832-2522. Copyright © Madonna Grehan.

Dr Madonna Grehan holds a PhD from the University of Melbourne, having recently completed a history of midwives, nurses, and the health of women in Victoria from the 1840s to the present. Her interest in coronial investigations was sparked when examining primary sources at the Women's Hospital which reflected a coroner’s jury’s recommendation relating to the practice of midwifery. Nineteenth-century provision of care to the sick and childbearing women continues to be one of her major research interests. Madonna is the Director of the Australian Nursing and Midwifery History Project, a web-based project designed to promote the study of nursing and midwifery history to students and the general public.

Abstract

Birth in nineteenth-century Australia was an event shrouded in mystery. The care of women at confinement was discussed in private domains such as the Medical Society of Victoria, a professional medical organisation, and comprised the work of women's hospitals such as Melbourne's Lying-in Hospital and Infirmary for Diseases Peculiar to Women and Children, now known as The Royal Women's Hospital. Generally speaking, birth was not a subject for public discussion. Nineteenth-century women diarists, who occasionally make reference to birth and miscarriage, do so in the most euphemistic of terms. Coronial records pertaining to maternal deaths in this era therefore offer a unique window onto what was otherwise an intensely private matter.

Coronial investigations into the circumstances surrounding suspicious deaths began in what became the colony of Victoria as early as the 1830s. By the 1850s, coronial investigations had extended to maternal deaths, that is, those in which a woman died as a result of childbirth. Inquest files concerning maternal deaths vary in their contents and many are not weighty documents. Some files, particularly those of the 1850s, contain only two pages of evidence and a judgement, with little analysis of the circumstances of the death. In other cases, inquests reported upon in newspapers have no file held by Public Record Office Victoria. Others contain witness statements from a range of people: childbirth attendants such as midwives, nurses, and neighbours; husbands and family members; and medical attendants, some of whom may have attended the deceased or performed an autopsy under coronial direction. Occasionally the files contain correspondence, such as that between the police and the coroner, which helps to explain the broader circumstances of deaths.

Nineteenth-century coronial inquiries into maternal deaths consist largely of text. There are rarely diagrams or other figures. The grim accounts of what happened to women are conveyed entirely in the disarming words of deponents, often in response to specific questioning by the coroner or his jury. Given that most women in the nineteenth century gave birth at home, depositions highlight the complexities of providing care in an era when everyday household conveniences now taken for granted, such as telephones, running water and electric light, were not available. Using a combination of evidence provided to coronial inquests, it is possible to build a picture of the nature of care provision, including who provided it and what ‘care’ meant in individual circumstances. Coronial investigations into maternal deaths illuminate the challenges of administering justice in what was a contested professional arena in the nineteenth century.

This paper uses the 1869 inquiry into the death of Mrs Margaret Bardon, summarised in two parts as a case study, and draws on other inquests to discuss the relationship between midwives, doctors, and coronial investigations of maternal deaths, and to consider elements common to inquiries conducted in this era.
On 3 April 1869 at 3.15 am, Mrs Margaret Bardon, a 34 year-old woman and wife of John Bardon, a tanner, living in Dover Street in the inner Melbourne suburb of Richmond, died following childbirth. Mrs Bardon had given birth to five children previously and recovered well after each pregnancy, although one baby was stillborn. Her fourth and fifth children were delivered without the assistance of ‘instruments’ (obstetric forceps).

In the pregnancy that resulted in her death, Mrs Bardon's labour began on Tuesday 30 March in the evening. At 1 am on Wednesday 31 March, she asked her husband to summon the midwife engaged to attend her. The midwife, a local woman named Anne Patten, arrived at 2 am. Around 8 or 9 am on Wednesday 31 March, Mrs Bardon was becoming increasingly distressed with pain and told her husband to go for a doctor. The midwife felt that this was not necessary. Anne Patten told Mr Bardon that his wife ‘had no patience, [and that] The proper pains … had not come on’. Some time later on Wednesday morning, Mrs Bardon in a loud voice told her husband to get a doctor, crying ‘Look here, I am done for’ and showed her husband her nightgown which was covered in a watery, dirty white substance.

Responding to his wife’s distress, Mr Bardon asked the midwife if there was any danger. Anne Patten answered that ‘I don’t think so – there might be danger’ and then warned Mr Bardon that if he did go for a doctor, she would leave the premises before that doctor arrived. Mr Bardon went out to consult Dr Stillman, waiting a little time to see him. Stillman agreed to come, but said he had to go to the local dispensary first. Mr Bardon returned home to find the midwife gone. Mrs Bardon then urged her husband, ‘For God’s sake, go for him [the doctor] again’. Mr Bardon went out, meeting Dr Stillman on the hill in nearby Church Street, Richmond. Mr Bardon judged he had been away from the house for around forty-five minutes.

Dr Stillman arrived at the house at 11.10 am, finding Mrs Bardon to be ‘in a greatly exhausted state, her countenance showing anxiety, the pulse around 120’, all of which indicated that the labour was complicated and the woman was very ill. Based on his examination, Stillman concluded that the uterus (womb) had ruptured. Dr Stillman’s colleague, Dr Wilson, arrived to help at midday. Stillman called Dr Wilson aside to explain the case and ‘said the patient had been previously under the care of a midwife’. Dr Wilson’s physical examination confirmed that the uterus had ruptured.
Mrs Bardon was given brandy and opium to support her while the doctors waited to see if her labour progressed. At 1.30 pm without any change, Dr Wilson began the difficult delivery of the deceased baby in the hope of saving the mother’s life. Wilson told the inquest that extracting the baby took between an hour to an hour and a half because the infant’s head was large and would not fit through the woman’s pelvis. Mrs Bardon survived what was an extremely traumatic delivery. She showed some signs of rallying, but died around 60 hours following the extraction of the deceased baby, on Saturday 3 April at 3.15 am.

One might expect that, as death had occurred, whatever happened afterwards in a case such as this was irrelevant. However, care, preservation, and supervision of the body were of great importance in cases of maternal death because the body itself formed the evidence of what had occurred. Until a cause of death was established by anatomical investigation, each person who had attended a woman – midwife, nurse, neighbour, and/or doctor – was potentially open to charges of malpractice or negligence. It was the work of the coroner and the jury to establish who did what, when, why, and to judge their conduct. What happened after Mrs Bardon’s death illustrates that this process was not as simple as might be imagined.

‘Certain irregularities of an unprecedented nature’[9]

Following Margaret Bardon’s death on the morning of Saturday, 3 April 1869, Mr Curtis Candler, District Coroner for Bourke, received a note from Sergeant Patrick Harty of the Richmond Police. Harty informed Candler that Drs Stillman and Wilson would not issue a cause-of-death certificate for Mrs Bardon because ‘the Deceased was attended by a Midwife named “Patten” previous to the medical gentlemen being called in to attend’. [10]

Unfamiliar with the circumstances of the death, and going by the information before him at that time, Mr Candler was not certain that an inquest was necessary and so asked the Richmond Police for further information. Candler wanted to know if Stillman and Wilson thought that Mrs Bardon’s death may have been caused by the ignorance, or negligence, of the midwife, or by any maltreatment on the part of any other person. I require to be informed of all the circumstances connected with her death both before delivery and since.[11]

Candler’s message to Drs Stillman and Wilson was conveyed by the police on the evening of Saturday 3 April. Their reply to him, written the same evening but not delivered until the following morning, Sunday 4 April, reads

In the case of Mrs Bardon there does appear to be sufficient reason to justify a suspicion that she may not have had proper treatment at the hands of the Midwife. To satisfy ourselves on this head, we will have a post-mortem under your direction if you please or without it.[12]

The Richmond Police also confirmed that Drs Stillman and Wilson planned to perform a post-mortem on Sunday 4 April at 11 am. Candler, clearly displeased, issued the following instructions:

Sergeant Grant will inform the medical gentlemen in attendance on Mrs Bardon that I shall require the post-mortem examination of her body to be made by some other medical man. He will request them to nominate three or four medical men in Melbourne whose employment of any one of them in this matter would not be distasteful to either of them. He will report as soon as possible so that examination may be made without delay.[13]

Mr Candler’s instructions were received by Sergeant Grant of the Richmond Police Station at 11.30 am. Grant dispatched the coroner’s message to Dover Street, the home of Mr and Mrs Bardon, where Drs Stillman and Wilson were poised to undertake what was an unauthorised, and therefore illegal, post-mortem on the deceased. Upon reading the coroner’s instructions, Stillman and Wilson penned a memorandum which reads: ‘We … decline to adopt the suggestion of the Coroner in the case of the post-mortem on Mrs Bardon’. [14] That memorandum was received by the District Coroner later on Sunday 4 April, along with Sergeant Grant’s notification that a post-mortem had been carried out on the body of Margaret Bardon by ‘a Medical Gentleman from Melbourne’.[15]

Mr Candler had little choice but to proceed with an inquest. Evidence was heard on Monday 5 April, before being adjourned to allow a second post-mortem to be carried out by a doctor uninvolved in the case. This was performed on Tuesday 6 April in the morning by the well-known Melbourne surgeon, Dr James George Beaney, with another surgeon, Dr Tharp Girdlestone, observing, Drs Reeves and Stewart who had performed the first autopsy were also present. When the inquest resumed later the same day, 6 April, the court heard that the second post-mortem confirmed a uterine rupture, and that Mrs Bardon’s death was caused by this event. The questions for the inquest were: when did the rupture happen? why did it happen? could it have been prevented? was anyone responsible?
Two of the doctors concurred that the midwife was culpable in some way. Dr Beaney surmised that ‘the uterus ... may be ruptured during labour from uterine contractions [even] where the pelvis is of the normal size. The rupture under such circumstances might occur without any blame attaching to the medical attendant.’[16] Beaney added that ‘had a medical man been in attendance on the deceased, he would have delivered her and prevented the rupture of the womb. I think the midwife ought to have sent for a medical man.’ Dr Stillman reasoned that ‘the death of the deceased was attributable to the Midwife [because] ... the deceased should have been delivered earlier by forceps.[And] ... had the deceased been attended by a person who understood midwifery, the rupture of the womb would not have occurred.[17] Dr Wilson, however, said ‘I am unable to say whether the rupture of the womb of deceased occurred through her [midwife's] ignorance.’[18]

The midwife in the Bardon case, Anne Patten, was reported to have worked as a midwife for fourteen or fifteen years.[19] There is no record of Patten’s deposition but she was present at both hearings of the Bardon inquest, because she ‘examined’ Drs Stillman and Wilson, and Mr John Bardon.[20] These indicate that Patten defended herself, claiming that doing nothing was the correct action when labour pains had stopped. She also disputed that she ignored the call for medical help.[21] Even so, the coroner’s jury found Anne Patten ‘guilty of culpable neglect in not sending for medical aid when first requested to do so by the deceased’.[22] Not only had the midwife dismissed the deceased woman's pleas for medical help, but when a doctor was sought, she had abandoned the distressed woman, saying to Mrs Bardon’s husband, ‘if you bring a doctor here I shall go before he comes inside’.[23]

The Argus newspaper observed this judgement to be very lenient and complained that the colony lacked training schemes in midwifery which were in operation in Europe.[24] This assertion was countered by Dr Nicholas Avent, a medical officer at the Lying-in Hospital, who reported that training was available and had existed for eight years. Avent explained that the nurses, having completed a structured theoretical and practical training course in the care of women, undertook an examination and, if successful, were awarded certification attesting to their qualifications.[25]

It should be pointed out that, while the doctors were quick to blame the midwife in this case because she did not seek medical aid urgently enough in their view, the doctors themselves did not act with urgency in their delivery of the deceased infant, instead waiting for three and a half hours before attempting this.[26] What happened to Anne Patten as a result of the Bardon inquest finding is not known. On occasion in the nineteenth century, women deemed negligent in their childbirth attendance were imprisoned, as was Ellen Wiggins for two months in 1864.[27] But no records concerning the Bardon case were located in Richmond Police correspondence files held by PROV. However, a notation pencilled on the outside page of the Bardon inquest documentation offers a clue as to Anne Patten's fate.
It reads:

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This is a difficult labour case – The Midwife is found guilty of “culpable neglect” ... it appears to have been a most difficult and protracted labour case to which the rupture was perhaps an almost inevitable result.[28]
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It is likely that no further action was taken against Anne Patten, given the above acknowledgement of the difficulties presented by the case. What we do know is that like other women accused of negligence, Anne Patten continued to work as a midwife. Her name, occupation as midwife, and address as 19 Little Lennox Street, Richmond were listed in the alphabetical and trades sections of the 1877 edition of the Sands & McDougall Directory.[29]

The Bardon case illustrates how difficult it was to apportion responsibility for a death when the circumstances were not clear-cut. Maternity care was a field of professional ‘turf’, too, which doctors believed was rightly theirs, and into which female midwives, nurses and numerous others wrongly strayed.[30]

Mr Candler’s correspondence contained in the Bardon inquest file highlights the notion of maternity as professional turf, and identifies the difficulties he and other coroners faced in determinations about maternal deaths.

Midwives, medical men, and ‘professional complications’

In a lengthy letter to the Honourable the Minister for Justice, dated 13 April 1869, Mr Candler communicated his intense frustration with the doctors involved who had organised and performed a post-mortem without authorisation.[31] Not only were the actions of Drs Stillman, Wilson, Reeves, and Stewart ‘outrageous’, and in complete ‘defiance of the process and authority vested in me as Coroner’, wrote Candler, but their conduct ‘might have materially interfered with the course of justice’. He pointed out to the Minister of Justice that Drs Reeves and Stewart had ‘set aside all consideration of law and propriety and ... taken the subject of the death of Margaret Bardon, as well as the fate of Anne Patten, into their own hands’, having performed a post-mortem in defiance of the coroner’s specific instruction.[33] Furthermore, Candler described the Bardon case as having an ‘ugly aspect’ when what he wanted was an inquiry ‘free from professional complications’. What did Candler mean?

Candler was referring to tensions between doctors and midwives over the care of women in childbirth. One aspect of this tension was competition for cases, although the actual extent of competition in maternity care is difficult to determine. In correspondence to the Australian Medical Journal doctors complained about midwives’ popularity as maternity attendants, reportedly because of their cheaper costs, which at one guinea were around a third of a doctor’s fee.[34] In a case which reached the courts, a doctor near the town of Ballarat successfully took civil action in 1871 against a man for breach of contract when, having been engaged to attend the man’s wife in confinement at a fee of three guineas, the doctor discovered that the pregnant woman had summoned a midwife to attend her for a cheaper fee.[35] In an 1894 case, the Victorian Branch of the British Medical Association, a professional organisation for doctors, failed in its court action against a midwife who, the Association asserted, did not have a licence to practise midwifery.[36]
Another aspect of tension in maternity care provision was that doctors were not always willing to attend women who had already received care from a midwife, as Stillman and Wilson did in the Bardon case. A reluctance to attend on the part of doctors was twofold. If a midwife and a doctor attended a woman, naturally each expected payment for their work, but paying both was prohibitive for many people. Some doctors, as a result, asked for their fee to be paid ‘up-front’ before they would attend a woman in labour, especially if they did not know the woman or had not attended her previously. There are several reported cases in which doctors were asked to attend births in an emergency, but refused to do so because the up-front fee was not forthcoming.[37]

The main reason put by doctors for not assuming care after a midwife’s involvement was that doctors feared being called upon when it was too late and being judged as responsible for poor outcomes.[38] From this perspective, one can see why Drs Stillman and Wilson were so keen to establish that the uterine rupture in the Bardon case had occurred on the midwife’s watch. In his role as coroner Mr Candler was acutely conscious of such ‘professional complications’ and realised that the Bardon investigation ‘might possibly end in a verdict of manslaughter against the Midwife Anne Patten’ because of the doctors’ interference.[39] In his letter to the Minister for Justice, justifying the second autopsy, Mr Candler wrote that

> the medical practitioner may have, or may be wrongly suspected of having, an animus against a midwife in his own neighbourhood; ... he may possibly be equally to blame with the midwife; ... he may be solely responsible for the death; and ... the midwife may be altogether innocent of the fatal termination of the case.[40]

As Candler put it, Stillman’s and Wilson’s ‘extra judicial’ actions in proceeding with an unauthorised autopsy might have given them some comfort, but to everyone else it gave the ‘appearance either of an attempt to screen out their own malpraxis, or of a combination to prove the midwife guilty’.[41]

Judging the preparedness of midwives and others for the important duty of childbirth attendance was no easy task without any form of statutory regulation prescribing what practitioners could and could not do. While doctors in Victoria who wished to claim the title of medical practitioner were required to register under the Medical Registration Act 1862, there was no such requirement or benchmark for midwives and nurses. Women of varying backgrounds took on attending work because there was no-one else available and women wanted some assistance at their confinements.[45] In the inquiry into the death of Annie Ah Young in 1868, Sarah Barnes told the inquest: ‘I am a midwife and have attended several females in their confinements. They have always recovered safely afterwards. I have no diploma or certificate’.[46] Midwife Barnes signed her deposition with her mark, being an X, indicating that she was illiterate.

In the 1879 inquiry into the death of Anna Maria Addison, Anne Fear, who also signed her deposition with an X, declared that

> I am a midwife – certified. I was engaged to attend the deceased … I have been accustomed to deal with twin births and understand the management in such cases. I did not apprehend any danger to deceased until I found that I could not deliver the afterbirth.[47]

The reality is that at least some of the maternity care doled out to women by midwives and doctors in the nineteenth century was rough. Coroners invariably asked about the state of the body at post-mortem and, specifically, about any evidence of violence seen in bruising, torn flesh, broken bones and so on. It makes for sobering reading, but without caesarean section, brute force was applied on occasion to extract babies from a pelvis that was too small to accommodate them.[42] There are also reports of midwives tearing the fragile tissue of the perineum hours before the birth was imminent; some forcibly dilated the cervix (neck of the womb), and some pressed on the abdomen with their body weight, in the belief that these actions were necessary to hasten birth.[43] According to medical teaching current in the mid-nineteenth century, however, such interference in natural labour was the sign of an ignorant midwife, [44] and into the second half of the nineteenth century the ‘ignorance’ of midwives is a theme seen consistently in the records of investigations into maternal deaths. How were the qualifications and skills of a childbirth attendant judged?

Qualifications and skill

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What the concept of ‘certified’ meant and who might have awarded this attainment, given that Anne Fear could not sign her name, is open to speculation. In contrast, Elizabeth Ingram, who described herself as a nurse, was able to sign her deposition to the 1863 inquiry into the death of Jeanette Grigg in the town of Maldon.
Ingram told the inquiry that

A fortnight before Mrs Grigg engaged to me if Mrs Hunter was unable to come as nurse. As a nurse I have had two or three years experience but have not had a similar case... I never attended any confinement when death of the mother occurred previous to this one.

The newspapers roundly chastised the doctors involved in the Bardon case for unnecessarily complicating proceedings and seeing themselves above the law, but they saved the charge of ignorance for Anne Patten, describing her as an ‘ignorant old crone’ belonging to a genus that had no place in the care of childbearing women.

Furthermore, The Argus newspaper reported that the rupture of Mrs Bardon’s uterus was ‘caused by undue pressure on the womb by an ignorant person from without’, implying that the ‘ignorant and mulish’ Anne Patten had pushed on the woman’s uterus, forcing it to rupture. The midwife may have indeed done this, although the inquest depositions do not carry this assertion.

Finally, there is one other striking shared feature in maternal death investigations worth noting. This is the notion of time, and telling the time accurately. The summary of the Bardon case, described in the first half of this paper, highlights that time was indeed relevant to assessing culpability in that case as the midwife was judged negligent for not seeking medical aid in time to save the life of the ailing woman.
Modern society takes for granted its familiarity with time and time frames, but as historian Graeme Davison reminds us, most people could not afford to own a watch until the 1890s; many people relied on the sounding of clocks in public places, such as a town hall. However, isolated areas such as goldfields and new settlements did not have the luxury of these public facilities. It is worth contemplating, then, how people in mid-nineteenth century Victoria conceptualised time in the context of events leading up to a death. As the Bardon case shows, any delay in seeking help when complications had arisen was viewed harshly.

Of course, to gauge the extent of a delay, an awareness of time and an ability to tell the time accurately were necessary. An 1868 inquest into the death of Annie Ah Young at Two Mile, a gold-mining area near Beechworth in north eastern Victoria, demonstrates how confusing it was to ascertain accurately the circumstances surrounding a death when what happened at what time was unclear. This inquest asked of the midwife involved how long Mrs Annie Ah Young had laboured, the answer being some hours; how soon after the birth of her baby haemorrhage had begun, the answer being one quarter of an hour; how soon the midwife told the husband to get help, the answer being immediately; and how soon this was obtained given that Mr Ah Young had to run two miles into Beechworth and back. These questions were to review the midwife's response to the unfolding emergency according to a standard time. From the inquest, we learn that not only had the clock in the woman's house stopped several times during the night, but that when the doctor arrived, he observed it to be at least twenty-five minutes slow. As the midwife attending Annie Ah Young marked her deposition with an X, it is possible that illiteracy in this case extended to an inability to tell the time.

**Conclusion**

In retrospect, without a caesarean section, Margaret Bardon's fate and that of her unborn baby were sealed when her uterus ruptured. As the doctors acknowledged at inquest, a rupture could occur even with the best medical attendance, but these medical men still managed to convince the jury that it was the midwife's negligence in not getting help sooner that led to Mrs Bardon's death. After this catastrophic event, Mr Bardon, the tanner, was left with five children to care for. Not only that, his wife had ailed for five days before dying in what must have been terrible conditions. It is disturbing to think that Mrs Bardon's body, having undergone two autopsies, in all likelihood remained at her house in Dover Street on the kitchen table, and at room temperature, for at least seventy-two hours while the first and subsequent inquests proceeded, and until a certificate of burial was issued. It is also sobering to think that, in all probability, her care was provided by candlelight, without the luxury of fresh running water and clean linen, and in the absence of a sewerage system. Looking at the Bardon case with the benefit of hindsight and a modern understanding of obstetrics and physiology, it is hard to imagine more difficult and challenging circumstances for her family to endure, and for a coroner and jury to examine.

Coronial inquiries such as the Bardon case highlight the precarious nature of nineteenth-century childbirth, and are a sharp reminder of what natural childbirth really meant in the absence of modern scientific understandings of anatomy and physiology and insights into complications of pregnancy. They offer a unique window onto the closeted world of childbirth and on less obvious nuances that characterised the maternity care landscape as professional turf. Perhaps most importantly, coronial inquests make it possible to build a picture of how a colonial society came to regard the deaths of women in childbirth as preventable, and to understand how Victoria and its citizens sought to ameliorate the conditions which led to deaths in childbearing women.

**Endnotes**

[1] PROV, VPRS 24/P0, Unit 232, File 1869/119, inquest into the death of Margaret Bardon.

[2] Anne Patten's name was spelt 'Ann' and 'Anne' in both the inquest notes and in newspaper reports.

[3] PROV, VPRS 24/P0, Unit 232, File 1869/119, deposition of John Bardon, 5 April 1869.

[4] This event is likely an indication of the moment when rupture of the amniotic sac occurred. With the sac's rupture, amniotic fluid is released which progresses the labour in uncomplicated births. Mr Bardon's description of the fluid as 'dirty' may be indicative of meconium staining of the amniotic fluid. Meconium is the baby's first bowel motion, usually green-black in colour. If amniotic fluid is tinged with meconium, it indicates that the baby is physiologically stressed.

[5] PROV, VPRS 24/P0, Unit 232, File 1869/119, deposition of John Bardon, 5 April 1869.

[6] ibid., deposition of Thomas Stillman, 5 April 1869. Stillman was recalled on 6 April following the second autopsy.

[8] PROV, VPRS 24/P0, Unit 232, File 1869/119, deposition of Edward Wilson, 6 April 1869.

[9] ibid., letter from C Candler, Coroner, to the Honourable the Minister for Justice, 13 April 1869.


[12] ibid., memo from Drs Wilson and Stillman to Coroner, 3 April 1869.

[13] ibid., memo from Coroner to Sergeant Grant, 4 April 1869.

[14] ibid., memo for Sergeant Grant from Thomas Stillman, Edward Wilson, 4 April 1869.

[15] ibid., memo for Coroner from Sergeant Grant with attached memo from Drs Stillman and Wilson, 4 April 1869.

[16] ibid., deposition of Dr James Beaney, 6 April 1869.

[17] ibid., deposition Dr Thomas Stillman, 6 April 1869.

[18] ibid., deposition of Dr Edward Wilson, 6 April 1869.


[20] PROV, VPRS 24/P0, Unit 232, File 1869/119, depositions of John Bardon, Thomas Stillwell, 5 April 1869; Dr Edward Wilson, 6 April 1869.

[21] ibid., deposition of John Bardon, 5 April 1869.

[22] ibid.

[23] ibid., deposition of John Bardon, 5 April 1869.


[26] PROV, VPRS 24/P0, Unit 232, File 1869/119, deposition Dr Thomas Stillman, 5 April 1869.

[27] For the case of Ellen Wiggins, see Argus, 4 April 1865, p. 5; Argus Supplement, 22 April, p. 1; Herald, 22 April 1865, p. 2.

[28] PROV, VPRS 24/P0, Unit 232, File 1869/119, inquest into the death of Margaret Bardon. It seems likely that the notation was pencilled by Ministry of Justice staff.

