

Book review

John P Hamilton, Adjudication on the Gold Fields in New South Wales and Victoria in the 19th Century, 2015, The Federation Press.

To view the publisher's page, click [here](#).

if gold ruste, what shal iren do?

The Canterbury Tales (General Prologue)

The banner of the Eureka Stockade is Australia's symbol of rebellion, and often advanced as a suitable flag for the Republic of Australia. The rebellion's most revolutionary effect to date is that it wrought a royal commission whose report was actually adopted by the government of the day.

John Hamilton is a lawyer, a former member of the New South Wales Supreme Court. His short and effective work is not a romance but a necessary record of the role of adjudication in the early years of our local gold fields.

The 49ers have not always been the San Francisco professional football team. They were named for the prospectors who landed in California in and around 1849. There, complex national politics percolated through in the following year, with the region

soon admitted to the union as a free state as part of the Compromise. Yet national complexity was largely unrelated to the local but notorious lawlessness of the goldfields.

The story in Australia is different. Edward Hargraves's discovery received press from 10 May 1851, while Victoria would be separated from New South Wales on 1 July 1851. This book is about not one but two methods of adjudication by two different authorities.

Beyond the book's historical value and perhaps by virtue of it, Hamilton's work is also about the rule of law itself. We lawyers and lay in our complex and sophisticated society may tend to think that the rule of law is a prerequisite of society, or at least a civilised society (if that is not a tautology)? But where does the idea of adjudication sit? Is it necessary to have a court or a set of rules – whether by the common law or by regulation – before people judge each other? Surely the position is the reverse. We begin by judging each other and then bring in rules to provide, among other valuable things, a consistency in our judgments.

And it was with adjudication that NSW and Victoria parted company.

Parenthetically, Australia has had an interesting time with the idea of “adjudication”. Our constitution provides for a great novelty, an Inter-State Commission charged with powers of “adjudication”, yet in 1915 the High Court held that this meant it couldn't adjudicate. Well, that's what I think it held, or more correctly, that's how Sir Isaac Isaacs beat Sir Edmund Barton on a point they'd disputed since pre-federation days. Professor Colin Howard puts it rather neatly when he said ‘The High Court disposed

of the invasion of its own area of interest by deciding that [the Constitution] did not mean what it said.’

This book is an historical monograph in the most valuable sense, something which focuses upon a hitherto unexploited aspect of a wider and more generally understood period and at the same time throws new and refreshing light on that understanding.



The bookcover is “Holtermann”, Cedric Flower’s version of the pose usually adopted by Bernard Holtermann when being photographed with the nugget he found at Hill End near Bathurst. Holtermann was himself a photographer of note and one our more famous Germans, along with Ludwig Leichhardt. He had a mansion in the Sydney suburb of St Leonards and with that odd patriotism which accompanies dual citizenship named his seventh and last child St Leonard Leichardt Ratchford Holterman.
