# Australia and the Day We Celebrate

Prof. The Hon. John H. Phillips, AC

The Great Australia Day Breakfast, Australian Unity

It is half past three in the morning of Sunday 3 December 1854. A thin sickle of a new moon hangs low in the western sky over the sprawling tent township of Ballarat. The soldiers of Her Majesty's 12th and 40th Regiments of Foot, together with a party of police, are on the march - nearly 300 of them. The Government camp where they have been quartered lies behind them and their line of march will take them across deeply rutted Lydiard Street, along the banks of the Yarrowee Creek to a ford below Black Hill and, thence, across low lying ground to their destination.

The march discipline of these men is impressive. With their accoutrements and the harness of the horses heavily muffled, they proceed in almost total silence. At their head ride the commanding officer, Captain Thomas and Magistrates Hackett and Webster.

Their destination is a crudely constructed stockade on rising ground near the road to Melbourne on a mining area known as the Eureka Lead. It is largely composed of wooden slabs with some additional shallow earthworks.

The night is very still, and after an hour's march the moon has disappeared. The force halts under a slight rise which screens them from the stockade. In it, about 100 diggers are asleep in tents or other rude structures with sentries posted. They have taken this precaution although no one within the stockade seriously entertained the thought of a military attack on this Sunday morning – hence many diggers were sleeping away from the stockade at their claims. They too have their leaders – the brave Irishmen Peter Lalor and Patrick Curtain and "Captain" Ross, an intrepid Canadian.

About 300 meters from the stockade, as dawn breaks, an assault group of 70 men, led by a Captain Wise, move forward, and a shot rings out.

For nearly 150 years now, argument has raged over who fired that first shot. It seems unlikely that the soldiers, having obtained complete tactical

surprise, would waste that element by firing at the stockade from a distance. Peter Lalor is later to admit that the diggers' sentries fired first to sound the alarm.

As it happens, we have an eyewitness' account as to what next happened. His name is Rafaello Carboni, an immigrant digger from Rome. He later wrote what he saw from his tent erected just outside the stockade.

> *"I awoke. Sunday morning. It was full dawn, not daylight. A discharge of musketry – then a round from the bugle – the command "Forward" – and another discharge of musketry was sharply kept on by the red coats. The shots whizzed by my tent. I jumped out of the stretcher and rushed to my chimney facing the stockade. The forces within would not muster 150 diggers.*
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> *The shepherds holes inside the lower part of the stockade had been turned into rifle pits. The divisions in front of the gully, under cover of the slabs, answered with a smart fire.*
>
> *Dragoons from the south and troopers from the north were now trotting in full speed towards the stockade.*

*Peter Lalor by his decided gestures pointed to the men to retire among the holes. He was shot down in his left shoulder at this identical moment.*

*A full discharge of musketry from the military now mowed down all who had their heads above the barricade. "Captain" Ross was shot in the groin. Those who suffered the most were the pikemen who stood their ground on a slight rise.*

*The command "Charge!" was distinctly heard, and the red coats rushed with fixed bayonets to storm the stockade. A few cuts, kicks and pulling down and the job was done too quickly for they actually thrust their bayonets into the bodies of the dead and wounded strewed about on the ground. A wild "Hurrah!" burst out and the Southern Cross was torn down.*

*Of the diggers who survived some made off the best way they could and others surrendered themselves prisoners and were marched down the gully."*

In the aftermath to this, Peter Lalor was hidden and spirited away. On the following day his arm was amputated by a local surgeon. Before the battle he had written to his fiancé

> *"Since my last letter, a most unfortunate state of things has arisen here. I mentioned that great excitement prevailed here, owing to the attempt of the Magistrates to screen the murderer of a digger. That excitement has been still further increased by wicked license-hunting. The authorities have gone so far as to have had the diggers fired upon this morning, who, in self defence, have taken up arms and are resolved to use them. My dear – to confess the truth, I am one amongst them. You must not be unhappy on this account I would be unworthy of being called a man, I would be unworthy of myself, and above all I would be unworthy of you and of your love, were I base enough to desert my companions in danger."*

The fighting saw four soldiers, and one officer, a Captain Wise who had distinguished himself by his bravery, dead from their wounds. On the diggers side casualties were much higher, 22 altogether. The following

list of them was published by a local newspaper – their nationalities are full of interest:

*John Hynes, John Diamond and Thaddeus Moore – County Clare, Ireland*

*Samuel Green – England*

*George Donaghey – County Donegal, Ireland*

*Patrick Gittons, Patrick Mullins and Thomas O'Neil – Kilkenny, Ireland*

*John Robertson – Scotland*

*"Captain" Ross – Canada*

*Edward McGlyn – Ireland*

*Robert Julien – Nova Scotia*

*Edward Thonen – Prussia*

*Edward Quin – County Cavan, Ireland*

*James Brown – Ireland*

*William Quinlan – Goulburn, NSW, known on the Eureka as "Happy Jack"*

*Others unknown*

In recent times it has become fashionable in some quarters to diminish the events of Eureka. It is said that the stockade was not a real stockade – rather a jumble of pieces of timber and the whole affair of very short duration. This approach puts on one side both the fact that Eureka is still one of the very few armed rebellions against Government in Australia's history and the background history of fierce opposition by the 25,000 diggers on the Ballarat Gold Fields to the system imposed by the Government of Miners' Licenses. The system was ruthlessly enforced by police, and later by soldiers, at the behest of a body known as the "Gold Commission". There was also an issue of official corruption involving the local Magistrates Court which discharged a publican called Bentley who had plainly been involved in the violent death of a digger.

So, what then is the true significance of Eureka? One cannot properly answer that question without considering other events which are linked with what happened that Sunday morning at the stockade. The first of these occurred on Thursday 30th November 1854 at a place called Bakery Hill where some 1,000 diggers were assembled. Again let us listen while Raffaello Carboni describes the scene.

*"The sun was on its way towards the west, in vain some scattered clouds would hamper its splendour. The "Southern Cross" was hoisted up the flagstaff – a very splendid pole, 80 feet in length and straight as an arrow. This made the appearance of our standard in the midst of armed men of all languages and colours a fascinating object to be hold. There is no flag in old Europe half as beautiful as the Southern Cross. It is of silk, blue ground with a large silver cross similar to the one in our southern firmament*

*"Captain" Ross, sword in hand, had posted himself at the foot of the flagstaff, surrounded by his rifle division.*

*Peter Lalor, our commander in chief, was on the stump of a tree, holding with his left hand the muzzle of his rifle, whose butt-end rested on his foot. A gesture of his right hand signified what he meant when he said "It is my duty now to swear you in, and to take with you the oath to be faithful to the Southern Cross. Hear me with attention. The man who, after this solemn oath does not stand by our standard, is a coward in heart.*

*I order all persons who do not intend to take the oath to leave the meeting at once and let all divisions under arms fall in in their order round the flagstaff."*

*The movement was made accordingly. Some 500 armed diggers advanced in real sober earnestness, the captains of each division making the military salute to Lalor, who now knelt down, his head uncovered and with his right hand pointing to the standard exclaimed in a firm measured tone "We swear by the Southern Cross to stand truly by each other and fight to defend our rights and liberties."*

*A universal well rounded "Amen" was the determined reply of the diggers, some 500 right hands stretched towards our flag."*

I entertain no doubt that this was one of the most dramatic occasions in Australian history. It has been commemorated by the poets Henry Lawson and Victor Daley. But, as far as I know it has not attracted the attention of any of our leading painters. Perhaps in this 150th anniversary year of Eureka, the Victorian Government might see its way clear to give a commission. Robert Hannaford, who is presently completing his

painting of the ceremony which established our Commonwealth, would be an ideal recipient. And what an opera Eureka would make!

The second event which must be linked with Eureka is the trials of those diggers charged with criminal offences as a result of what occurred at the stockade. There were 13 of them in all and the Attorney-General of the day, Sir William Stawell, conducted the prosecutions in person, having insisted that the charges be that of high treason for which the death penalty applied. In all, 12 men were tried, the last 6 together, the case against the 13th having been dropped for lack of evidence.

The first man charged was tried before the Chief Justice, Sir William a'Beckett, and a Melbourne jury. I would have to say that it may be that the judges of those days were decidedly more colourful than those of the present. When a new theatre, called the "Royal", was opened in Melbourne in 1854, the orchestra struck up the first piece of music with the words having been written by the Chief Justice. Chief Justice a'Beckett married twice during his lifetime. His brides were sisters and also his first cousins, so that his aunty ended up being his mother-in-law!

In any event the jury found the first defendant not guilty in 30 minutes flat. And the juries in the other trials did not take much longer to do the same thing. Defence counsel for the accused generally took the line, as Rafaello Carboni put it, *"to confess to riot, but laugh at treason"*.

Barry also rated high in the colourful-character stakes. He is one of the two Australian Judges known to have fought a duel. His occurred, against an opponent called Dr Snodgrass, on Middle Park Beach. As the duel was about to commence Snodgrass was suffering from what the Collingwood Coach would now call pre-match nerves. He pulled the trigger of his pistol while it was still pointing down and shot himself in the foot. Barry had to fire his pistol up into the air so that honour was satisfied. And when he was not undertaking his judicial work, Barry devoted a lot of time and energy to amorous activities. But, like most men of that persuasion, from time to time he had his disappointments. He recorded one of these in his diary.

> *"Sunday 17 April. Got up. Went to church. Walked about. Called on Lady Riversdale. No go."*

Why is it necessary to consider these events to form a meaningful view of Eureka? Because it is impossible to believe that without that solemn oath to the Southern Cross at Bakery Hill, armed resistance, as opposed to meek surrender, would have occurred at the stockade. And without that armed resistance – and the tragic results to both sides – the government would not have proceeded to act in the way it did. Within weeks Governor Hotham had set up the Goldfields Commission of Inquiry. This Commission acted with commendable dispatch and their report was produced early the following year. It condemned the arbitrary and despotic administration of the goldfields by government officials. It underlined their lack of respect for the rule of law and the rights of the individual. In June 1855 the Victorian Parliament passed the Goldfields Act to remedy this lamentable state of affairs. In November of the same year the Constitution Act of the colony of Victoria received Royal Assent. It set up a new Legislative Council and Legislative Assembly with an adult suffrage generous for those times. The Commissions of the Supreme Court Judges were continued and their independence guaranteed by a provision which required an address by both Houses of Parliament to the Governor to procure the dismissal of a judge. In short the spirit of the doctrine of separation of powers was well and truly planted in our

Victorian constitution and remains to this day entrenched in it and in the constitution of our Commonwealth.

So, too, in the trials of the Eureka diggers in 1855, Victorians witnessed a remarkable demonstration of the strength of the jury system which has been described by a distinguished English Judge as “the lamp that shows that freedom lives”. The juries who tried the Eureka diggers intuitively understood that the charges of high treason were the use of a sledgehammer to crack a walnut and they reacted accordingly. That demonstrated strength of the jury system remains to this day. The Victorian Government spends $4 million a year on the jury system and in my opinion every cent of it is money well spent. In this state we are fortunate to have retained juries for civil and criminal proceedings. In the United Kingdom in recent years there has been a steady erosion of the right to trial by jury. We must set our faces against anything of that sort happening here.

Victorians also saw in those trials a first rate demonstration of judicial independence and integrity on the part of the best known judge in the colony, Mr Justice Redmond Barry. Barry was an Irish establishment

figure – from the landed gentry. Everyone knew that all the men he was trying were "agin the Government" and yet his behaviour was impeccable. The distinguished historian, Professor Molony, in his excellent book "Eureka" has written that Barry "*was a man of great urbanity and wide vision and treated with gentleness and respect the diggers who came before him in 1855*".

Bakery Hill and Eureka were in fact the springboards for the principal planks of our democracy. On his death bed in 1889, Peter Lalor said to his family:

> *"Tis better as it is now. We not only got all we fought for, but a little more. It is one thing to die for one's country, but it is sweeter to live and see the principles for which you have risked your life triumphant."*

And so, on this Australia Day of 2004, here in our green and gold country with deeply troubled times in other countries making us feel not so secure as we thought a few years ago, let us regard with gratitude and respect our rights and privileges as citizens under our constitutions. Let us set our faces against any of them being removed or diminished.

And now I shall ask you to rise and please join me in the toast to "Australia".