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Eureka's message more relevant than ever

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With longstanding liberties under serious challenge, not least by emergency powers legislation that lacks adequate safeguards, today's anniversary of the Eureka Stockade seems more relevant than ever.

Of course, the dust had barely settled on the carnage in Ballarat on December 3, 1854, before a new battle began over the causes and significance of the events that led to the death of 30 miners, as well as of five soldiers, and which left hundreds wounded.

Eagerly observing the rebellion from afar, Karl Marx described "the riot in Ballarat" as "merely a symptom" of a "revolutionary movement" rapidly gaining ground in Victoria.

At the other extreme, the London Times, dripping with condescension, tartly dismissed the miners' assault on the licence fee system as no more than a "difficulty" that the colony's recently arrived governor, Sir Charles Hotham, would readily overcome in his efforts to raise badly needed revenues and curb Victoria's mounting public debt.

In reality, the uprising, like all social movements that suddenly surface with explosive force, brought together a broad range of accumulated frustrations and disappointed expectations, along with hopes for, and visions of, a better future.

The licence fee the miners were required to pay had been resented from the outset; but they tolerated it so long as its enforcement was reasonable, showing some clemency to those who were newly arrived, ill or just down on their luck.

However, Hotham's determination to increase revenues had unleashed a torrent of intrusive licence checks, with no understanding for the hardship the diggers faced as easily mined gold became ever harder to find.

To make matters worse, the licence fee legislation provided that half the fines would be paid to whoever had apprehended the unlicensed miners, creating a bounty hunter mentality in which diggers were routinely harassed, humiliated and fleeced by troopers and petty officials who were on the take.

And when allegedly unlicensed miners were hauled before the courts, their cases were not heard by independent magistrates but by commissioners – often, historian John Hirst said, “aristocratic puppies fresh off the boat” – whose interests were inextricably linked to the system they were enforcing.

Simmering anger therefore soon escalated into outrage. No one captured the mood better than William Howitt, an English writer who visited Victoria to try his hand on the goldfields. “‘Is this a Christian country?’ asked a digger,” wrote Howitt, in reporting on the miners’ reaction to an obvious abuse of power. “‘Is this an English colony?’ asked another. No, said a third, ‘It’s Roosia.’”

This was, to the diggers, Russian despotism – not the British liberty to which they were entitled. As digger John Whitelaw put it when they gathered at The Ovens on January 8, 1853 – immediately after a hunting party of police had stormed the diggings in search of unlicensed miners – what they sought was no more than “the privilege which belongs to British subjects”.

And at the great meeting that established the Ballarat Reform League, the crowd roared when Thomas Kennedy declared his willingness to “lay his life down for his noble Queen” – and then roared again when he vowed to “shed the last drop of his blood before he would pay another licence”, for they were opposing a “tyranny and system of terror” that offended every

fibre of Britain's ancient constitution.

As many of the miners – who were generally literate and often exceptionally well-read – realised, they were scarcely alone in pressing, against what was viewed as tyrannical oppression, the rights of “free-born Englishmen”, a term that was less an indicator of geographical origin than a marker of the respect owed to all British subjects.

Already in the Canadian revolts of 1837-38, which led to the first grant of responsible government to a British colony, an inextinguishable “right of resistance” against oppression had been invoked to justify the uprisings. With William Lyon Mackenzie's reform party and Louis-Joseph Papineau's Patriotes vaunting Canada's British heritage, the rebels had rallied to the battle cry that “the people are determined to have their rights; peaceably if they can: at all hazards if they must”.

And the fervent evocation of ancient English freedoms, which no government could curtail without meeting fierce opposition, was also a fundamental feature of Britain's Chartist movement, whose six-point People's Charter, launched on May 8, 1838, inspired the Victorian miners' democratic demands. As FC Mather concluded in a classic study, *Chartism*, with its “constitutionalist, even royalist” rhetoric, was “at heart, a very English movement” in its reverence “for the principles of British justice and the jury system” – and its passionate belief that it was an Englishman's right and duty to protest unjust laws.

But the roots of the “right of resistance” on which the diggers relied lay even deeper than that. No less a liberal than John Locke had argued that while the sovereign was entitled to impose emergency rule “in Cases of extreme Necessity”, the people had a right, when that prerogative was misused, to engage in “Public disorders (to) get that to be declared not Prerogative, which truly Never was so”.

And despite being a Tory, William Blackstone, who was widely regarded as the common law's most authoritative exponent, had echoed Locke's views in his famous *Commentaries* (1758), asserting that Britain's ancient constitution provided all British subjects with a “natural right of resistance” against “the violence of fraud and oppression” caused by the abuse of the sovereign's prerogative powers.

Little wonder then that on the very same flagpole where the Southern Cross flew, the miners proudly hoisted the Union Jack; and little wonder too that the jury in the final trial of the rebellion's alleged ringleaders took all of seven minutes to return a verdict of not guilty.

In effect, the diggers who had been hauled before the court were not seen as disloyal to the Queen, as the crown alleged. Rather, they were hailed as loyal to a gift the still-young colony enjoyed that was even more precious than its gold: the British tradition of freedom under law, and the commitment of ordinary people to cherish and protect it.

In time, that tradition's many strands became known as "the rule of law". Exactly what that term encompasses is inevitably changeable and contentious. But to AV Dicey, the great British constitutionalist who gave the phrase its modern meaning, this much was certain: that "the exercise by persons in authority of wide, arbitrary, or discretionary powers of constraint" is its absolute antithesis.

The diggers knew that, and paid for it in blood.

After a year that has seen unprecedented recourse to "wide, arbitrary or discretionary" powers in peacetime, we should never let it be forgotten.