

*Public Law in the Age of Statutes: Essays in Honour of Dennis Pearce*

*This is a timely collection of essays, with a vibrant range of topics of immediate relevance.*

ire was directed toward the appointment of Sir Owen Dixon as Australian Government minister to the US; moving forward half a century Brown suggests that the appointment of former High Court Justice Dyson Heydon AC to chair the Royal Commission into Trade Union Governance and Corruption in 2014 raises similar questions as to whether there should be limits on how former judges may accept government appointments to head major inquiries. In a slight change of tack, the last three

chapters look at the history and status of administrative review and governmental oversight bodies. Justice Susan Kenny in 'The Administrative Review Council and Transformative Reform' charts the history of the Administrative Review Council. Linda Pearson in 'The Vision Splendid: Australian Tribunals in the 21<sup>st</sup> Century' looks at the amalgamation of specialist tribunals into the Administrative Appeals Tribunal, and in doing so evokes Pearce's query in 1991 as to whether the 'vision splendid' of the consolidation of Commonwealth

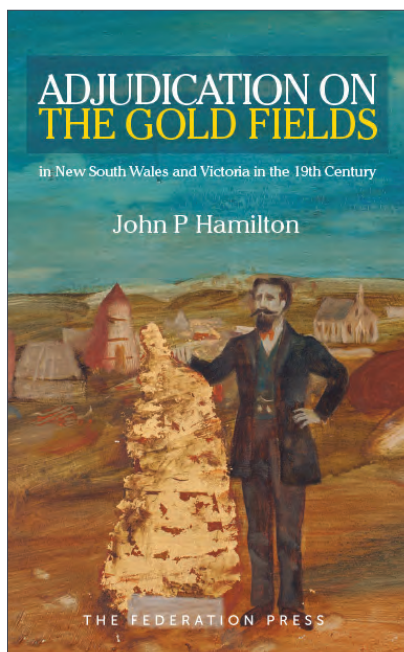
tribunals into the Administrative Review Tribunal had faded. And in the last chapter, John McMillan, a former Commonwealth and Australian information commissioner, reflects on the effectiveness of organisations such as the ombudsmen in effecting organisational cultural change.

This is a timely collection of essays, with a vibrant range of topics of immediate relevance. It is worthy of honouring the life work of Dennis Pearce.

**Review by Charles Gregory**

## Adjudication on the Gold Fields in New South Wales and Victoria in the 19th Century

By John P Hamilton | The Federation Press | 2015



The mid nineteenth century gold rush period produced an unrivalled population explosion in Australia. Opportunists flocked from afar doubling the population in New South Wales and multiplying Victoria's sixfold. It was a golden period with Australia producing 39 per cent of the world's gold. A referenced extract captures the frenetic atmosphere, 'tents everywhere, an anthill swarming with frenzied activity... an earnestness you cannot imagine.'

An unexpected administrative crisis arose from the sudden onset of the fledging gold mining pursuits in the colony. Disputes frequently broke out on the gold fields. For example, disputes about the entitlement to ground, encroachment or stealing gold as well as co-ownership or partnership disputes. On busy fields, like Ballarat, there

were hundreds of such disputes a year. There was a rush to establish a system of laws and processes to govern life on the gold fields and to promote order among a potentially revolutionary and demographically diverse community of mostly transient opportunists.

This book charts the development, between 1851 and 1875, of the public administration of the gold fields in New South Wales and Victoria. In particular, it chronicles the origins, development and nature of the heyday of gold fields adjudication at that time in those two colonies. It gives a contained and carefully documented example of the development of government in colonial Australia which tended to be characterised by a blend of principle and pragmatism.

*Adjudication on the Gold Fields in New South Wales and Victoria in the 19th Century* (Federation Press, 2015)

*There was a rush to establish a system of laws and processes to govern life on the gold fields and to promote order among a potentially revolutionary and demographically diverse community of mostly transient opportunists.*

This is a valuable academic nugget. Its author, John Perry Hamilton, formerly a barrister and then judge of the Supreme Court of New South Wales recently obtained his PhD in history. His thesis forms the basis of this book. His research is meticulous. He relies upon primary records from what must have been exhaustive mining of archives, somewhat frustrated by the practice of many colonial mining adjudications taking place without written records.

While there is considerable historical writing about life on the gold fields, particularly the rebellion of the Eureka Stockade, this book cures a long lasting lacuna of historical literature on the *adjudication* systems of the gold fields. It is a triumph of literary form. It is novel-like as well as a study and a subject matter authority. It contains both social history, colonial jurisprudence and personal stories. It really is a golden addition to any historical library, particularly one focussing on Australian history or legal history.

The book is structured thus. Chapter 2 summarises the history and social background, including the nature of gold fields demography and gives a brief account of the Eureka Stockade and the royal commission. Chapter 3 deals with the origins of the administrative systems for the gold fields. Chapter 4 provides an account of the legislative history relating to adjudication in both New South Wales and Victoria. Chapter 5 concerns

the establishment of gold commissioners as adjudicators. It homes in on the role of John Richard Hardy, a pivotal figure in the administration of the gold fields in New South Wales who established a very successful dispute resolution system (coincidentally, he was the brother in law of Alfred Stephen, a chief justice of New South Wales). Chapter 6 concerns the operation of Wardens' Courts and Local Courts as adjudicators in Victoria, and the abolition of Local Courts and their replacement by the Courts of Mines. Chapter 7 deals with the manner of adjudication by gold commissioners and the continuation and development of their function in New South Wales. It contains some fascinating extracts of 19 entries of disputes from the 'Rocky River Record'. These are the (very rare) written records of a commissioner at Rocky River near Uralla maintained in a leather bound book. They record the disputes he presided over during a two month period. These are a remarkable and valuable record because the adjudication system was effectively unwritten. Chapter 8 is concerned with the 1866 legislation and the New South Wales Royal Commission. Chapter 9 deals with the continued operation of adjudicators in New South Wales from 1867 to 1873. Legislative activity during this period was sparse. Chapter 10 deals with the establishment of the Victorian Courts of Mines and Wardens' Courts and offers a comparison with the New South Wales system. Chapter

13 deals with the establishment and operation of the Wardens Courts in New South Wales and Chapter 14 with the body of jurisprudence in the superior courts of New South Wales and Victoria relating to the adjudication system in the specialised mining courts. It examines the reported cases available in the period 1851 to 1875 (which effectively means reported cases in the 1860s and 1870s). In New South Wales, there were 13 cases touching on mining adjudications. Of these, 8 were encroachment cases, three were criminal cases, one was a partnership case and one was a contract case. In Victoria, there was a larger volume of reported decisions: 46 cases were noted. Of these, 24 were encroachment cases, 12 were forfeiture cases, two were criminal cases and one was a nuisance case. Chapter 15 considers the history of the Wardens' Courts after 1875. In conclusion, the book offers three helpful appendices. One contains a table of cases determined by Beechworth Local Court, another contains cases from Hill End Bench Book. The third contains the Register of Complaints in Sofala Warden's Court.

**Reviewed by Talitha Fishburn**