THREE

Gold and the Public in the Nineteenth-Century Gold Rushes

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HOW DID INDIVIDUAL WEALTH SEEKING in the nineteenth-century gold rushes become associated with democratic politics? What were the effects of that association? There were, after all, other possibilities. The gold could have been reserved for public use. It could have been more highly taxed. And those outcomes could have been, and in some cases were, also understood as democratic. But, I will argue, in the Anglo, white settler, colonial democracies between the 1830s and 1850s, views about the public rather than private benefits of gold became increasingly the preserve of conservatives, and hence less and less likely to prevail in these self-consciously progressive and democratic societies. Understanding this nexus matters for us now, as we struggle with the legacies of this historic prioritization of private exploitation of natural resources.

I want to seek the answers transnationally, looking at both the Georgia (U.S.) gold rush and the midcentury, southeastern Australian gold rushes. Situating these Anglo gold rushes transnationally, like examining them comparatively, helps us penetrate the veil of nationalist sentimentalism that continues to surround them. For so long, the various national historiographies celebrated the freedoms and adventurousness of the early individualist gold rush years, proudly noting the development of a set of self-governing and egalitarian values that have been claimed on all sides as distinctive national traits. We can, however, use the gold rushes as windows onto more substantive issues—as clarifying moments, for example, in the evolving thinking of these settler societies about the relationship between public and private wealth and resources.

The 1829 Georgia gold rush remains little remembered—the only recent scholarly book on the subject correctly observes that the historiography of

the Georgia rush is "thin indeed."[1] There is local interest of course, but I want to argue here that the larger significance of the Georgia gold rush is only apparent in a longer chronological and a transnational setting. Georgia's rush was only two decades earlier than the attention-grabbing Californian and Australian gold rushes, yet the ideological climate was significantly different. The initial response to Georgia gold was informed by older republican concerns about the public good. Recovering and more sympathetically explicating these public good arguments—that the wealth from precious minerals should enrich the whole public, not just those who happened to arrive first or with greatest force—is my central task in this chapter. Not all Georgians were yet ready to assume that individual wealth seeking inevitably trumped other concerns, but the public good argument was part of a residual and diminishing tradition. The increasing political alignment of individual gold seeking with democracy in Georgia and then Australia was part of what was in the 1830s still a relatively new association of the individual miner with the public good and a democratic and egalitarian future. This emergent association helped clear the way for political and legal decisions that allowed miners (at first individuals and then companies) to dig for gold on public and in many places private land, and to use public resources like timber and water, in what now seems an oddly unquestioned manner. This process happened differently in different settler societies, but the direction of change was clear everywhere in the Anglo world—and examining it transnationally, shorn of distracting national character arguments and the heat of local historical preoccupations with pioneers and first comers, renders this much clearer.

THE PEOPLE'S GOLD

George Rockingham Gilmer became governor of Georgia in 1829, shortly after the discovery of gold in Cherokee territory. A lawyer, he had fought in the U.S. Army against the British in the War of 1812 and against the Creek Nation. He is, as the *New Georgia Encyclopedia* observes, "best known for his successful efforts to remove the Cherokees from the state"—he was the Georgia governor (in his second, nonconsecutive, term) who oversaw the Cherokees' final, tragic, forced departure on the Trail of Tears.[2] All political leaders in Georgia at the time advocated Indian removal. Gilmer was at the less aggressive end of this spectrum (supporting, for example, permitting Indian testimony in court), and he would pay a political price for this

moderation. Everywhere in the settler colonial world, democracy was hard on indigenous people. Gilmer, as we will see, championed the public good, but in this early phase of the establishment of white male democracy (Georgia held its first direct election of a governor in 1825) there were of course clear boundaries around Gilmer's and most white Georgians' sense of who made up the public.

Gilmer tried hard, but ultimately failed, to establish not just public control but public ownership of the gold and a ban on private mining. The individualist gold rush with which we are most familiar was not yet the norm in 1830. That the attempted ban on private mining was expensive—the Georgia legislature set aside $20,000 in 1831 for "the protection of the gold mines"—only emphasizes the strength of the initial commitment of the governor and legislators to the task.[3] The prohibition of private mining was not, however, popular out of doors. Gilmer recalled in his autobiography how unaccustomedly popular he was when taking a tough stand on Indian removal and, in contrast, how unpopular was his stance on gold: after the newspaper publication of an uncompromising letter from Gilmer to former U.S. attorney general William Wirt, attacking the idea of an appeal to the Supreme Court to decide on Cherokee sovereignty, "the people assembled *en masse* the night after, paraded before my house with drum, and fife, and noisy acclamations. A very different expression from what I received when I recommended the appropriation of the gold mines to public purposes."[4]

Gilmer was a states' rights Democrat. He belonged to the Troup faction of the party, more popular in the settled and wealthier parts of the state than its Clarkite rivals, although one historian of Georgia politics warns that these were only "vague tendencies" in a "fluid, highly partisan political milieu that defied logical explanation."[5] Gilmer later became a Whig, and he had indeed always had some of the characteristic Whig belief in taxing to support public works and in a common good that had a greater moral call on resources than mere individual interests.

It was under Governor Troup in 1825 that Georgia had enacted a relatively tough law "to set apart and reserve for the use of the State all valuable Ores, Mines, and Minerals" (gold, silver, lead, copper). This act created punishments of "not less than four nor more than six years" in the penitentiary for concealing, removing, carrying away, or working such deposits, as well as damages of double the amount of the mineral taken. Only with the governor's consent could anyone mine these minerals for profit, and even then a maximum of one-quarter of the net profit of the mining activity could be

retained by the miner, providing the total profit did not exceed $50,000.[6] Neighboring North Carolina had had publicly known gold since 1805 and a gold rush from 1825; Georgia's 1825 law was framed with that knowledge in the background. Then in August 1829 came newspaper announcements of the discovery of gold in Georgia. The Georgia legislature repealed its 1825 mining law in December 1829. Judge Augustin S. Clayton later recalled that the 1825 measure had met the "decided disapprobation of the people."[7]

Despite the repeal, Gilmer continued to claim the state's right to its precious mineral wealth. When gold "in great quantities in the Indian lands" was announced in early 1830, Georgia was thus without an explicit gold law. Gilmer considered recalling the legislature in early 1830 to deal with the gold crisis. He decided not to because, he said, an extraordinary session was "so inconvenient to the members, and so expensive to the people."[8] But perhaps he had always planned to wait until June 1830, when Georgia's assertion (in an 1829 law) of legal jurisdiction over Cherokee lands took effect. Gilmer then promptly issued a proclamation banning gold mining and declaring that Georgia had "the fee simple title to said lands and the entire and exclusive property to the gold and silver therein."[9] At this time Gilmer also requested the withdrawal of U.S. troops from the gold districts. The gold question, states' rights, and the Cherokee question were now inseparable.

Gilmer's June 1830 proclamation was a striking assertion of the primacy of the public good. The gold diggers were, he explained, "appropriating riches to themselves, which of right equally belong to every other citizen of the state, and in violation of the rights of the state and to the injury of the public resources."[10] The gold, "like the accumulation of the people's money in the public Treasury, should be managed for general, and not for individual advantage." It should be used for improving "all the public roads," rendering the rivers navigable, and extending the "advantages of education to every class of society."[11]

Did Gilmer go so far as to contemplate a state gold mine? His opponents claimed that he did, but I cannot find any discussion from his side. We know that in 1829 Gilmer was overseeing the expansion of the state's slave labor force—the "public hands." Georgia law said that free white males, free blacks, and slaves were liable to be made to work on the roads, but there had also been public slaves since 1815 working on "improving" Georgia's rivers—removing obstructions and enhancing navigability. Gilmer doubled the number of public hands, centralized control of them, and extended the program to include road work, under supervision of city councils.[12] Taxing to

pay for internal improvements was thus a core part of his philosophy, and it is not impossible that he did imagine a state mine, operated by public slaves.

It was not just that for Gilmer the public good had a greater claim on the golden wealth than individuals. He also believed that gold seeking would be detrimental to individuals. Such a view was not uncommon at the time. The Committee on Banks of the Georgia Senate warned in 1826 that gold and silver "excite the desires and avarice of men . . . this restless and uncurbed anxiety for their possession, augments and strengthens, and exercises an influence on every transaction and every department of the active scenes of life."[13] In 1829 a New York newspaper responded gloomily to a report about North Carolina gold: "The facility of obtaining money leads to great extravagance and idleness—luxury and dissipation—national apathy and national ruin. . . . We know the value of gold, when obtained by industry; it is slow poison, when obtained by picking it from the surface of the earth."[14] Gilmer shared these relatively common pessimistic beliefs. In an October 1830 message to the Georgia legislature he observed that the ill effects had already been felt: "The love of gain became stimulated to excess. . . . The thousands of persons thus collected together, operated upon by motives which lead to most of the disorders of society, and freed from the restraints which the laws impose upon the evil dispositions of men, exhibited scenes of vicious indulgence, violence and fraud."[15] In his autobiography, Gilmer depicted an even more lurid scene at the gold diggings: "Many thousands of idle, profligate people . . . whose pent up vicious propensities, when loosed from the restraints of law and public opinion, made them like the evil one, in his worst mood."[16] Gilmer clearly did not share the newer liberal and free-market faith that out of the chaos of individual gold seeking would come order and socially useful energy.

In a June 1830 letter to President Andrew Jackson, Gilmer outlined his understanding of the legal situation about gold in Georgia: "The king of Great Britain claimed by virtue of the common law of England to be the sovereign owner of all the lands within his kingdom and especially in the American colonies. Upon the independence of the states their governments became entitled to all the rights of sovereignty over the territory which had before belonged to the crown of Great Britain. The state of Georgia is therefore entitled to the gold and silver in its territory occupied by the Indians as well."[17] This is a striking passage. Gilmer had to acknowledge that sovereignty over Indian lands was contested, but he confidently asserted Georgia's ownership of all the ungranted land. He turned to J. W. Jackson, solicitor general

for the East District of Georgia, for legal advice about prohibiting individual gold mining. Jackson affirmed the state's ownership of ungranted land and the precious minerals beneath: "The sovereignty of the State is coextensive with her chartered limits; and her absolute right to the allodium, as well as Jurisdiction, cannot be successfully denied. The Indian title is permissive—at the permission of Georgia alone—the soil, and the mines within it, are Georgia's."[18] In 1829, Georgia asserted sovereignty over Indian land, but Gilmer and his legal advisers also chose in 1830 to emphasize the state's further claims to *ownership* of every inch of ungranted land and of the precious minerals beneath.

There were precedents for asserting state ownership of precious minerals. In Spanish law all mines, in British law gold and silver mines, belonged to the Crown. In the Brazilian gold rush of the 1690s, Russia's Urals in the 1740s, and County Wicklow, Ireland, in 1795, there were active assertions of a state right to gold. Although seldom enforced, in the United States the 1785 Land Ordinance reserved one-third of the proceeds of gold, silver, lead, and copper mines for public purposes. These measures expired with the Continental Congress, but subsequent land acts also reserved mineral lands from sale in the usual way.[19] Gilmer saw only loss when people who were not Georgia citizens took the state's gold. He also thought Georgia citizens were stealing when they took gold that actually belonged to all the people of the state, and he contested their right even to enter the gold country: "A citizen has no more right to enter upon public lands than upon the lands of individuals."[20]

Despite such strong words, some on Gilmer's side of politics thought him too lethargic in defending the people's wealth. "Such a scene of plunder, such an outrage upon the rights and the interests of our people has never been committed within the jurisdiction of our state," complained the *Georgia Journal*. The paper said that Gilmer had been too slow to order out the militia and to make a "manly effort to save the property of the people."[21] Gilmer said that he had no legal power to call out the state militia—no law of the state had "made it criminal to take minerals" from the Cherokee territory; the governor was only authorized to call out the militia in cases of insurrection or invasion. He thus asked for legislation to prevent gold digging, and to allow the state to take possession of the mines, to render them secure from trespass and "profitable to the State."[22]

The legislature obliged, and on December 2, 1830, Gilmer assented to "An Act to authorize the Governor to take possession of the Gold, Silver and other Mines lying and being in that section of the chartered limits of Georgia,

commonly called the Cherokee country, and those upon all other unappropriated lands of the State."[23] The law allowed the governor "to take immediate possession of all the gold, silver and other mines which have been discovered, and all of those which may hereafter be discovered," and "to employ such military force as may by him be deemed competent to take into possession the said mines and to protect and defend them from all further trespass." If you sent your slave to dig for gold, the gold could be confiscated and sold, and the profits retained by the state. The penalty for digging for gold without permission could be up to five years jail with hard labor. If you employed someone to dig the gold for you ("any white man, Indian, negro or mulatto"), you would be liable for a sentence of up to four years in jail with hard labor.[24]

While Gilmer was defending the people's gold from individual depredation, the Cherokee were symmetrically defending *their* national wealth. The Cherokee Nation also thought that most of the gold should be for the public. In 1825 the Cherokee National Committee and Council had resolved that "all gold, silver, lead, copper or brass mines" on Cherokee land "shall be the public property of the Cherokee nation," and "should the legislative council deem it profitable and expedient, to have such mine or mines worked . . . the discoverer or discoverers shall be entitled to receive one fourth of the net proceeds."[25] Through 1830 and 1831, as the U.S. Congress was debating and passing the Indian Removal Act, the Cherokee were resisting attempts to prevent them digging for gold on their own land. In June 1830, Gilmer appointed Colonel Yelverton P. King as superintendent of the gold mines, instructing him "to proceed immediately to the mines . . . and to put a stop to all digging for gold either by the whites or Indians."[26] Gilmer asked King to "convince everyone both Georgians and Cherokees that the public property in the gold will be protected."[27] In August 1830, nine Cherokee men arrested for digging for gold responded with a threat: "If we are driven by force from here you may Rest assured, that you Go from here in Short order . . . if the number here cannot . . . Ten Thousand men can."[28] Some of the national press coverage was notably sympathetic to the Cherokee in this conflict. *Niles' Weekly Register* argued that "to remove intruders from the Cherokee lands, may have been well enough—but the Indians themselves have certainly, as yet, as much a property in the gold mines, as in the fruits of the earth growing in their fields."[29]

These concerted efforts to keep the gold in public hands were, however, unsuccessful. Gilmer wrote to King in August: "The information which I have . . . received from the gold mines in the Cherokee country convinces me

that the intruders cannot be restrained from digging for gold by the civil authority and that your efforts are but vain to effect that object."[30] Finding itself unable to enforce the law, Georgia agreed to the return of federal troops to the goldfields. U.S. troops arrested a hundred miners, Cherokees and whites, in October 1830.[31] The *Cherokee Phoenix* observed in November: "In the decision of this important question, this nation has every thing that is sacred at stake, and Georgia nothing"; the arrest of Cherokee for digging gold on their own land was, the paper said, "a stamp of grinding oppression."[32] "If this is not despotism," stated the *Vermont Chronicle*, "we want to know what would deserve the name."[33] Edward Everett in the U.S. House of Representatives called it a "disastrous violation of the National Faith."[34] When three Cherokee men digging for gold on Cherokee land were shot dead by the state guard, the *New-York Spectator* asserted that the action violated "every principle of natural equity" and the U.S. and Georgia constitutions.[35]

Inevitably, the gold question went to the courts. In July 1830, Georgia Superior Court judge Augustin S. Clayton issued an injunction to stop the Cherokee searching for gold on their land. Georgia sent in the militia, who arrested numbers of Cherokee.[36] But when U.S. troops brought one arrested man before Clayton, he ordered the man released, saying that the territory was Georgia's, and that the U.S. Congress had no right to pass a law about "the digging of gold in the nation" because it was not a form of interstate commerce.[37] Clayton made clear, however, that, like Gilmer, he was a public good man: "the gold diggers were wrong and ought to come away"; "the land belonged to all the good people of Georgia, in common, and *no one* had a right to go there and enjoy it in any manner, until *all* could by law, be permitted to do the same thing."[38] He released another nine men charged as gold diggers, saying the evidence was not conclusive, again warning against any "future intrusions upon the public property of Georgia."[39]

In 1831, Clayton, in a dramatic, brave decision in *Georgia v. Canatoo* (a case about a Cherokee man arrested for digging for gold on Cherokee land), decided that the Georgia law protecting the mines was void.[40] He rejected his own earlier belief that the "mines and minerals are separate and distinct from the interest of the land, and that the former always belong to the sovereign." Now he believed that "the word 'land' includes not only the face of the earth, but every thing under it or over it," and thus that "the state holds just as good a title to the Indian lands, as it does in their mines and minerals . . . they are inseparable." But there was a caveat. Britain had taken the land of Georgia by

preemption, and by international law conquest "confers upon the conqueror only the *empire* and the *unappropriated domain*, but private property is sacred." Where Indian title had not been extinguished, the original owners retained the rights to minerals on their land: "The above reasoning then shows a time when the Indians had a right to the gold found on their land; if they have lost that right, it is certainly incumbent upon the party who says he has acquired it to show the deed by which it has passed: I confess I have looked for it in vain." Clayton then reached his most radical conclusion: the Cherokee retained native title, which was unencumbered and unlimited, "a much more stubborn title than is usually conceived." Georgia's mining law was thus invalid. Clayton warned that "to consign a weak and defenceless race to the scourge of slavery by day and the gloom of a dungeon by night, far from their country and their friends, for no other crime than that of taking gold from their own land and the land of their fathers . . . will incur the condemnation of all civilized nations, if it do not provoke the curse of a much higher tribunal."[41] Chancellor James Kent of New York affirmed Clayton's decision, commenting: "The proceeding of Georgia in this case is an anomaly, and I think it hurts the credit of free and popular governments, and the moral character of our country."[42]

Gilmer defied the court's decision, instructing the state militia to "arrest every person who may be found attempting to take away any gold from the mines."[43] But popular opinion among the settler population was not with him. The *Macon Telegraph* called his action a stretch of authority "unwarranted, flagrant and dangerous."[44] In November 1831, Clayton was not reelected by the legislature for another term as judge.[45] A Philadelphia paper commented that Clayton's loss of office for his "independent and sound decision, repugnant to an oppressive law of the legislature of that State," pointed again to the importance of an independent and tenured judiciary.[46]

Governor Gilmer also had election problems that year. His opponent was Wilson Lumpkin, a member of the U.S. House of Representatives, standing for the Clark-Unionist faction, which claimed to be the true states' rights party, firmly opposed to nullification despite its hostility to federal and Supreme Court Indian policy.[47] Lumpkin vociferously opposed the reservation of the gold mines for public use.[48] He was a persistent proponent of Indian removal; the *Macon Telegraph* praised the "ardent zeal" with which he had pursued in Congress the acquisition of Indian lands.[49] He promised to distribute ownership of the gold-bearing land by lottery, to give the poor man an equal chance with the rich. In 1821, Governor Clark had used a lottery to

distribute Creek lands, also in order to "do equal justice to the poor and rich, and to insure a speedy population of the country."[50] The Georgia legislature passed a land bill in 1830, which Gilmer as governor opposed; he proclaimed the right of the state to take possession of Cherokee land but was opposed to doing it immediately. For this he was shot and burned in effigy in Muskogee and Carroll Counties.[51] At Gilmer's insistence, Georgians who had dug for gold in Cherokee territory were to be excluded from the lottery—a provision that, the *Augusta Chronicle* pointed out, would "affect a very large portion of the citizens of the frontier counties."[52] His principles were damaging his popularity. Almost three-quarters of Georgia's land was sold for low prices through the lottery system between 1805 and 1833.[53] "The public interest requires," Gilmer warned, the exemption of the gold-bearing lands from the lottery. He worried about "the spirit of speculation which the disposition of the lands by lottery is calculated to excite": "The community would become highly excited by the hope of acquiring great wealth, without labor. The morals of the country would be in danger of corruption."[54] Gilmer labored the point, knowing that other Georgians were advocating just such a distribution.

Gilmer's republican concern for the common good was about to be trumped by Lumpkin's more aggressively populist democratic stance, with its fear of centralism. The Milledgeville *Federal Union* contrasted Gilmer's policy of pouring the "incalculable wealth of the gold mines" into the "Treasury, or rather into the Central Bank," with Lumpkin's determination that "this noble fund should be distributed among the people, to carry independence, and comfort, and happiness into the family of many a worthy citizen, who, although honest and patriotic, is poor."[55] The paper reflected on the "immense, unascertained, and almost unlimited amounts of gold, proposed by Mr. Gilmer, to be taken from the people and placed in a Treasury so full, that the State has not known how to dispose of it, except by loaning it out." Gilmer's centralizing became, in this rendition, a direct assault on republican principles: "A rich treasury and a poor people may very well suit a monarchy or aristocracy—where the nobles may oppress their subjects and wallow themselves in ease and luxury. But such a state does not suit a republican people, for the very import of the form, *republic*, implies the wealth and prosperity of the people." Gilmer was accused of wanting to take "from the people what *belongs* to them, and put it into a Bank, to go to the wealthy and independent," while the "poor, the great mass of the people . . . *the widow and the orphan*, shall not touch this precious gold."[56] The accusation was that Gilmer thought the poor could not cope with sudden wealth. One Lumpkin sup-

porter mocked the idea that golden wealth suddenly acquired "will corrupt your manners and spoil your morals!!! *Oh! Absurdity of absurdities!!!!*"[57] In contrast, Lumpkin loudly professed his entire faith in the people; this was why, he explained, he was "utterly opposed to reserving the gold mines for public use."[58] As one supporter memorably put it: Lumpkin was "in favor of giving the 'poor man' a 'white man's chance.'"[59]

Lumpkin partisans thus argued that so much wealth from gold in government hands would inevitably foster corruption and end republican and democratic government. The historian Thomas Goebel argues that at the heart of populist republicanism was the belief that "the abuse of political power caused economic inequality."[60] Lumpkin supporters argued that the reverse was also true—great government wealth could entrench incumbents forever. The *Macon Telegraph* suggested that reserving the gold mines for public use could be a means of placing "from fifteen to twenty thousand votes . . . directly under executive influence."[61] There could be twenty-five thousand workers at the state mines, in addition to the victualers and carriers dependent on mine business—a huge bloc of votes in the governor's control. If the state mines were operated directly by the state, the paper argued, it could not run them with slaves because the constitution prohibited a standing military. The large body of white state employees would be a bloc of votes controlled by the governor; if rented out to commercial miners, they, "from the shortness of their tenure and the uncertainty of continuance, would not risk the purchase or responsibility of hiring slaves," and hence many of "the laborers would be white, and they neither the most orderly nor moral." Thus the huge wealth accruing to the state would foster political corruption: "every patriot will tremble," the paper contended, at the contemplation of such vast state-held wealth. Gilmer's proposed reservation of the mines for the state would inevitably "prostrate our liberties."[62]

Lumpkin won the (relatively close) election. "It is pretty plain," observed the *Richmond Whig*, "why and wherefore, Gov. Gilmer lost his election. He was disposed to reserve the Gold Mines as State property."[63] The *Macon Telegraph* thought "not one voice in five hundred is raised in favor of his recommendation" to reserve the mines for the state.[64] This was not surprising when the same paper was editorializing that Gilmer "wishes poverty to be the perpetual lot of the poor."[65] Gilmer had lost support in the frontier counties, where he was now seen as pro-Indian. This election brought about, one study concludes, a "fundamental reorientation in the state's policies towards the Cherokees."[66] In his inaugural address, Lumpkin spoke of his "confidence in

the unofficial, sovereign people. . . . I believe them to be not only capable of self-government, but of wise self-government."[67] A pro-Lumpkin newspaper described Gilmer's testimonial dinner in 1831, at which he spoke on "the measures of his Administration, reservation of gold mines, Indian testimony, and all": "His Ex-Excellency spouted a speech an hour and a half long. In it he foamed like a chafed boar in a white clover patch, and designated the citizens who throughout the State elected Lumpkin, 'a rabble'—yes, the majority of our freemen, 'a rabble!'"[68] The association of public good arguments with elitism and contempt for the masses was becoming entrenched.

In late 1831, the Georgia legislature passed "An Act to lay out the gold region in the lands at present in the occupancy of the Cherokee Indians, into small lots, and dispose of the same by separate lottery."[69] In 1832 the gold districts were divided into forty-acre lots and distributed among "the people" by lottery. White male persons who were U.S. citizens and had resided in Georgia at least three years were entitled to one draw, so long as they did not have a family residing out of the state and had not evaded military service. If they had a family they got one extra draw; widows and orphans who met the other requirements got one draw.[70] This was a quite specific settler colonial transfer from one class of people to another, and from collective to individual ownership (figure 3.1). Lumpkin had told the U.S. House of Representatives in 1830 that it was a "fundamental principle" that "the Indians had no right, either to the soil or sovereignty of the countries they occupied."[71]

There was high excitement at the time of the drawing; streets were "almost blocked up by the crowds of people." In the 1832 gold lottery, participants had almost a one in four chance of success—133,000 entrants for thirty-five thousand prizes.[72] In the May 1833 gold lottery, Alfred Alison drew a valuable lot, worth as much as $100,000; he was "said to have been quite a poor man" who "bore his poverty with cheerful heart."[73] On the other side, the *Cherokee Phoenix* called the lottery "one of the most shameless and atrocious depredations . . . ever committed in times of profound peace." The lottery, it said, "can never convey to Georgia a title; it can be only a forcible entry, and illegal possession of the premises."[74] Early in 1833, the *Phoenix* lamented evocatively: "When we see the pale faces again, they are closely viewing the marked trees and the carved posts. The gold drawers have been arriving at the gold mines, and they are compared to the great flocks of pigeons that hasten to the ground in search of food."[75]

In Georgia, then, the proponents of deploying the golden wealth for public rather than private benefit were successfully depicted as aristocrats and conservatives, as lacking the proper democratic faith in the people and their

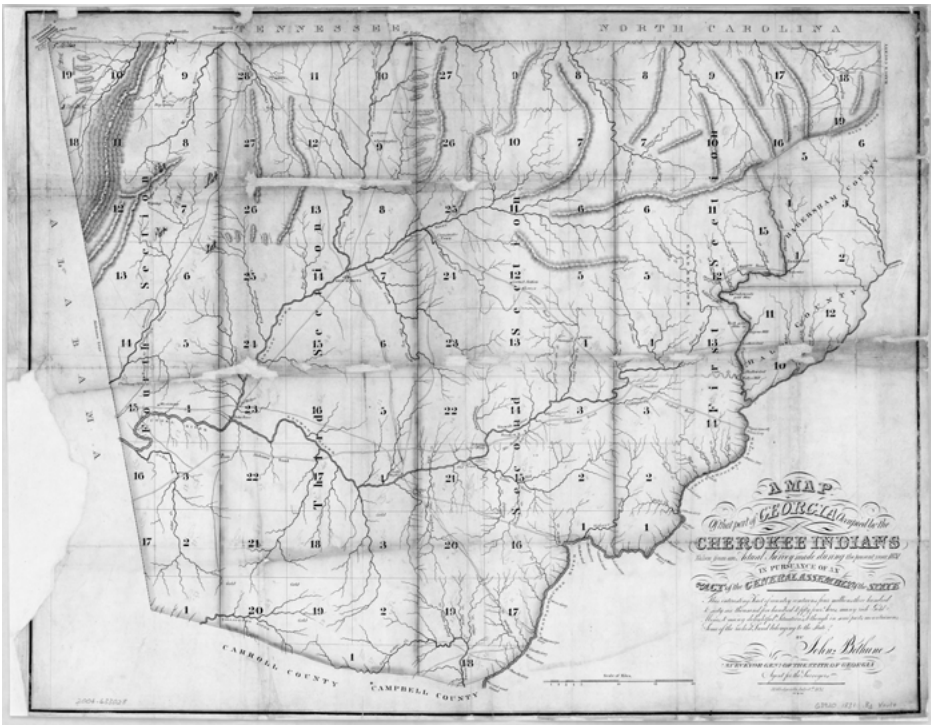

FIGURE 3.1 Map of Cherokee territory. The original caption, from John Bethune, surveyor general, reads: "A map of that part of Georgia occupied by the Cherokee Indians, taken from an actual survey made during the present year 1831, in pursuance of an act of the general assembly of the state: this interesting tract of country contains four millions three hundred & sixty six thousand five hundred & fifty four acres, many rich gold mines & many delightful situations & though in some parts mountainous, some of the richest land belonging to the state." Milledgeville, GA: John Bethune, 1831. G3920 1831.B4. Library of Congress Geography and Map Division.

capacity for self-government. The Georgia gold rush triggered a fundamental political debate about who owned mineral wealth in the soil—the state or the people—a debate democratically resolved in favor of the people, understood as a certain class of individuals, not the public.

AUSTRALIA

I might turn for contrast here to California, but the Australian gold rushes at almost the same time also provide dramatic and illuminating comparison

to Georgia, evidence of how far political orthodoxy in the Anglo settler societies had shifted in twenty years toward associating the private rather than public benefits of natural resource exploitation with democracy. In Australia in the 1850s, public good arguments about gold were even more rapidly and comprehensively identified as conservative, paternalist—and imperial. The New South Wales governor, after the discovery of gold near Bathurst, proclaimed that all gold, whether on public or private land, belonged to the Crown, and that all who dug for gold without "leave or other authority from Her Majesty" would be prosecuted.[76] A license system was announced, with a monthly fee of thirty shillings; the neighboring colony of Victoria adopted the same system. The intention was that the license fee should "not be higher than the persons engaged in the occupation would cheerfully and readily pay."[77] Secretary of State for the Colonies Earl Grey in London approved the system, noting that the money so raised should be spent on the policing and administration of the goldfields. Early reports indicated that the license fee was readily accepted—"not the slightest objection has been made to the payment," reported Crown Commissioner of lands Hardy in June 1851.[78]

When resentment did appear, at first it was mostly an objection to the mode of enactment of the licensing policy, rather than to the idea of charging for private access to a public resource. There were protests that the license fee was too high, that it was applied to unsuccessful and successful diggers alike and so imposed a tax on labor, and that the manner of collection was high-handed and disrespectful. Looking back from 1855, *The Age,* a Melbourne newspaper, noted that "though licences, like postage stamps, might have been sold by storekeepers, they were procurable only from official hands, which generally held out a licence in one hand, and arms in the other."[79] Most early critics confined themselves to these procedural objections, still at least tacitly agreeing that some payment was appropriate for the chance of private enrichment from a public resource. The Victorian correspondent of a South Australian paper contended in 1852 that thirty shillings a month was too high, but acknowledged that "a charge by the government for liberty to search for Gold is undoubtedly a tax just in principle."[80] Another goldfields correspondent thought the license fee a fair charge for maintaining order on the goldfields and that "the damage done to the country should be paid for by those who are destroying the pastures."[81]

The most sweeping Australian public interest assertions, however, came from imperial or conservative sources. Unlike in Georgia, there was never a serious domestic political proposal to reserve the gold for public use. The

London *Times* called for the "prevention by armed force of unauthorised intrusion on the lands of the Crown, and the preservation from plunder of the valuable public property recently discovered." There was, it argued, "a clear right to reserve this public property for public use . . . the duty to preserve it is as obvious as the right."[82] *The Times*' understanding that this was in part a question of military capacity to resist the popular will was shared in the colony. NSW colonial secretary Deas Thomson in 1851 mocked the idea of an export duty: "If we are circumstanced as they were at the Ural Mountains—if we had three or four regiments to keep watch, and convicts employed to dig the gold (hear, hear) such a scheme might be practicable. But in a free country like this . . . the suggestion was impracticable."[83] For Thomson, then, the license fee was as close to a public benefit policy as public safety allowed. But for conservatives, and many liberals, the principle of expecting public benefit from a public resource remained important. William Charles Wentworth, in the same Legislative Council debate, asserted strongly that "the public at large had a right to expect great benefit from this gold discovery, as well as the private individuals who embarked in gold seeking enterprise . . . in the protection of the public property confided to its charge, the government ought to possess the same authority as an individual possessed in protecting his property from spoliation. (Hear)."[84] Coming from the man associated with proposals for a hereditary aristocracy in New South Wales, this served only to further identify the public interest argument with conservatism. In Victoria the same year, conservative lawyer Thomas Turner à Beckett wrote that the gold "belongs to the Crown, simply as trustee for the people, to be turned to the best account nationally." He advocated "devoting a considerable proportion of our gold to public uses," to give "the people at large" a share of the benefits resulting.[85] As in Georgia, these aspirations for a public sphere built with gold were often heard just as proposals that ordinary people should be denied a chance at wealth, as reassertions of class privilege, or even as class hatred. One newspaper editorialized that Wentworth "hates the gold diggers: they are an independent working class who present the idea of *will* and *toil*—of muscular and moral faculties blended." The diggers, in their turn, the paper said, "defy and despise the Wentworths who never conceal their hatred."[86]

More fundamental opposition was soon being expressed to the very idea of a license fee, in the language of rights and British freedoms and defense of the dignity of the working class. There was now constant suspicion that attempts to discourage gold digging had at their heart an attempt to keep the working

class in subservient dependence, rather than the manly independence of gold seeking. Miners at Castlemaine in 1851, angry at Governor La Trobe's plan to double the license fee, posted this handbill on trees: "Will you tamely submit to the imposition, or assert your rights like men? You are called upon to pay a tax . . . imposed by your Legislators for the purpose of detaining you in their work-shops, in their stable yards, and by their flocks and herds . . . shame upon the men, who . . . would tax the labour of the poor man's hands!"[87]

Once that motive was identified as being at the forefront, and the license fee was understood as an attack on the dream of masculine independence from class subordination, principled opposition to the license fee itself became more common. A torchlight meeting in Geelong in 1852 concluded that the license fee was "wrong in principle" and "revolting to every Briton."[88] At a tumultuous meeting of the Ballarat Reform League in late 1854, Frederick Vern moved that all burn their licenses because "the obnoxious licence-fee was an imposition and an unjustifiable tax on free labor."[89] Much was gained at Eureka (the 1854 Ballarat miners rebellion), including democratic representation for gold diggers, but something was also lost—the public good argument once articulated by George Gilmer. The idea that the golden wealth should be for public rather than private good was becoming ever more firmly associated with a conservative, even reactionary, point of view and dismissed from the political mainstream.

Remarkably, the individual miner had now become a symbol of freedom and resistance to oppression, rather than of private wealth seeking at the expense of public resources. The common sense of colonists, and most historians since, became that individual gold seeking was the most natural response to gold, and that proposals to tax or limit individual gold seeking in the name of the greater public good were simply masks for imperial and class oppression. The license was replaced in Victoria in 1855 with a Miner's Right, sold for one pound and valid for one year, conferring also the right to vote. The 1857 amendments to the 1855 Gold Fields Act further specified that the Miner's Right gave the right to put up a building, cut down trees for personal use, and "divert and use" water for mining purposes on Crown land.[90] These measures were understood as democratic. Watson's depiction of early nineteenth-century North Carolina assertions of a "common right of mankind" to fish in local rivers reminds us of the longer Anglo history of casting individual access to common resources as democratic.[91]

After 1855, the rights of miners as against landowners became a central issue in Victoria. The individual miner had by now paradoxically become the

personification of the public. On all sides the argument was heard that the public interest required that miners have a right to dig on privately owned land. The *Ballarat Times* asserted in 1856 that "the land belongs to the state: the gold belongs to the people. Should the wants of the community require the land, all private rights must give way to the public good."[92] Robert Benson, a member of the Legislative Council, explained in 1856 that any minerals not expressly removed from Crown ownership "were reserved for the use of the public. (A voice, we are the public.) . . . public interests were not to be sacrificed to private ones. The wealth raised out of the bowels of the earth should be distinctly for the public good."[93]

Benson's "public good" was the opposite of Gilmer's—it was individual gold seeking. Another Bendigo meeting demanded "simple, cheap and speedy access by the miner to any private land known or believed to be auriferous, upon payment of surface damage."[94] John Basson Humffray, chairing a protest meeting in Ballarat in March 1857, said, "We want the right of the miner acting on behalf of the public to be acknowledged. We want his right to get the gold to be recognised, as the gold belongs to the public. (Cheers). It is a monstrous absurdity to tell the people that the gold belongs to them, yet they have no right to get it."[95]

By the later 1850s, then, the individual miner had become the representative of the public good against the selfish interests of individual property owners. Even the *Argus*, a relatively conservative Melbourne newspaper, argued that it was "incomparably more desirable that a hundred men should get a hundred pounds apiece than that one man should get ten thousand," and that hence conceding the gold in the soil to private landowners would be a mistake.[96] Despite the clamor, and almost annual introduction of mining on private property bills to the Victorian parliament, no such bill passed the upper house until 1884, although the principle had been well established that gold seeking could take place on private land as adjudicated by local mining boards.[97]

In California, in contrast, the courts at first upheld the priority of the individual right to seek gold. In *Hicks v. Bell* (1853), the California Supreme Court said that the United States had established the policy of permitting on its public lands "all who desire it to work her mines of gold and silver, with or without conditions."[98] *Conger v. Weaver* in 1856 affirmed a right to divert water on public land, observing that "this right . . . like that of digging gold, is a franchise; the attending circumstances raise the presumption of a general grant from the sovereign of this privilege, and every one who wishes to attain

it has license from the State to do so, provided the prior rights of others are not interrupted."[99] Later, the contrary rights of private property were upheld. Stephen J. Field in the *Biddle Boggs* case of 1859 held that "there is something shocking to all our ideas of the rights of property in the proposition that one man may invade the possessions of another, dig up his fields and gardens, cut down his timber and occupy his land, under the pretense that he has reason to believe there is gold under the surface, or if existing, that he wishes to extract and remove it."[100] That decision began a process of the privatization of mineral rights. Peter Reich writes: "Abandoning the traditional Spanish (and English) policy of tight sovereign control over resource development, *Biddle Boggs* and its progeny reflected the mid-nineteenth-century perspective that authorizing intensive exploitation by private business would promote an industrial economy."[101] The first U.S. federal mining law in 1866 said that mineral lands in the public domain should be "open to exploration and occupation"; the 1872 Mining Law added that mineral lands should be open to purchase as well as exploration and exploitation. The individual (and then company) miner had become the carrier of public interest and representative of the common good. Although the United States and Australia went in different directions on the rights of landowners, in both places the idea of public ownership of precious minerals had lost viability by midcentury. That was a political and cultural process at least partly explicable by the history I have just sketched, of the increasing association of the public interest position on gold with an untenable and undemocratic conservatism.

CONCLUSION

In the Anglo settler democracies, then, Crown or state rights were refigured as rights of the people understood as individuals. We should not forget how revolutionary that still was in the mid-nineteenth century. Letters explaining that gold and silver mines were "Royal Mines" were sent to landowners in Wales and England throughout the nineteenth century, asserting the Crown's right to conduct the mining or to extract a "royalty" payment of 5 percent on the precious metals mined. Outside the white settler colonies, gold mining in the British Empire retained Crown prerogatives more bluntly—in British Guiana, for example, gold mining required both a monthly license payment *and* the payment of a 5 percent royalty to the Crown.[102]

The connection between democracy in these settler societies and the shape of the gold rushes that followed can be probed further than the generally celebratory historiography, so fascinated by the topsy-turvy egalitarianism of gold rush society, has thus far done. Robin Eckersley observes that "the space-time-community co-ordinates of liberal democracies are ill-suited to serving the long-term public good of environmental protection."[103] In the gold rushes of the nineteenth century, democratic governments responsive to majority settler male opinion struggled with fundamental questions about public and private benefit, indigenous and settler ownership, and present and future generations, and they sided with the individual miner—who was becoming an increasingly attractive, democratic, romantic, and self-making figure. We still tend to write the history from the perspective of this likable and democratic fellow, neglecting the rival arguments and values he helped displace. In Australia, recent major revisionist work has more often extended our understanding of who participated in the individualist gold rush than sought to recover alternative traditions of thinking about it.

Today even the most elementary environmental sense should lead us to reevaluate with a little more sympathy the losing side of these nineteenth-century arguments about gold and democracy. We remember the Eureka rebellion very well in Australia as a key moment in the history of Australian democracy. Few Americans remember the ideologically coherent but impractical attempts of George Rockingham Gilmer to create a public gold rush or the ensuing battles, such as the skirmish at Leathersford, where sixty men without guns attacked the state militia.[104] Arguments like this from the *Hobart Courier* are nowhere in the national memory in Australia: "The gold diggers cannot be permitted to use the public lands for private advantage without contributing rent in some shape or other to the public purse."[105] Why on earth—in this more environmentally conscious age—do we *not* remember, and even cautiously honor, that side of the argument?

NOTES

1. David Williams, *The Georgia Gold Rush: Twenty Niners, Cherokees and Gold Fever* (Columbia: University of South Carolina Press, 1994), xi.

2. Katherine E. Rohrer, "George R. Gilmer (1790–1859)," *New Georgia Encyclopedia*, accessed May 15, 2018, https://www.georgiaencyclopedia.org/articles/government-politics/george-r-gilmer-1790-1859.

3. *Acts of the General Assembly of the State of Georgia Passed in Milledgeville at an Annual Session November and December 1831* (Milledgeville: Prince and Ragland, 1832), 23.

4. George Gilmer, *Sketches of Some of the First Settlers of Upper Georgia, of the Cherokees, and the Author* (New York: Appleton, 1855), 355.

5. F.N. Boney, "The Politics of Expansion and Secession, 1820–1861," in *A History of Georgia*, ed. Kenneth Coleman (Athens: University of Georgia Press, 1991), 129.

6. *Compilation of the Laws of the State of Georgia: Passed by the General Assembly, since the Year 1819 to the Year 1829, Inclusive* (Milledgeville: Grantland and Orme, 1831), 286.

7. *Athenian*, October 11, 1831.

8. *Athenian*, October 26, 1830.

9. *Niles' Weekly Register*, June 26, 1830.

10. *Niles' Weekly Register*, June 26, 1830.

11. In Gilmer, *Sketches of Some of the First Settlers of Upper Georgia*, 364–66.

12. Watson W. Jennison, *Cultivating Race: The Expansion of Slavery in Georgia, 1750–1860* (Lexington: University Press of Kentucky, 2012), 250.

13. Resolution No. 420, Committee on Banks, Georgia Senate, in *Compilation of the Laws of the State of Georgia: Passed by the General Assembly, since the Year 1819*, 68. On later anxiety about gold fever, see the chapter by Mountford in this volume.

14. Reprinted in the *Hagerstown Torch Light and Public Advertiser*, July 16, 1829.

15. Reprinted in Gilmer, *Sketches of Some of the First Settlers of Upper Georgia*, 363–64.

16. Reprinted in Gilmer, *Sketches*, 341–42

17. Gilmer to the President, June 15, 1830, Governor—Executive Dept.—Letter Books vol. 2, 12921, Georgia Archives, Morrow, GA (hereafter Governor Letter Books).

18. J. W. Jackson to Gilmer, August 7, 1830, Digital Library of Georgia Database, http://neptune3.galib.uga.edu/ssp/cgi-bin/tei-natamer-idx.pl?sessionid=7f000001&type=doc&tei2id=tcc519.

19. Terence Daintith, "The Common Law of Underground Energy Resources," in *The Law of Energy Underground: Understanding New Developments in Subsurface Production, Transmission, and Storage*, ed. Donald N. Zillman, Aileen McHarg, Adrian J. Bradbrook, and Lila Katz Barerra-Hernández (Oxford: Oxford University Press, 2014), 40.

20. Gilmer to Mr. Neal [?], January 5, 1830, Governor Letter Books.

21. Quoted in *Macon Telegraph*, September 17, 1831.

22. *Athenian*, October 26, 1830.

23. *A Digest of the Laws of the State of Georgia: Containing All Statutes and the Substance of All Resolutions of a General and Public Nature, and Now in Force, Which Have Been Passed in This State, Previous to the Session of the General Assembly of Dec. 1837* (Athens, GA: Oliver H. Prince, 1837), 560.

24. "An Act to Authorise the Governor to Take Possession of the Gold, Silver and Other Mines," *Athenian*, December 14, 1830, 3.

25. *Laws of the Cherokee Nations, Adopted by the Council at Various Periods* (Knoxville, TN: Knoxville Register Office, 1826), 50.

26. Gilmer to B. L. Goodman, June 25, 1830, Governor Letter Books.

27. Gilmer to Colonel Yelverton P. King, June 28, 1830, Governor Letter Books.

28. *Cherokee Phoenix*, September 4, 1830.

29. *Niles' Weekly Register*, June 26, 1830.

30. Gilmer to Colonel Yelverton P. King, August 23, 1830, Governor Letter Books.

31. *Salisbury Journal*, November 9, 1830.

32. Quoted in *Niles' Weekly Register*, November 18, 1830.

33. *Vermont Chronicle*, October 14, 1831.

34. *Cherokee Phoenix*, April 9, 1831.

35. *New-York Spectator*, October 11, 1831.

36. *Memorial of a Delegation from the Cherokee Indians. January 18, 1831* (Washington DC: Government Printing Office, 1831), 6–7.

37. *Milledgville Recorder*, July 13, 1830; *Athenian*, June 22, 1830.

38. *Georgia Journal*, April 10, 1830.

39. *Pittsfield Sun*, July 15, 1830.

40. *Nantucket Inquirer*, October 8, 1931.

41. *Daily National Intelligencer*, October 24, 1843.

42. *New-York Spectator*, November 29, 1831.

43. *New-York Spectator*, October 4, 1831.

44. *Macon Telegraph*, September 24, 1831.

45. *New-York Spectator*, November 29, 1831.

46. *National Gazette*, November 26, 1831.

47. Anthony Gene Carey, *Parties, Slavery and the Union in Antebellum Georgia* (Athens: University of Georgia Press, 1997), 25; E. Merton Coulter, "The Nullification Movement in Georgia," *Georgia Historical Quarterly* 5, no. 1 (1921): 10; George R. Lamplugh, *Rancorous Enmities and Blind Partialities: Factions and Parties in Georgia, 1807–1845* (Lanham, MD: University Press of America, 2015), 198.

48. *Macon Telegraph*, September 10, 1831.

49. *Macon Telegraph*, June 11, 1831.

50. *Niles' Weekly Register*, May 19, 1821.

51. *Augusta Chronicle*, December 11, 1830.

52. *Augusta Chronicle*, December 11, 1830.

53. *Macon Weekly Telegraph*, September 24, 1831.

54. *Athenian*, October 26, 1830.

55. Quoted in *Macon Telegraph*, September 10, 1831.

56. *Federal Union* editorial in *Macon Telegraph*, September 10, 1831.

57. *Athenian*, September 13, 1831.

58. *Macon Telegraph*, September 10, 1831.

59. *Macon Weekly Telegraph*, September 24, 1831.

60. Thomas Goebel, *Government by the People: Direct Democracy in America 1890–1940* (Chapel Hill: University of North Carolina Press, 2002), 12.

61. *Macon Telegraph*, August 27, 1831.

62. *Macon Telegraph*, September 17, 1831.

63. Quoted in *Pittsburgh Weekly Gazette*, December 27, 1831.

64. *Macon Telegraph*, September 17, 1831.

65. *Macon Telegraph*, September 17, 1831.

66. Jennison, *Cultivating Race*, 213.

67. *New York Evening Post*, November 22, 1831.

68. *Louisville Courier Journal*, December 9, 1831.

69. *Acts of the General Assembly of the State of Georgia Passed in Milledgeville at an Annual Session November and December 1831* (Milledgeville: Prince and Ragland, 1832), 164.

70. *Acts of the General Assembly of the State of Georgia Passed in Milledgeville at an Annual Session November and December 1831*, 164–65.

71. *Macon Telegraph*, July 17, 1830.

72. *Greenville Mountaineer*, October 20, 1832.

73. "Georgia Land Lottery," *Vermont Chronicle*, May 24, 1833.

74. *Cherokee Phoenix* article reprinted in *Spectator*, November 29, 1832.

75. *Cherokee Phoenix* reprinted in *Gettysburg Star and Republican Banner*, January 15, 1833.

76. *Correspondence Relative to the Recent Discovery of Gold in Australia* (London: HMSO, 1852), 3–4.

77. Executive Council minute No. 51/24, May 23, 1851, in *Correspondence Relative to the Recent Discovery of Gold in Australia*, 29.

78. Letter from Hardy, June 8 1851 in *Correspondence Relative to the Recent Discovery of Gold in Australia*, 50.

79. *The Age*, November 28, 1855.

80. *South Australian Register*, August 5, 1852.

81. *Goulburn Herald and County of Argyle Advertiser*, September 17, 1853.

82. *The Times*, September 19, 1851.

83. *Sydney Morning Herald*, December 4, 1851.

84. *Sydney Morning Herald*, December 4, 1851.

85. T. T. à Beckett, "The Gold and the Government," *Empire*, October 29, 1851, 4.

86. *Hobart Colonial Times*, October 20, 1853.

87. *Geelong Advertiser*, December 13, 1851.

88. *Empire*, January 8, 1852.

89. *Argus*, December 1, 1854.

90. "An Act for Amending the Laws Relative to the Gold Fields" (November 24, 1857), in *Acts of the Parliament of Victoria 1856–1857*, ed. Travers Adamson (Melbourne: Sands and Kenny, 1857), 2052.

91. Harry L. Watson, "The Common Rights of Mankind: Subsistence, Shad and Commerce in the Early Republican South," *Journal of American History* 83, no. 1 (June 1996): 13–43.

92. Quoted in *The Age*, December 22, 1856.

93. *Bendigo Advertiser*, April 15, 1856.

94. *Bendigo Advertiser*, June 11, 1857.

95. *Ballarat Star*, March 9, 1857.

96. *Argus*, February 6, 1857.

97. Arthur Clifford Vetch and Walter Lowrie Fisher, *Mining Laws of Australia and New Zealand* (Washington, DC: Government Printing Office, 1911), 102.

98. *Hicks v. Bell*, 3 Cal. 219, 1853.

99. *Conger v. Weaver*, 6 Cal. 548, 1856.

100. *Biddle Boggs v. Merced Mining Company*, 14 Cal. 279, 1859.

101. Peter Reich, "Western Courts and the Privatization of Hispanic Mineral Rights since 1850: An Alchemy of Title," *Columbia Journal of Environmental Law* 23 (1998): 86.

102. *The Times*, August 27, 1897.

103. Robin Eckersley, "Anthropocene Raises Risks of Earth without Democracy and without Us," *The Conversation*, April 1, 2015, http://theconversation.com/anthropocene-raises-risks-of-earth-without-democracy-and-without-us-38911.

104. *Macon Telegraph*, January 29, 1831.

105. *Hobart Courier*, May 5, 1855.