COMPLAINT TO THE NATIONAL MUSEUM OF AUSTRALIA

SUBJECT: Digital Classroom Content:

“Australian Journey Episode 11: Australia’s First Terrorist?”

COMPLAINT: Innumerable errors, outdated claims and misinformation in this documentary constitute a breach of the NMA Charter to ‘inform’ its clients. In fact, it so comprehensively misinforms the general public that its promotion in an online ‘classroom’ is inappropriate and it ought to be withdrawn.

Dear Sir/Madam

I watched the video “Australia’s first terrorist?” on July 9th 2021 after discovering it on your webpage. It is a very powerful, cleverly presented and highly professional documentary that purports to be a balanced exploration of the Kelly story.

At the beginning we have this: *“Common criminal or fearless revolutionary?....we will explore the two contested sides of the Kelly persona*”, and at the end the viewer is asked on the basis of the forgoing *“Was he a victim or a villain, a great Australian rebel or a 19th century terrorist, an Irish idealist or a dangerous and deluded criminal?”* (21.50)

Quite apart from the dubious value of suggesting the choice is between one of two extreme characterisations of Ned Kelly, the problem with this documentary is that it is not in any way balanced, it presents an extremely one sided view of Ned Kelly and the Outbreak and it does so with the support of a litany of misinformation, misrepresentation, outdated interpretations and false assertions. Viewers most certainly are not provided with a balanced and objective look at the “Kelly persona” and the notion they have been provided with sufficient information to decide on whether or not he was a villain or a hero is a deception. I realise that’s a harsh judgement, but will detail the reasons for it, below.

For many years, it’s been commonplace for the complexities of the Kelly story to be distilled into the ‘hero or villain’ question, the approach continued in this documentary. However, what the writer of this 2018 Documentary has either been unaware of, or else deliberately ignored is that over recent years vastly improved access to the historical record via PROV and other places has enabled extensive critical re-evaluation of the Kelly story popularised by authors such as Brown, Molony, and especially Ian Jones. The result of this close scrutiny is that much has been cast aside, and the answer to the age-old question is now clearly, some kind of complex villain and not a freedom fighter or people’s hero. But none of this new scholarship was exposed in this documentary, so at the very least it is now seriously out of date.

But its much worse than just being out of date.

Instead of any kind of critical appraisal of many of the Kelly claims, especially the anti-police ones, they are incorporated into the narrative as if they are true. One glaring example of this is when Susan Garland correctly notes that *“Kelly hated police with a passion”*. She then claims Ned *“had reason to”* because *‘it wasn’t just that police bribed by squatters harassed poor men off the land, or the targeting of the Kelly clan or the bullying and victimisation of Kelly sympathisers...(But) ...in the Nolan series we see how the police charged with upholding the law drove Kelly deeper and deeper into a life of crime and how a cycle of violence came to consume lawmaker and lawbreaker alike. That cycle escalated with the harassment of Kate Kelly, Neds pretty young sister by this man, constable Fitzpatrick. Here the bearded drunken officer draws the 14-year-old towards him as Ned watches this outrage from outside, powerless to help her”(9.58)*

There are two major problems with that segment: firstly, there is no attempt to examine the claim that Ned Kelly was a ‘police made’ criminal, that police harassment and persecution was to blame for what he became. Instead that claim is asserted as if it was true, even though the Police Royal Commission of 1881 investigated that very complaint and rejected it, a fact the documentary makers seem to have ignored or worse perhaps, been unaware of. The Commissions conclusion was as follows:

***“It may also be mentioned that the charge of persecution of the family by the members of the police force has been frequently urged in extenuation of the crimes of the outlaws; but, after careful examination, your Commissioners have arrived at the conclusion that the police, in their dealings with the Kellys and their relations, were simply desirous of discharging their duty conscientiously; and that no evidence has been adduced to support the allegation that either the outlaws or their friends were subjected to persecution or unnecessary annoyance at the hands of the police.”***

That failure to reference the Commissions finding results in a very unbalanced view of what motivated Kellys hatred for the police.

Secondly, Garland repeats the Kelly claim of an “outrage” being committed on Kate Kelly by the ‘drunken officer’ Fitzpatrick. This is a standard component of the popular Kelly story, but the viewer isn’t told that after his capture when asked about that incident Ned Kelly said it didn’t happen. He also said that if it had happened, the whole of Victoria wouldn’t have been big enough for the perpetrator to hide in. The viewer is also not told that neither Kate Kelly nor anyone else in the extended Kelly household at the time said anything at all about that incident to anyone until many months later, even though it could have been a powerful defence in Mrs Kellys assault case, meaning she may have avoided conviction and gaol time altogether. But no, this story appeared nowhere until months after the Kelly gang had murdered three police and were on the run, and perhaps the Kellys were now seeking to create a justification for their behaviour. How can there be balance if these facts are not mentioned? The claim Fitzpatrick was drunk, and the many other vilifications of his name and character that have been standard Kelly fare are also refuted by multiple lines of evidence, brilliantly set out by Dr Stuart Dawson in 2015 but it would appear not known to these documentary makers in 2018. ( <https://ironicon.com.au/redeeming-fitzpatrick-ned-kelly-and-the-fitzpatrick-incident-dawson-distributable.pdf> )

The detail of the so-called Fitzpatrick incident isn’t provided, so the viewer is not made aware that Fitzpatrick went to the Kelly home on legitimate police business to arrest Dan Kelly, that he was shot at and bashed by the Kellys. Neither is mention made of the Kellys deep and undisputed involvement in what Kelly himself called “wholesale and retail” cattle and horse stealing, which was of course what legitimised police interest in the Kellys. Instead, Garland doubles down on the idea that the police were the problem with this : *“The Kellys drove Fitzpatrick from their home and the police embarked on yet another vendetta (10.30)”*  Here again, the view of the Kellys is advanced as if it was fact – criminals routinely portray legitimate police investigations as police vendettas and persecution!

The misrepresentations continue with the discussion about the Stringybark creek murders, with Bruce Scates quoting small parts of Ned Kellys version of events as if they are the only version and as if they are necessarily reliable. In fact, Scates misquotes Ned Kellys version, saying that Lonigan “*put up his hand to take aim when I shot him that instant or he would have shot me”*. Kelly actually wrote that what Lonigan put up was his HEAD, and that Lonigan was behind a battery of logs, a claim which the forensic evidence derived from Lonigans autopsy proves to have been a lie: Lonigan had wounds in parts of his body that would have been protected by the logs if Kellys claim was true. These recent insights were obviously not known to Scates but knowing that Ned Kelly lied about what happened is an important realisation if its Kellys ‘persona’ we are trying to understand.

Garland perpetuates other disproven claims about SBC saying “*Ned and three members of the gang confront a police party laden with arms, men who had come determined to arrest or destroy them”* The notion the police were *‘laden’* with arms is false, but has been embedded in the Kelly story for decades. Each policeman had his usual police issue revolver and between the four of them they had one additional rifle and one shotgun to kill game. That is all. Equally false is the claim they were determined to *‘capture or destroy’* the Gang. They took handcuffs and were expecting to bring back prisoners. There was no order to bring them back dead or alive as is often repeated. The source of that claim, a noted kelly sympathiser refused to swear and sign an affidavit to that effect when asked to do so by police.

But SBC wasn’t just about the murder of Lonigan: two other police were killed the same day, yet Scanlan’s killing isn’t mentioned and neither is Kennedys. How can Kellys persona be properly understood without the knowledge of how he treated a fleeing wounded unarmed policeman - chasing the fleeing Sergeant Kennedy half a mile through the bush, wounding him, executing him with a gunshot at point blank range to the chest and then robbing his corpse? What would that reveal about Kellys persona, and how would not mentioning it affect anyone’s understanding of it? Again, balance is lacking, and Kelly criminality is glossed over or ignored in favour of Ned Kellys provable lies about killing in self-defence.

*“Wilful cold blooded murder or a shooting in self-defence? I wonder if in todays Courts Kelly would be convicted of a capital crime?”* asks Garland, once again positing a false dichotomy as the only possible explanations of what happened. As Kelly himself said they could have shot the police without calling on them to ‘Bail up’ – which would certainly have been in cold blood, but they didn’t so that leaves ‘self-defence’ as the only option according to this documentary. However, in a modern Court the self-defence claim would be neutralized by the forensic evidence from Lonigan’s autopsy, and of course Capital offences dont exist anymore because capital punishment has been abolished. What happened at SBC was a complex chaotic tragedy created by Ned Kelly that can’t be reduced to either of Garlands alternatives.

Scates use of the Jerilderie letter in this documentary is problematic, to say the least. As mentioned previously he misquotes it, and strings separate parts together to make a narrative which may or may not be in sympathy with the context. How can this cherry picking be acceptable coming from an academic?

An early example of the deliberate misuse of quotations from the JL occurs at 6.17: Scates reads from the JL but gives no indication that what he appears to be reading is not one continuous extract but an amalgam of two separate extracts *“Dear Sir, I wish to acquaint you with some of the occurrences of the present past and future. The ground was rotten.”* Next Susan Garland describes the rottenness of the north east, claiming it was dominated by wealthy squatters who took all the best land. The impression is created that the opening paragraphs of the JL are about Ned Kellys political views and ambitions, and the rottenness of society. In fact this is a quite deliberate misrepresentation: in the opening paragraphs of JL what Kelly airs are not in any way political or ideological concerns but his own very personal grievances about a conviction for assault and indecent behaviour. In seeking to blame others for what he did, Kelly claims quite stupidly among other things that the reason his fist came into contact with Mr McCormack’s face, and Mr McCormack fell from his horse was because McCormacks wife made Kellys horse jump forward. The incident began when a wagon got stuck in mud, and Kelly wrote *“The ground was that rotten it would bog a duck in places, so Mr Gould had to abandon his wagon for fear of losing his horses in the spewy ground”* Clearly Scates has taken the reference to rotten ground completely out of context and misused it to create a completely false impression of the JL right from the start.

Here’s another example: Scates says this, appearing to be reading from the JL : *“It will pay government to give those people who are suffering innocents, justice and liberty. If not I will be compelled to show some colonial stratagem which will open the eyes of not only the Victoria police but also the whole British Army. The queen is guilty. We will hoist a green flag. I give fair warning...”(16.45)*

In fact this “quote” is another artefact made by Scates using modified parts of four separate paragraphs from different parts of the Jerilderie letter to support his own narrative. The reference to the queen comes from this violent threat made by Kelly *“Fitzpatrick will be the cause of greater slaughter to the Union Jack than St Patrick was to the snakes and toads in Ireland. The Queen of England was as guilty as Baumgarten and Kennedy Williamson and Skillion of what they were convicted for”* How does Scates get *“The queen is guilty”* from that?

*“We will hoist a green flag”* is another serious misrepresentation by Scates, this time of a sentence from yet another part of the JL: *“What would England do if America declared war and hoisted a green flag as it is all Irishmen that has got control of her armies, forts and batteries....”* Again, where does Scates get *“We will hoist a green flag*” from that? There are no other references in the JL to a green flag.

The discussion about the siege at Glenrowan is also misleading. The Kelly gangs imprisonment of scores of innocent local people and the abhorrent plan for mass murder of police is glossed over, in preference to misrepresentation of the action of the police: *“Within minutes of their arrival police opened fire. A fusillade of lead tears though the building killing and wounding men women and children*” (15.30)

In fact, the first shots were fired by the gang, after police had called on them to surrender.

In spite of almost certainly realizing their plan had failed and escape was almost impossible, the gang responded with taunts and began shooting while standing in armour on the veranda in front of the Inn filled with their prisoners: a very different reality from that presented in the documentary. As for the claim that there was *“killing and wounding of men women and children*” – this is hyperbole and sensationalist. Leaving aside the three Gang members who died and not wishing in any way to diminish the horror and the tragedy of any deaths and injuries, the reality is that of 63 prisoners, a single adult man ( Martin Cherry) and a single young man ( Johnny Jones) died by police bullets - that is all. Another young man ( Johnny Reardon) received a shotgun pellet to his chest but died an old man decades later and a baby was reported to have a grazed forehead. No women or other men were reported killed or injured, but everyone was deeply traumatised by their imprisonment. The ultimate responsibility for all this physical and deep psychological trauma must lie with the instigator of the entire confrontation, Ned Kelly.

At 16.15 Scates reveals what he believes was the purpose of the Glenrowan campaign: an army of sympathisers led by Ned Kelly and the Gang would defeat the police and declare the North east a Republic. This formulation was introduced by Ian Jones at a symposium in Wangaratta in 1967. It wasn’t an idea that had been mentioned by anyone at the time of the outbreak or for at least twenty years after it had ended, it wasn’t mentioned by prominent Kelly Sympathiser and author J J Kenneally in his Kelly classic 1929 publication “The True History of the Kelly gang” yet Ned Kellys brother Jim said of this publication that said nothing about a Republic, now “the public was in full possession of the truth.”

In fairness to Scates the definitive and now widely accepted deconstruction of these claims about a Republic were published in 2018, too late for inclusion in his documentary, but that publication alone effectively renders this documentary out of date. (read this important research document here: <https://ironicon.com.au/Ned_Kelly_and_the_myth_of_a_republic_of_North-Eastern_Victoria.pdf> )

Another important error in this documentary is the false claim that 30,000 people signed a petition that *“called for a pardon”.* The petition was promoted by prominent anti-capital punishment activists David and William Gaunson, and asked not for a pardon but a ‘reprieve’, that is to say a punishment other than death. There was no challenge to the conviction – in fact it was widely supported – but Kellys defence team made use of the growing opposition to Capital punishment. Scates also wrongly states that Ned Kelly *“was given no opportunity to speak at his trial”*. In those days defendants were able to make an unsworn statement to the court but they were not cross-examined. Kelly declined to make such a statement, and also of interest, when the Prosecution suggested admitting the Jerilderie letter as evidence, Kellys team objected, and so it wasn’t. The suggestion that somehow the authorities conspired to keep Kelly silent is false : his own team wanted it that way.

Many other claims made in this documentary are contentious, such as that when Kelly burned mortgage documents farmers were relieved of their debts, such as that the bank robberies were as much political as criminal acts, such as that after the SBC murders the Gang wasn’t so much on the run from the law but engaged in an *“open war with the authorities”*, such as whether or not there was any important truth to Kellys claim that *“there was never any such thing as justice in the English laws but any amount of injustice”,* such as the claim Kelly had a gentle trusting nature.

There are also many important omissions from this documentary, not the least of which are any references to the many bloodcurdling threats of torture and violence that Kelly directed at any person who dared assist the police, or to the fact that political references, such as they are make up only a very small part of the JL. The gangs murder of Aaron Sheritt is ignored, Kellys earlier criminal activities, his prison record and his stock stealing syndicate are not mentioned, and neither are the extensive criminal records of innumerable members of his extended family.

In conclusion, I ask that consideration be given to removing this Documentary from the NMA webpages. It purports to be an examination of “both sides”, of the Kelly story, but as I’ve pointed out, by the use of deliberate misrepresentations, omissions and misinformation it advances a highly partisan and unhistorical view of Ned Kelly, a view which more recent scholarship has largely rejected. I don’t believe as important a public institution as the National Museum of Australia ought to be promoting a myth as history or suggesting to the public that the “hero or villain” debate is still a valid approach to the Kelly story. The question has been answered : its a complex and fascinating story but Ned Kelly was a villain.

Many thanks

David MacFarlane

July 10th 2021