The Hon. John Harber Phillips, A.C., Chief Justice of Victoria “The North-Eastern Victoria Republic Movement – myth or reality”.

G.B. Kerferd Oration, Beechworth Sesquicentenary, 27 July 2003

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G. B. KERFERD ORATION - SUNDAY 27 JULY 2003 FOR BEECHWORTH SESQUICENTENARY,

DELIVERED BY

THE HON. JOHN HARBER PHILLIPS, A.C., CHIEF JUSTICE OF VICTORIA

*"THE NORTH-EASTERN VICTORIA REPUBLIC MOVEMENT* - *MYTH OR REALITY?"*

At the end of the sittings of the supreme court - held here at Beechworth in the spring of 1878, the presiding judge, Mr. Justice Redmond Barry pronounced sentence on two men and a woman. They had earlier been convicted by a jury of being accomplices in the attempted murder of a police officer, a trooper Fitzpatrick. The two men - William Skillion and William Williamson - were each sentenced to six years' imprisonment with hard labour. The woman received a sentence of three years, also with hard labour, because, the judge said, she had a child of six months which she was still feeding. Her name was Ellen Kelly. According to the evidence given by trooper Fitzpatrick at the trial, he had gone to Ellen Kelly's home with a warrant for the arrest of her son Dan for cattle stealing. Dan Kelly's elder brother Ned, so Fitzpatrick told the court, had fired a shot at him, wounding him in the wrist. The three accused persons had rendered assistance to Ned Kelly during this attack.

A few minutes after the sentences had been pronounced - clutching her child to her - Ellen Kelly trudged with her companions up the gentle slope towards the high walls of Beechworth gaol. Their footsteps led them as surely to their punishment as those of their escort, trooper Fitzpatrick, led him, in the fullness of time, to dismissal in disgrace from the Victoria police force. In the grim gaol yard Fitzpatrick broke the bitter silence.

# "Well Billy", he said to Williamson,

*"I never thought you'd get anything like that."*

Williamson disdained to reply - but Ellen Kelly did so:

# "My sons will play up over this", she said, "there will be murder done now!"

This was prophecy indeed, for, ere two years had passed 11 people would be dead. Dispute still occurs as to the character of some of these deaths - but this much is plain beyond argument- only one was from natural causes.

If trooper Fitzpatrick was surprised at the length of the sentences imposed on Ellen Kelly and the others, Ned and Dan Kelly, hiding in the bush because of outstanding arrest warrants, were beside themselves with rage when news of the sentences reached them.

There is no doubt in my mind that the sentence on Ellen Kelly was the proximate cause of the Kelly gang outbreak. Both the chief commissioner of police at the time, Captain Standish and the Benalla magistrate Mr Wyatt, thought it excessive and gave evidence of this view to a royal commission into the Victoria police conducted in 1881.

The judge who imposed the sentences, Mr. Justice Redmond Barry, was a complex man. An Irishman and graduate of Trinity College Dublin, he is probably the most devoted citizen Melbourne has ever had. He was responsible for the founding of the University of Melbourne, the public library, the Supreme Court library, the Melbourne Hospital and even the Melbourne Philharmonic Society. He handed out severe sentences in court and yet, throughout his working life, he secretly gave part of his income to the poor.

Now, let us leap in our imaginations to the last hours of the Kelly gang.

Steadily firing a revolver, a figure lurches towards the Glenrowan hotel through the pre-dawn fog of 28 June 1880. The waiting cordon of police can just make out a pale overcoat and some type of helmet.

One police officer, in a reaction typical of those present, thinks the figure is of *"tremendous size-much taller than a human being".*

For almost half an hour the return fire of the police is of no effect until one of their number, sensing that some sort of body armour lies beneath the overcoat, lowers his aim. After his second shot is fired, the figure crashes to the ground like a felled tree. Two police rush forward to pinion him while a third tears away a crude metal helmet. a pale, black bearded face looks up at his captors.

Ned Kelly, cold-blooded murderer and robber to some and folk hero to others, is taken at last.

Within a short time after Ned Kelly's trial and execution in October 1880, a number of rumours - speedily translated into legends-grew up about him. One of the most intriguing was that when he was captured at Glenrowan he was found to have in his pocket a declaration of a Republic of north-eastern Victoria. This document, so this legend went, was passed on by the police to the government who suppressed its existence because of the very unsettled nature of the north­ eastern region of the colony.

For many years, this legend was treated as a bit of *"Irish mist".* The first written account of it I have been able to find was in a magazine *"The Irish Times"* published in Dublin in the late 1920's. Early histories of the Kelly gang were dismissive of it, but in Max Brown's book *"Australian Son",* published in 1948, it was given some attention.

Then, in 1964, the well-known Kelly historian, Ian Jones, conducted some interviews with Thomas Patrick Lloyd, the son of Thomas Peter Lloyd who was widely regarded as the fifth member of the Kelly gang and who remained in the background at Glenrowan and so escaped arrest. In those interviews, Lloyd spoke of a movement for a Republic in giving his recollections of his father's account of events leading up to and including Ned Kelly's capture.

Based on this material, Ian Jones raised the real possibility of a Republic movement here in a paper entitled, *"A new view of Ned Kelly"* delivered at an important Kelly seminar at Wangaratta in 1967. Ian Jones conducted a further interview with Thomas Patrick Lloyd in July 1969 and was told that a hand-written copy of the declaration of the Republic of north-eastern Victoria was still hidden away together with exercise books which contained records of meetings where such a republic was discussed.

In the same year Leonard Radic, a respected Melbourne journalist and theatre critic for the Melbourne *"Age",* told Ian Jones that he hadvisited the Public Records office in London during the winter of 1962. There he had seen a printed copy of the Declaration. He clearly recalled its *"quaint, mock legalistic language".*

Apparently because he did not realize the significance of what he had seen, Mr. Radic delayed reporting this find. When he did so, intensive searches were conducted at the public records office. In one of these, the well known parliamentarian Dr Barry Jones played a prominent part. In another, the director, Tony Richardson, preparing for

the film which starred Mick Jagger as Ned Kelly, engaged a professional searcher. These searches were unsuccessful. The officials at the office had no record of the declaration. The most likely explanation was thought to be that the document had been on loan for a particular exhibition and had been returned *to* its owner.

Significantly, other respected Kelly historians have treated the notion of a republican movement seriously. Dr John McQuilton did so in his *"The Kelly Outbreak"* published in 1979, and Professor Molony did the same in his work *"I am Ned Kelly"* published the following year.

So, what are we to make of this evidence about a Republic movement? That supplied by Thomas Patrick Lloyd was plainly hearsay and, although documentation was referred to, none was produced. In my opinion, Lloyd's evidence cannot be regarded as anything higher than supportive. That of Len Radic is of a quite different character. I should have thought had he presented it in a court of law he would have been treated as a truthful, responsible witness and - given that he was a professional journalist - an accurate observer to boot. As the theatre was his world and he had no particular interest in Ned Kelly, he would also have been regarded as an objective witness.

Accordingly, I think that it is both safe and reasonable to regard Len Radic's account as hard evidence of a north-eastern republican movement. This being so, it is proper to regard Thomas Patrick Lloyd's reports as satisfactory supportive evidence.

Together, this material clothes what had previously been a legend with the aura of reality. It must be accepted, however, that it is very sparse documentary evidence indeed. But is this at all surprising? As other evidence, to which i shall shortly turn, indicates that apparently the Republic was to be established, if necessary, by force of arms, then what was in contemplation was nothing less than high treason - for which the penalty was death. Small wonder then that, after Glenrowan, those involved would see the necessity of destroying any incriminating documents.

Let us now turn our attention to other evidence supportive of the existence of a Republican movement.

Prior to Glenrowan, extraordinary secrecy and a program of misinformation accompanied the making

of the armour for the gang members. This is consistent with the *"armoured"* gang being seen as shock troops, should resort to violence come about as part of a republican cause.

A mounted Constable, James Arthur, part of the police siege party at Glenrowan, witnessed the firing in the darkness of two rockets. *"one",* he said, *"was very faint, and the other was a large one."* In evidence, he gave to the police Royal Commission, the inference was that he considered the rockets were signals to Kelly sympathisers, letting them know the gang was under attack by the police and summoning them for assistance. Arthur also gave evidence that he had seen Ned Kelly leaving the hotel shortly after the firing of the rockets.

Other reliable police reports contained accounts of sightings of parties of armed men in the surrounding district. The movement of bodies of mounted men were also heard, heading towards Glenrowan in the darkness. It was established by civilian evidence that Ned Kelly, under cover of darkness, had contrived to leave the Glenrowan hotel during the police siege. Witnesses gave accounts of him addressing a body of his supporters on a nearby hilltop. He ordered them to disperse. One witness thought they numbered up to 150 men, all armed.

Another witness, a journalist named McWhirter, recalled being told by a police officer during the siege that a group of men had gathered behind the police lines.

Further, the gang had brought gunpowder with them. This had nothing to do with the proposed derailment of the police train, for Ned Kelly was confident fettlers would remove rails if ordered to do so.

What did Ned Kelly have to say that throws light on this matter?

A section of the *"Jerilderie Letter",* dictated to the gang member Joe Byrne by Ned Kelly, and produced by him at the newspaper office in that town after the robbery of the Bank of New South Wales in February 1879, reads as follows:

*"I give fair warning to all those who has reason to fear me to sell out and give ten pounds out of every hundred towards the widow and orphan fund and do not attempt to reside in Victoria but*

*as short a time as possible after reading this notice, neglect this and abide by the consequences, which shall be worse than the rust in the wheat in Victoria or the druth of a dry season to the grasshoppers in New South Wales I do not wish to give the order full force without giving timely warning, but I am a widow's son outlawed and my orders must be obeyed."*

The same letter contained the following declaration:

*"it will pay government to give those people who are suffering innocence, 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 and inhabitants, but also the whole british army."*

Another Kelly letter sent to a parliamentarian, Mr. Cameron, concludes with the words, *"Fitzpatrick shall be the cause of greater slaughter to the rising generation than St Patrick was to the snakes and toads of Ireland" ... "for I need no lead or powder to revenge my cause, and if words be louder I will oppose your laws with no offence remember your railroads".* (The expression *"railroads"* probably reflects Ned Kelly's association with a Californian miner, George King, who married the widowed Ellen Kelly.)

According to police officer Bracken, one of Ned Kelly's prisoners at the Glenrowan hotel, Ned had declared to them that rural people were *"damned fools to bother their heads about parliament".* He added, significantly, *"this is our country".*

I must say that, before I heard of Len Radic's evidence several years ago, I regarded Glenrowan as a puzzling occurrence. The murder of Aaron Sherritt and the attempt to derail the police train seemed totally inconsistent with preparations for another bank robbery and the traditional explanation - that the gang were simply sick. and tired of being on the run - lacks credibility. These men were expert bushmen moving about in a very wide area replete with their sympathisers. Food and shelter were always available.

But if one allows that a Republic was on the agenda, an initial decisive strike against the police is certainly not inconsistent with the known facts.

It is also clear that Republican movements were by no means uncommon prior to the Kelly outbreak. At Eureka in September 1854, a *"declaration of independence"* was drawn up by Alfred Black, brother of George Black, editor of *"The Diggers' Advocate"* and member of the executive of the Ballarat Reform League. When Black read this declaration to the aggrieved diggers, they loudly cheered it.

In 1855, the Reverend John Dunmore Lang published a draft Declaration of independence of Victoria. He had previously advocated republicanism in lectures he had delivered in Sydney. Part of the declaration read:

# "We, the people of the province of Victoria in eastern Australia, being both able and willing to govern ourselves, hereby solemnly declare, in the presence of almighty god, from whom alone we derive our political rights, and in the sight of the whole civilised world, which we call to witness this our act and deed, that we are henceforth free and independent."

In the same year James McPherson Grant, a Melbourne solicitor and parliamentarian, repeatedly pressed the notion of a republic through the medium of the *"Age"* newspaper. He wrote that he envisaged Victoria as *"a great free and independent republic* - *the hope and salvation of the world".*

In 1861 following a public meeting in Portland attended by some four to five hundred people, a separation league was formed. This contemplated the separation of the western region of Victoria from the rest of the colony. The region was to be renamed *"Princeland".* Another 11 meetings followed and a petition was sent to the House of Lords and the governor of Victoria for transmission to the Queen. It was rejected by her and in 1862 the project was abandoned.

Further, it is plain that, in social justice terms, by the late 1870'8 north eastern Victoria was in a state of very considerable unrest and senior police gave evidence to this effect to the Royal commission. To illustrate this, it is necessary to look at some of the history of the area. Fueled by favorable reports of the explorer Major Mitchell, occupation by squatters occurred in two waves : the 1830's and the mid 1840's. Gold was discovered near the present site of Beechworth in 1852 and other fields followed. In 1853, not long before the momentous

events at Eureka, a riot occurred on the Ovens goldfield and a mass meeting called for land reform. This grievance resulted in the formation of the Victoria Land League in 1856. This league's task was to press Victoria’s first parliament for action.

By this time, the population of the north-east was divided into three groups. The squatters, the small farmers, and the gold diggers who had not made their fortunes. This last group was the largest. The Victorian parliament proceeded to enact a series of Land Acts. The Nicholson Act of 1860 and the Duffy Act which followed two years later, did not significantly affect the north-east, but it is necessary to briefly review them in order to understand later events. The former Act provided for some crown land to be alienated by the auction process and for other areas of it to be alienated, upon conditions including residence, by selection. Selection of lots from 80 to 640 acres in surveyed areas was permitted by part purchase and part lease. The subsequent act of 1862 reduced the minimum allowed selector allotment to 40 acres. another act of 1865 sought to put down various abuses of the system and it also made provision for diggers who now sought selection. They were now permitted to take up land free from cultivation and residential obligations of it if it lay within a specified distance from a goldfield. A great many selected land accordingly.

A further act of 1869 operated to permit selection generally in the north-east and thousands of acres were selected pursuant to it and its predecessors. generally speaking, the land selected was of inferior quality.

It is now universally accepted that the process of selection here was, at best, a relative failure. The squatters adopted many stratagems - buying at auction, dummying and manipulation of the relevant officials -to frustrate it. The hardships of the selectors were legion and were reflected in the reduction in the sizes of permissible allotments and the halving of rents in 1878. the disappointing result of the selection process was to play a significant part in events that followed.

By the early 1870's, again in social justice terms, rural poverty in the area was widespread. Squatters' fences were burnt and isolated police stations were stoned. the historian McQuilton reports that the manager of the Barnawartha common, *"had his sheds and harvest burnt by selectors irate at rates charged for com1lfonage".*

The relationship between selectors and police was very strained. The police were given duties under the Land Acts which often left them the "meat in the sandwich" between squatters and selectors. Stock theft was rife and the Ovens and Murray Advertiser complained that many saw this as *"a commendable means of earning a livelihood".* In 1878, the effect of a good harvest was spoiled by a sharp decline in grain prices. This was followed by a disastrous harvest in the following year with the Ovens and Murray advertiser reporting, *"in the rich agricultural district extending from Barnawartha to the Murray nothing but sheer ruin stares many in the face".* the local councils forwarded submissions for relief to the unemployed board in Melbourne.

And, so, the Kelly gang began their activities in a region which was very largely both *"agin the government"* and sympathetic to them. No-one responded to the very considerable rewards that were offered for their capture. In November 1878, the age newspaper declined that, it was *"more than astonishing* - *positively sickening"* to observe the open sympathy for the outlaws. Could it not be then, that the north-east was also ripe for republican sentiment?

Well, ladies and gentlemen, there - as we say at the law courts - is the evidence. I simply put it before you for your consideration. it is for each of you to supply an answer to the question posed by the title of this oration *"the north-eastern victoria republic movement* - *myth or reality?".*

 Over to you.

(the speaker acknowledges the very considerable assistance provided to him by the following:

* *"The Kelly outbreak"* by Dr J McQuilton
* *The friendship that destroyed Ned Kelly"* and *"Ned Kelly, a short life"* by Ian Jones
* *"The West Victoria ("Princeland'') Separation Movement"* by Helen White)