



## PURSUING NED KELLY IN THE 1950s

above left:  
Unknown photographer  
Portrait of J.V. Barry in  
September 1941  
b&w photograph;  
20.7 x 15.4 cm  
Pictures Collection  
nla.pic-an22986320

above right:  
A selection of J.V. Barry's  
papers, including the  
manuscript of the *Australian  
Dictionary of Biography* entry  
for Ned Kelly  
Manuscripts Collection  
MS 2505

Mark Finnane looks back at  
J.V. Barry's pioneering research  
on an Australian icon

When the poet Douglas Stewart, a recent immigrant from New Zealand, chose Ned Kelly as his subject for a radio play first broadcast in 1942, he was turning a hero of popular culture into a figure of high culture. The bushranger who had lived by violence and suffered a violent death was now absorbed into another cultural realm, bearing the values of 20<sup>th</sup>-century myth-makers. Imagining what made Ned Kelly became an abiding preoccupation of a succession of artists from Stewart through to artist Sidney Nolan (the most influential iconographer of all) and the more recent novelists, notably Robert Drewe and Peter Carey.

Alongside the artists was another group of writers—the historians, both popular and academic. They also were concerned with what made Ned, and what he stood for, or even what the very fact of his iconic status said about Australia—for these were the years in which J.V. Barry drafted the material which later formed the entry on Ned Kelly in the *Australian Dictionary of Biography*

(*ADB*), the grand historical enterprise initiated in 1957. Working down a different track was the fecund popular author Frank Clune, who produced his book *The Kelly Hunters* in 1954. The crossing of their paths can be traced in the papers of both men, held in the National Library.

John Vincent Barry, the author of the *ADB* entry (not published until 1974) was a judge of the Victorian Supreme Court from 1947 to his death in 1969. His interest in Kelly was partly that of a Kelly-country local. Barry was born in 1903, on the fringes of Kelly country, that area of north-eastern Victoria which, just 25 years before, the Kelly gang had briefly made their own. His father came from Beechworth, his mother from Albury, both of them towns starring in the Kelly dramas.

Another stimulus to Barry's interest was his own expertise in criminal law. From his admission to the Victorian bar in 1926, until his appointment as a judge in 1947, Barry developed a reputation as one of the state's leading criminal defence lawyers. To this expertise he added an enthusiasm for the history of law and especially for the

traditions of rule of law, and liberty of the subject, specialisations that made him one of the first serious legal writers on these matters in Australia.

After becoming a judge, and surrendering a potential political career, Barry determined from the late 1940s to pursue historical as well as criminological research. In the summer of 1949–50 he decided to visit the Kelly country of north-eastern Victoria, accompanied by his friend Alf Foster—one-time socialist, now a judge, and a man who had been born and raised in Beechworth. Barry was in search of records that might inform his own study, not so much of the legend, as of the forces that made Ned and sent him to the gallows.

As Barry's papers record, at Glenrowan the two men found a shop standing in place of the old Jones's hotel, which had burned to the ground during the gang's last stand. Going on to Beechworth, Barry found, in the town's library, files of the local newspapers with records of the trials; he made a note that these should later be copied. At the Petty Sessions office there was only a register noting the committal of Kelly for the murder of Constable Lonigan. Barry was looking for materials relating to 'Kelly sympathisers' but could find no register available. The following day the holidaying judges drove from Beechworth to Greta, then past Eleven Mile Creek (where Ellen Kelly had settled in a bush hut with her many children after the death of her

husband in 1866), on to Benalla and finally Mansfield. There a constable told them that one of the police occurrence books dealing with the period was missing. A daughter of Sergeant Kennedy was still alive, 'but very touchy about the subject of her father's death'.

At Mansfield, the visitors inspected the police memorial dedicated to the three slain police officers, Kennedy, Scanlan and Lonigan—it was defaced by graffiti reading '1950 Ned Kelly Merry New Year'. Barry observed in his notes, 'There are still many Kelly sympathisers, & the subject is a delicate one throughout the Kelly country'. Back at Glenrowan a few days later they learned that Kelly's signature was in one of the station records. There they were able to inspect the police 'station book', a register of charges laid against arrested individuals. The Kelly entries, the first dating from 1870, were closely inspected for evidence of Ned's literacy. Barry suspected Kelly's signature had been made by the person who otherwise filled out the data sheet.

Over time, Barry continued his Kelly research in Melbourne. A press report in December 1951 noted that two books were at that time in preparation on Ned Kelly, to add to the more than 100 volumes that had already been published on the subject.



above:  
Unknown photographer  
Detail of Ned Kelly reproduced  
from a 1988 facsimile of a  
'wanted' poster for capture of  
the Kelly Gang, 1879  
Pictures Collection  
nla.pic-an8391421

below:  
Unknown artist  
*The Beechworth Police Court  
During the Kelly Trial* 1880  
wood engraving; 29.0 x 42.0 cm  
(Melbourne: *Illustrated  
Australian News*, 1880)  
Pictures Collection  
nla.pic-an8420479





One of the new prospects was a book by Barry, the other by Frank Clune, the prolific author of popular history and historical romance who had precociously launched his writing career with a volume of autobiography.

Barry's draft outline of his work makes it clear that he wanted to highlight the Kelly case's legal aspects, in a book of sober title: *The Law and Edward Kelly*. In a two-part volume, he would undertake a detailed study of the land laws and criminal law of Victoria as it affected the Kellys, and their various trials and destinies. To this he would add a second part, consisting of the major primary documents, including the Cameron and Jerilderie letters, extracts from the Royal Commission examining the Kelly outbreak, and press reports from the time.

News that Clune was also writing a Kelly book may have turned Barry away from the project. When Clune's opus came out in 1954, it was a 350-page blockbuster titled *The Kelly Hunters* which (almost uniquely in Kellyana) focuses more attention on the police than on the outlaws. Among the many persons figuring in the acknowledgements was Justice Barry. Clune had sought his advice in February 1952 on such matters as whether a prisoner might give evidence on his own behalf. It was the kind of detail that occupied legal minds who would later consider the Kelly trial—but Clune would pass over the trial itself in less than a page.

Barry welcomed Clune's interest in the legal significance of Ned's status as an outlaw, but he stressed that there was more than just 'lawlessness involved in the Kelly outbreak. It did have something of the nature of a social protest against the rapacity of the large landowners.' Clune ignored Barry's sceptical advice on some aspects of the legend. The Kelly story had never been critically examined, said Barry. He cautioned Clune against accepting parts of the 'Kelly legend of oppression'—for example, the infamous allegation that, in the course of the sentencing of Ned's mother in 1878, Judge Redmond Barry (no relation to J.V. Barry) had also threatened to sentence Ned to 15 or 20 years imprisonment. Clune's reputation for embellishing his facts was not diminished by the subsequent appearance of this same allegation as uncontested fact.

Barry's own draft project anticipated the work of the scholarly historians by some 30 years. It also anticipated his own published outcome of this research by nearly 20—in fact his contribution to Kellyana came into the public eye only after his death. Even then it was in somewhat circuitous circumstances. In 1964, Barry was invited by the editors of the new *Australian Dictionary of Biography* project to do the entry on Ned Kelly. His name was probably put forward by Melbourne historian Geoffrey Serle, who knew well the depth of Barry's historical expertise. While editing *Meanjin* in 1957, Serle had asked Barry for comment on an anonymous piece that had been submitted on Ned Kelly. This contribution argued that there was evidence, in stories of Kelly's cross-dressing, to suggest that the gang was nothing more than 'a pack of sex perverts'. Barry rejected the moralising, preferring a more social-psychological analysis that acknowledged the possibility of maternal influences on Kelly's disposition, while stressing also the social contexts of the gang's exploits.

The draft *ADB* entry submitted by Barry in February 1967 was in character. Thorough in preparation and dispassionate in tone, it reviewed the relevant facts as required by the genre. It was also twice the length of 1250 words that the *ADB* editor had requested. Its principal interest lay in the concluding paragraphs, which pungently addressed the polarities of the Kelly legend—but which were subsequently edited out of

above left:  
Cover of Frank Clune's *The Kelly Hunters*  
(Sydney: Angus and Robertson, 1954)

above right:  
Hall & Co.  
Frank Clune in the early 1930s  
gelatin silver photoprint;  
15.0 x 11.0 cm  
Mitchell Library, State Library of  
New South Wales  
P1/C (BM)

the published entry. In a venomous 1966 article in *The Bulletin* (and one reminding us that the 'History Wars' are nothing new), M.H. Ellis had offensively characterised Ned as 'one of the most cold-blooded, egotistical and utterly self-centred criminals who ever decorated the end of a rope in an Australian jail'. Undoubtedly the Kelly gang were murderers and robbers, agreed Barry, and 'as such should have excited public detestation'—and yet ironically it had not turned out that way. Barry went on to consider the hold that the Kelly legend 'has had upon Australian imagination'.

Identifying the conditions that 'fostered the legend', Barry's *ADB* draft emphasised what he called 'Australian social organisation' in the years before and after Kelly's death. These were years in which there were:

memories still fresh of the convict system, and in particular of transportation from Ireland; Irish hatred of the English; resentment and distrust of officialdom; the unjust land laws; the socialists' dislike of the English master-class; the bleak prospects of small selectors and the hardships of bush life; the privations of the discontented urban poor; and the infuriating pretensions of the upper elements of a class-ridden society.

These observations had long been nurtured. Kelly's attitudes, Barry wrote to Clune in 1954, reflected the bitterness of the 'have-nots' in Australia, the sort of people against whom coercion had been exercised in the 1890s strikes. The dominant classes had not clothed themselves in glory in the Kelly episode. 'Standish [the chief commissioner of police] was a fool', Barry added, 'of the kind England exported to the Colonies.' But not only England was responsible for the Kelly fiasco, for there was also the ghostly presence of Redmond Barry, the Irish-born judge who sent the Irish-descended Ned to the gallows. Although compatriots, Ned and Redmond were from different classes, Barry stressed. 'The upper class Irish from which [Redmond] Barry came ... were brutal in their method of dealing with those below them socially and economically. Both at home and abroad Irish judges hanged with great enthusiasm.'

Barry largely won the day on the length of the *ADB* Kelly entry. But the version finally published in 1974 was missing those 66

words that contextualised the Kelly outbreak as a phenomenon that was grounded in a particular colonial history.

There was one other significant emendation. The last paragraph of the text submitted to Geoffrey Serle as *ADB* editor harked back to Barry's *Meanjin* article of 1957, the one that had dismissed the idea of Ned as a sex pervert. In these final lines of his draft, Barry noted Kelly's strong attachment to his mother, 'as is common in Irish families'; he also dismissed speculation of Kelly's romantic attachment to a young woman. In a curious posthumous tribute to Barry's industry, the entire text was published in *The Age* in July 1970—under the headline 'Mother's boy as folk hero'. The sardonic banner was not quite what Barry would have wanted—and neither did the *ADB* entry in its edited final version reflect the expansive interpretation favoured by the judge as historian.

MARK FINNANE is Professor of History at Griffith University. He edited *The Difficulties of My Position, The Diaries of Prison Governor John Buckley Castieau 1855–1884*, published by the National Library in 2004. His biography of J.V. Barry will be published in 2007 by UNSW Press

Athol Shmith (1914–1990)  
*Portrait of Sir John Barry, c.1963*  
 b&w photograph; 12.1 x 9.4 cm  
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