Australia On Trial (Malcolm McDonald, Lisa Matthews and Ana Kokkinos, 2011) is a 3 x 54-minute drama series recreating three historic trials that throw light on aspects of Australia during colonial times.

The three high-profile and controversial court cases raised major issues of national identity in the developing colonial nation. Each of the cases caused a sensation at the time and attracted enormous public interest. Each triggered social and political debate about subjects at the very heart of Australian society: democracy and justice, the identity and behaviour of Australia’s men, and attitudes towards women and Indigenous people – themes and concerns that are still relevant to modern-day Australia.

Each of the three episodes covers a separate trial. Episode 1, The Eureka 13, recreates the 1855 trial of the Eureka 13 – the case of thirteen ‘diggers’ detained six weeks after the Eureka uprising and ordered to stand trial in Melbourne for treason. The ensuing court case would fuel public demand for popular democracy and perhaps led to major changes in the Victorian constitution.

In Episode 2, Outrage at Mount Rennie, we witness the 1886 trial of eleven Sydney ‘larrakins’ charged with the gang rape of a sixteen-year-old orphan, Mary Jane Hicks. This horrific crime came at a time of changes to industrialisation and urbanisation in Sydney, leading to unemployment. The court case put Australian youth, masculinity and violence towards women under the spotlight as never before.

In Episode 3, Massacre at Myall Creek, we see the trials in 1838 of a group of settlers involved in the killing of about thirty unarmed Aborigines in northern NSW. The massacre was sadly indicative of some white people’s aggressive attitudes towards Indigenous people in the region and raised major questions about the settlers’ relationship with Aboriginals in general.

Drawing extensively on actual court transcripts and journalism from the time, each episode recreates not only the trial itself but also the highly charged public and political debate surrounding it. As well as witnessing the drama and intensity of the courtroom, we see flashbacks of the circumstances of each alleged crime and hear from key characters to see the ‘bigger picture’ surrounding each case.

Modern historical observer Michael Cathcart is the ‘eyes and ears’ of the viewer, contextualising events and providing commentary at key junctures to highlight not just what was at stake for the defendants, but also for the colony and the emerging nation state at large. Ultimately, his aim is to show us that whether it is the nineteenth century or the twenty-first, Australians have been asking themselves the same question: What sort of society do we wish to live in?

Curriculum Applicability

Australia On Trial is a resource that can be used in middle- and upper-secondary classrooms in:

- HISTORY: aspects of Australian colonial history (frontier conflict, gold, urbanisation); critically evaluating modern representations of history
- SOCIETY AND ENVIRONMENT/ENGLISH: themes of justice, punishment, masculinity, race, national identity
- LEGAL STUDIES: the nature of the criminal trial system
- MEDIA: the dramatised documentary format.

This study guide can be used to study individual episodes, or the whole series. Each episode is explored using these headings:

A A summary of the episode
B The historical background or context to the events depicted in the trial
C What happened during the trial?
D The message or meaning about Australian identity that can be seen in the trial
E The episode as a representation of history
F The episode as a dramatised documentary.
Before watching the film

Australia has a criminal justice system that involves a jury trial for serious offences. Look at the table below, and summarise information about aspects of the system, using the ‘Today’ column. Then, after you watch *Australia on Trial*, you will be able to come back to the table and complete the ‘Past’ column and see if any of these aspects have changed over time.

<table>
<thead>
<tr>
<th>ASPECT</th>
<th>TODAY</th>
<th>PAST</th>
</tr>
</thead>
<tbody>
<tr>
<td>What is the purpose of a jury</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Who serves on a jury?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>How are they selected?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Who is responsible for prosecuting the accused?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>What degree or level of proof is required?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>How is evidence presented?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Who is responsible for defending the accused?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>How is evidence presented?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>What is the role of the judge?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>What conditions are trials held under?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>What is the role of the media?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conclusion: Is it a fair and good system?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The historical background or context to the events depicted in the trial

Sydney of the 1880s included a substantial ring of industrialised suburbs. These were often older and decaying slum areas, where large numbers of people lived in poor conditions and in great numbers.

Groups of youths often formed groups, or ‘pushes’.

Before the 1886 case there had been two other widely publicised cases of gang rape – both had occurred in 1883, and the women had been brutally attacked, raped and killed.

People in colonial Australia, and particularly Sydney, were conscious of the approaching centenary of the landing of the First Fleet in 1788, and many were concerned to dissociate themselves from the ‘convict stain’. They were keen to show that they were a civilised people, and had not been corrupted by the convict stock.

Economically Sydney was prosperous, and work was available for all who would take it, though it was often short-term and unskilled work.

The Mount Rennie Outrage

A: A summary of the episode

It’s 1886 and in Darlinghurst Courthouse nine young men glare down from the dock as an apprehensive but determined young woman is called to the witness box. This is sixteen-year-old orphan Mary Jane Hicks, and these ‘larrikins’ stand accused of serially raping and possibly torturing her in a crime that has obsessed Sydney since the story broke.

Miss Hicks, a stranger to Sydney, was looking for work when a cab driver stopped and offered to take her to the registry office. The driver then took her to Waterloo where he tried to assault her. When she screamed, some youths – who she believed to be her rescuers – came to the cab. This gang, members of a group known as the ‘Waterloo Push’, then led her to nearby bushland on Mount Rennie (now Moore Park) and repeatedly raped her.

Presided over by Justice Windeyer, the trial attracts unprecedented press coverage. As it plays out, colonies all over Australia erupt into a whirl of passionate debate and fevered accusation. Mary Jane Hicks is either a strumpet or an innocent girl; the young men are savages or they’re virile Australian-born men; the judge is incompetent or his verdict will stamp out the plague of sexual violence once and for all.

By the time the judge brings down his verdict and four young men climb to the gallows for a grisly mass hanging, the question on everyone’s lips is: ‘What is to become of Australia? Can we ever be civilised?’ Australian masculinity itself was on trial. 120 years on, the issues raised by the Mount Rennie case remain part of our national debate.
C: What happened during the trial?

C1 What happened at Mount Rennie?

C2 Who were charged with the Mount Rennie crime? What did they have in common?

C3 What did the prosecution have to prove against each of the men charged? Consider these elements:
   - their location
   - their behaviour
   - their intention.

C4 What was the main prosecution evidence?

C5 How did the defence challenge that evidence?

C6 Was it fair to challenge the character of the victim?

C7 What was the attitude of the judge during the trial?

C8 Did this influence the trial unfairly?

C9 What was the outcome?

C10 How do you explain the different attitude of The Bulletin and the other newspapers to the trial?

C11 How strong do you think the evidence was against the accused?

C12 Was it a popular verdict?

C13 The jury wanted mercy shown. Why do you think it was not shown to all those who were convicted of the crime?

C14 The trial was very rushed. Do you think this was fair? Explain your views.

C15 Historical commentator Michael Cathcart usually refers to the Mount Rennie accused as ‘boys’. Do you think this is an accurate description to use? Why?

C16 Having watched the trial, what is your attitude towards:
   - the prosecution
   - the defence
   - the judge
   - the jury?

D: The message or meaning about Australian identity that can be seen in the trial

The filmmakers chose this case because they believe it tells us something important about Australian society and national identity.

D1 What does the film help you understand about:
   - the role of newspapers or popular media in issues
   - the different classes and values in society
the law and legal system at this time
how and why people can commit such brutal acts on others?

D2 The filmmakers also believe that the cases featured in *Australia on Trial* have many modern-day parallels and resonances.

The Mount Rennie case has echoes in the Bilal Skaf gang rape trial of 2000. In this case, a series of gang rape attacks were committed by a group of fourteen Lebanese Australian men (led by Bilal Skaf) against European Australian women and teenage girls in Sydney in 2000. The crimes – described as ethnically motivated hate crimes by officials and commentators – were covered extensively by the news media, and prompted the passing of new laws. The nine men convicted of the gang rapes were sentenced to a total of ‘more than 240 years’ in jail. The Anita Cobby rape trial in 1987 had previously also raised questions about Australia’s gang culture – the 26-year-old nurse was abducted and raped by five men before being murdered. The men were caught, tried and sentenced to life imprisonment amid a media furore and public disgust.

What do you think is needed for people accused of a crime that horrifies society to receive a fair trial?

D3 Do you think the Mount Rennie accused received a fair trial? Justify your views.

E: The Mount Rennie Outrage as a representation of history

The episodes in *Australia On Trial* are representations of history – that is, they are somebody’s version of what happened. The people responsible for the films make choices about what to include, what to leave out, what to emphasise, how to present information, and so on. Every account of history is a representation of it. Is this representation of history an accurate and fair one?

E1 Look at the set of criteria in the Summary Table: Assessing the elements of a dramatised documentary as a representation of history on page 17. Summarise your ideas and comments in that table.

E2 Here is an alternative representation of the Mount Rennie situation:

Why did the Mt Rennie case, and with it larrikinism, become such a controversial issue? Several factors need to be considered: the Mt Rennie case was interpreted as one crime in a series; it was greeted as a new departure in crime; it was unambiguously a crime involving youths; these youths came from an industrial neighbourhood and committed their crime in one of the waste places of the city; the crime and
and how well they are realised in the features of a dramatised documentary, to decide this you need to look at the variety of elements and efficacy of punishment, the role of education act which critics believed would lead to deteriorating moral standards. Youthful depravity gave those convinced of the moral deterioration of colonial society useful confirmation of their position. That this proved to be a far from unanimous assessment of the state of New South Wales society after one hundred years of white settlement, guaranteed a bitter case. Moreover, a case which raised such imponderables as the nature of youth, the purpose and efficacy of punishment, the role of the family and the meaning of colonial history, would not easily be set to rest. There was intense conflict about how best to act in the face of a youth problem enigmatically embedded in the shifting cultural formation of colonial society. That Mt Rennie was one crime in a series, was a subject of regular comment.


Identify the similarities and differences between this version or representation of history and that of The Eureka 13.

E3 What do you think are the strengths and weaknesses of each version?

F: The Mount Rennie Outrage as a dramatised documentary

The Mount Rennie Outrage is a dramatised documentary. Is it a good and effective one? To decide this you need to look at the variety of elements that make a dramatised documentary, and how well they are realised in the episode.

F1 Go to the Summary Table: Assessing the elements of a dramatised documentary on page 18 and summarise information and ideas about each of the features listed in the table.

The comments from the director (above) might help you consider some of the features.

You will also find useful information and ideas in the Additional Reference: Constructing a documentary on page 19 in which some of the filmmakers of the Australia On Trial series discuss their approaches.

F2 Do you think The Mount Rennie Outrage is a good and effective dramatised documentary? Justify your views.

THE MOUNT RENNIE OUTRAGE
Director Lisa Matthews:

What attracted me to Australia On Trial were the stories – although more than a century old – they still have contemporary relevance. The trials are significant in showing how we evolved as a colony during the 19th century. They also hold a mirror as to how we deal with issues such as women’s and indigenous rights and Australian masculinity.

It was important to translate the 19th century setting of the series in a contemporary style. Unlike some historical interpretations which are often sanitised versions of events – we wanted the series to be gritty and real.

Contemporary techniques such as handheld cameras, whip pans, smash zooms and fast cutting ensures the court room drama feels fresh and in sync with our times. Impressionistic grainy flashbacks of each crime mirrors the style and pace of contemporary cop shows.

Naturalistic set design, costumes and language of the series all create an accessible world that a contemporary audience can relate to. The audience must be engrossed in the unfolding story: which of the accused is guilty, who will triumph and who will hang? These are real people whose lives are at stake. Their stories had a tremendous impact on how we viewed ourselves and the society we wished to live in. Music and sound design play a key role in creating this contemporary edge to the series.

For the episode I directed, The Mount Rennie Outrage, I wanted a strong sense of the court of public opinion, outside the walls of the courtroom. What were people of the time thinking? Were these boys just being boys or larrikins? Or had gang rape replaced bush ranging as the authentic Australian crime?

The writer Katherine Thompson and I came up with the idea of vignettes – snapshots of the 19th century as stylised vox pops sliding on and off screen like iphone touch photos.

What makes Australia On Trial daring and different is its contemporary style and approach in reinterpreting our history. These stories are part of who we are, what we have become and hopefully will resonate with today’s audience.
The historical background or context to the events depicted in the trial

The discovery of gold in 1851 led to a rush to the Victorian goldfields. Thousands of people came to Victoria from Britain, Europe, America and China to seek their fortunes. Many of these were educated people who were supporters of the more democratic ideas that were developing – especially the right to have a vote without owning property.

Initially, the hopeful miners searched for gold in streams, and near the surface. Gradually they realised that most gold was found deeper in the ground, in old stream beds, and this required them to dig down to try and intercept the old river beds. This meant that people on goldfields such as Ballarat had to set up permanent campsites, and rely on credit from storekeepers or financial backers while they slowly sunk their deep mine shafts. They had only a tiny area in which to sink their shafts – four metres by four metres.

Even when they were not finding any gold, they still had to pay their licence fees. The government relied on these fees to pay for the policing of the goldfields. Many of the goldfields police were former convicts, and many were brutal and corrupt men.

Reforms to the situation had been put to the government, and a new constitution had been drafted for Victoria that would give the miners some of the political reforms they wanted, but it...
had been sent to Britain for approval, and the Governor, Hotham, was determined to maintain income from the goldfields and to maintain effective control while the political changes were being considered.

So, a dangerous situation was developing – large numbers of miners gathered together, without income, with radical ideas spreading among them, angry with sometimes corrupt local officials and the way goldfields police enforced a tax, and increasingly frustrated with a seeming lack of reform.

On 29 November a mass meeting of diggers loudly voiced their discontent, burned their licences, and pledged to resist government attempts to impose harsh order on them. They built a rough stockade, armed themselves, and raised a flag that was not the British government one.

The government rushed additional troops to the area and, early on the morning of 3 December, attacked the stockade. After a short but fierce battle, thirty diggers and five troops were dead, and many more were wounded. Many were arrested, and in 1855 thirteen of them were put on trial in the Supreme Court in Melbourne, which is where this episode starts.

C: What happened during the trial?

Here is the crime with which the thirteen were charged:

at the bar, the charge against you in the first count of the information to which you are now called to plead is, that you did, on the 3rd December, 1854 (being at the time armed in a warlike manner), traitorously assemble together against our Lady the Queen; and that you did, whilst so armed and assembled together, levy and make war against our said Lady the Queen, within that part of her dominions called Victoria, and attempt by force of arms to destroy the Government constituted there and by law established, and to depose our Lady the Queen from the kingly name and her Imperial Crown.
In the second count you are charged
with having made war, as in the first
count mentioned, and with attempting
at the same time to compel by force
our said Lady the Queen to change her
measures and counsels.

In the third count the charge against
you is, that having devised and intend-
ed to deprive our said Lady the Queen
of the kingly name of the Imperial
Crown in Victoria, you did express and
evince such treasonable intention by
the four following overt acts:

1st That you raised upon a pole, and
collected round a certain standard, and
did solemnly swear to defend each other, with the intention of levy-
ing war against our said Lady the Queen.

2nd That being armed with divers
offensive weapons, you collected
together and formed troops and bands
under distinct leaders, and were drilled
and trained in military exercise, to pre-
pare for fighting against the soldiers
and other loyal subjects of the Queen.

3rd That you collected and provided
arms and ammunition, and erected
divers fences and stockades, in order
to levy war against our said Lady the Queen.

4th That being armed and arrayed in a
warlike manner, you fired upon, fought
with, wounded, and killed divers of the
said soldiers and other subjects then
fighting in behalf of our said Lady the
Queen, contrary to duty and alleg-
iance. In the fourth count the charge
against you is, that having devised and
levied war against the Queen, in order
to compel her by force and constraint
her measures and counsels, you did
express and evince such treasonable
and diverse acts, which overt acts are
four in number, and the same as those
described in the third count.

http://prov.vic.gov.au/whats-
on/exhibitions/eureka-on-trial/
the-state-trials

C1 Why is this a serious charge?

C2 What did the Prosecution have
to prove against each of the men
charged? Consider these elements:
• their location
• their behaviour
• their intention.

C3 Why did the prosecution want the
men tried in a particular order?

C4 Why did the defence want to
change that order, and bring John
Joseph on first?

C5 What evidence did the prosecu-
tion bring against Jones?

C6 How did the defence challenge it?

C7 What was the outcome?

C8 The main accused was Timothy
Hayes. What evidence did the pros-
cecution have against him?

C9 How strong do you think this
evidence was?

C10 Why do you think he was found
not guilty?

C11 Was this a popular verdict?

C12 Having watched the trial, what is
your attitude towards:
• the prosecution
• the defence
• the judge
• the jury?

D The message or meaning
about Australian identity that
be seen in the trial

The filmmakers chose this case
because they believe it tells us
something important about Australian
society and national identity.

D1 What does the film help you un-
derstand about:
• the establishment of democracy in
  Australia
• the law and legal system at this
time
• why some people are prepared to
  challenge laws
• why some people are prepared
to place themselves in danger for
what they believe in?

D2 The filmmakers also believe that
the cases featured in Australia on Trial
have many modern-day parallels and
resonances.

In the Eureka case we see people
preparing to use violence to oppose
what they see as unfair laws. History
now agrees that the Eureka rebels
were right and justified in doing so.
But what if the opposition had been to
a law that most people actually agreed
with, and the opponents still used
violence to oppose it because of their
minority beliefs? Is that justified if a
small group does not accept the laws
that the majority accepts? Discuss
this idea, if possible applying it to a
modern situation.

E: The Eureka 13 as a
representation of history

The episodes in Australia On Trial are
representations of history – that is,
they are somebody’s version of what
happened. The people responsible for
the films make choices about what
to include, what to leave out, what to
emphasise, how to present informa-
tion, and so on. Every account of
history is a representation of it. Is this
representation of history an accurate
and fair one?

E1 Look at the set of criteria in the
Summary Table: Assessing the ele-
ments of a dramatised documentary
as a representation of history on
page 17. Summarise your ideas and
comments in that table.

Here is an alternative representation of
the Eureka trials.

The trials had achieved their objec-
tive, but in a totally opposite sense to
that intended by Hotham and his chief
advisor, Attorney General Stawell. In
some measure it was recognised that
at the heart of the whole goldfields’
administration stood the person of
William Stawell. To him, the diggers
were ‘wandering vagabonds’ and mere ‘vagrants’ who threatened the fabric of society as seen by a man trained at Trinity College, Dublin. At Bendigo, to the waving of the Southern Cross, he was burnt in effigy, and in the pages of The Age his behaviour as a chief architect of the whole ‘sad’ affair was deplored as revolting’. Yet, without Stawell’s active involvement, and his determination to prosecute, Hotham may never have summoned up the courage to reject all the pleas for an amnesty, and the events of 3 December would thus never have been made public in all their stark venality and with all their accompanying butchery.

The trials revealed the system of espionage, the acts of revenge, the clear provocation and the deliberate attempts to turn the diggers into insurgents bent on independence. They made it plain that the Camp had embarked on a concerted effort of destruction with premeditated plans to destroy even the physical possessions of the diggers, while the atrocities against human life abounded. Perjury was repeatedly manifest in the evidence of several witnesses called by the Crown, and the bumbling incoherencies of others showed publicly the level of bureaucratic ineptitude under which the diggers suffered. Finally, the manner in which Stawell manipulated the jury system proved that the leading law officer was not above perverting justice to obtain his own ends. In that, the effects were otherwise than intended. While it was still possible to point to the active involvement of the Irish in the Stockade, it was not possible to say that the Irish had any hand in the verdicts of the juries for there were no Irish among them.


**E2** Identify the similarities and differences between this version or representation of history and that of The Eureka 13.

**E3** What do you think are the strengths and weaknesses of each version?

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**F1** Go to the Summary Table: Assessing the elements of a dramatised documentary on page 18 and summarise information and ideas about each of the features listed in the table.

The comments from the director (above) might help you consider some of the features.

You will also find useful information and ideas in the Additional Reference: Constructing a documentary on page 19 in which some of the filmmakers of the *Australia On Trial* series discuss their approaches.

**F2** Do you think *The Eureka 13* is a good and effective dramatised documentary? Justify your views.

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**THE EUREKA 13**

**Director Malcolm McDonald:**

Ever since watching [the 1959 film] *Anatomy of a Murder* I’ve wanted to do a courtroom drama. Finally my wish came true in the genre of historical drama. We ended up using two trials in the film. It was important to be able to show the strategies of Stawell and the defence attorneys as they battled to win the sway of the jury. This is where the challenge and the fun was to be had.

The challenge – using court reports of the day we had to tell the story of what happened at the Eureka Stockade in a way that the viewing audience would see or imagine, all the action prompted by the accounts of the witnesses. In my film I had a procession of witnesses, so casting was really key to make sure they all had a different look and sound. The actors who played these roles had to stoke the imagination of the audience as well as guide the narrative of the battle between the attorneys. We used very quick impressionistic flashbacks to help this balancing act along.

The fun – watching this all unfold! Seeing a full courtroom in 1855 was very exciting. The attorneys and judge in full regalia, complete with mutton chops – the gallery and jury in costume and hairstyles – with all those wonderful hats! And the wretched prisoners who had been rotting in cells for months.

The best fun was watching and working with the actors – the two main attorneys were so intrigued by their characters – it was great to go through the process with them – finding the core elements and giving meaning to all those lines! There are so many words being said in a courtroom drama that finding the way to clarity is an interesting path to all walk down together.

I was just very happy to be in that courtroom.

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**F: The Eureka 13 as a dramatised documentary**

The Eureka 13 is a dramatised documentary. Is it a good and effective one? To decide this you need to look at the variety of elements that make a dramatised documentary, and how well they are realised in the episode.

**Additional Reference:** Constructing a documentary on page 19 in which some of the filmmakers of the *Australia On Trial* series discuss their approaches.

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**G: The comments from the director (above) might help you consider some of the features.**
Massacre at Myall Creek

A: A summary of the episode

In Sydney in December 1838, seven men stand accused of the mass killing of a group of unarmed Aboriginals. The massacre of about thirty Wirrayaraay people at Myall Creek was the culmination of a series of conflicts between settlers and Aboriginal people in the Liverpool Plains region. The men responsible for the massacre included freed and assigned convicts who had spent a day unsuccessfully pursuing Aboriginal people. When they came to Henry Dangar’s Myall Creek Station, they discovered a group of Wirrayaraay whom they rounded up and tied together. The Aborigines were then led off and massacred. Two days later, the men responsible for the massacre returned to the scene of the crime to burn the bodies.

Twelve men are charged with murder, including convict stockman Charles Kilmeister. To most people in Sydney, the killings are simply the price of colonisation – the Sydney Herald refers to ‘black animals’ unworthy of attention. The first trial finds eleven out of the twelve not guilty. But there are dissenting voices and leading citizens attend an inaugural meeting of the Aborigines Protection Society to discuss indigenous rights and Aboriginal claims of land ownership. As the public debate becomes more heated, seven of the acquitted men are re-arrested to face a retrial.

This time, a key witness, George Anderson, whose testimony in the first trial had been half-hearted in fear of retribution, tells his story in graphic detail. The second trial delivers a new verdict – guilty. The Judge sentences all seven men to death. After legal objections are exhausted and the Executive Council rejects petitions for clemency, the sentences are carried out. The hanging of the seven European settlers for their part in the Myall Creek massacre causes controversy throughout the colony. It leads to heightened racial tensions and hardened settler attitudes towards Aboriginal people. But NSW Governor George Gipps is unrepentant – for him, the British Empire is a force for civilisation and this trial has again highlighted the need for Australia to look closely at its social and moral attitudes as an emerging nation.

B: The historical background or context to the events depicted in the trial

In 1838 the British colony of New South Wales was expanding rapidly – so rapidly, in fact, that squatters were setting up cattle and sheep stations beyond the ‘limits of location’ which were the official boundaries of the colony. To set up these sheep and cattle stations the squatters used their convict labour who were ‘assigned’ to them by the government.

For the convicts, generally, being ‘assigned’ was infinitely preferable to being in government service working on road gangs or building public buildings. As assigned workers on these remote stations they generally had a great deal more freedom and some had minimal supervision. Very few of the squatters to whom they were assigned actually lived on these stations in remote areas, preferring to live in places such as Sydney, the Hunter Valley or the Hawkesbury. The supervision of the convicts was therefore left to free men employed as station superintendents or former convicts or ‘ticket of leave’ convicts. On some stations the convicts were left to ‘supervise’ themselves for long periods. A convict’s master nevertheless had ultimate control over them and on many levels the convicts were little better than slaves. They could not leave their stations without permission and they had to obey their masters at all times otherwise their masters could have them flogged.
The squatters were wealthy landholders who were able to expand their landholdings by using the convict labour assigned to them. Their workers drove their sheep or cattle into new areas and staked out an area as ‘theirs’. Within the limits of location a fee per acre was paid to the government but outside the land was ‘free’. There was therefore ample motivation for the rapid ‘occupation’ of this land outside the boundaries of the colony.

The Aborigines had, of course, lived on this land for tens of thousands of years and had a very clear and definite understanding of which areas were ‘theirs’ and which belonged to the neighbouring tribes or clans. The Aborigines in the Liverpool Plains district were mainly Kamilaroi. They had a very close knowledge of their land and their culture required them to use the land in a sustainable manner, hence their nomadic lifestyle. As they used the resources of one area during a particular time of year, they then moved on to another area, allowing time for the resources of the first area to regenerate. The knowledge of how to look after the resources of their land, (‘ari’) the animal nurseries, the bird hatcheries etc was treated as special and handed down from generation to generation. Animals which were on their land were theirs to hunt. As they travelled around their ‘ari’ they also visited various sites which were sacred to them.

Conflict: It is not surprising then given the combination of these different groups that there was conflict. It had in fact occurred all over the colony from the start of British settlement / occupation in 1788. As the white men, with their sheep and cattle, occupied Aboriginal land, they drove off the native animals and damaged the resources of the land that the Aborigines lived on. The Aborigines speared some of the sheep and cattle to eat instead. The whites regarded this as theft and attacked the Aborigines. Another issue that caused conflict was the fact that in these remote districts there were virtually no white women whatever. The abuse and rape of Aboriginal women became quite common, which led the Aboriginal men to retaliate.

www.myallcreekmassacre.com/Myall_Creek_Massacre/Background.html

C: What happened during the trial?

C1 What was the crime committed?
C2 Who committed the crime?
C3 What evidence did the prosecution call at the first trial?
C4 How did the defence challenge it?
C5 What was the attitude of the judge?
C6 What was the outcome?
C7 Do you think this was a fair decision?
C8 Who was charged at the second trial?
C9 Why were fewer men charged?
C10 What crime were they charged with at this trial?
C11 How was the evidence different at this trial?
C12 How was the jury different?
C13 What was the outcome?
C14 Do you think this was a fair decision?

D: The message or meaning about Australian identity that can be seen in the trial

The filmmakers chose this case because they believe it tells us something important about Australian society and national identity.

D1 What does the film help you understand about:
- attitudes to race
- frontier conditions and contacts
- classes in society
- conflicting attitudes, interests and values in society
- the law and legal system
- how and why people can commit such brutal acts against others?

D2 The filmmakers also believe that the cases featured in *Australia on Trial* have many modern-day parallels and resonances.

The Myall Creek case has modern parallels, in terms of the emotional impact and issues of justice for Aborigines, in the Palm Island/death of Mulrunji trial of 2007.

Mulrunji was a 36-year-old Indigenous Australian who died while in police custody on Palm Island, Queensland. His death led to civic disturbances on the island and a legal, political and media sensation that continued for three years, culminating in the first trial of an Australian police officer for a death in custody. The officer was acquitted by a Townsville jury in June 2007. In 2004, the death of seventeen-year-old Aboriginal Thomas Hickey while being chased by police in Redfern evoked similar public feelings of outrage and injustice regarding the treatment of Indigenous people.

D3 Do you agree that attitudes and values in 1830s Australia help us understand contemporary situations involving Aboriginal people and the law? Explain your views.

E: Massacre at Myall Creek as a representation of history

The episodes in *Australia On Trial* are representations of history – that is, they are somebody’s version of what
happened. The people responsible for the films make choices about what to include, what to leave out, what to emphasise, how to present information and so on. Every account of history is a representation of it. Is this representation of history an accurate and fair one?

**E1** Look at the set of criteria in the Summary Table: Assessing the elements of a dramatised documentary as a representation of history on page 17. Summarise your ideas and comments in that table.

**E2** Here is an alternative representation of the Myall Creek trials:

### The Lead Up to the Trials

In the Hunter, Day’s investigation and the arrival of the prisoners attracted wide interest. A fund was set up to defend the prisoners and landholders met to lobby the Governor. Soon, a vociferous campaign erupted over the trial of the Myall Creek men. It is thought that a clandestine organization of Hunter Valley landlords, many of whom also had holdings in the North Western Districts, were the driving force in this campaign. In September of 1838, Mr. Robert Scott, a prominent landholder on the Hunter and on the Gwydir (an area close to Myall Creek), visited the prisoners in the Sydney gaol and told of his plans to finance their defence. He said that the one witness against them was insane and they should hold together and not inform on each other. In early October, Henry Dangar visited Myall Creek Station and dismissed William Hobbs. However, Dangar insisted Hobbs complete his contract by mustering some 500 cattle. But when Hobbs received a subpoena to appear as a witness in the coming trial, he responded to that duty above other concerns. Meanwhile, in Sydney, controversy raged in the press and in public meetings. An attempt to form an Aboriginal Protection Society was short-lived. By early November, public opinion was running in favour of the accused.

### First Trial – November 15th, 1838

Chief justice James Dowling presided in the Supreme Court, with the prosecution led by the Attorney-General, John Hubert Plunkett. Seated with the three defence lawyers was Mr. Robert Scott, who had retained them from the 300 subscribed by holders of the livestock in the ‘disturbed’ North West district. The charges against the eleven accused dealt with the killing of one Aboriginal male, ‘Daddy’ and one other. In Milliss’ words, the charges were couched in ‘legal gobbledygook gone utterly mad’. But they could not conceal the fact that the whole accusation was based on extremely tenuous circumstantial evidence. There was no observer of the crime and nobody had been recovered. The accused pleaded not guilty. Thomas Foster, the first crown witness, was circumspect. Hobbs was more forthcoming, but had to concede that he could not positively identify the body of Daddy. In essence, Edward Denny Day’s evidence amounted to him having come across the traces of an old fire and picking up a few fragments of bones. He was not cross-examined. The defence tried to destroy Anderson’s credibility, firstly by reference to Anderson’s request that Ipeta be left for him. His reluctance to provide information was raised with the suggestion that he was seeking his liberty by giving evidence favourable to the prosecution. When his contract in the colony and reason for deportation were raised, however, he stood up for himself and had the better of the exchange. Further witnesses included a dentist, who agreed that the bone fragment consisted of a jawbone with two teeth, several other burned teeth and a rib bone, apparently from a child. The defence case first sought, unsuccessfully, to have the prosecution disallowed on the grounds of circumstantial evidence. Then, surprisingly, instead of calling in their 30 witnesses the defence only called for testimony as to the good character of their clients. Dangar supported Kilmeister and attacked Anderson. In his summing up, Dowling said that no-one could be convicted of murder unless a body was found. Therefore the jury had to determine whether ‘Daddy’ was the ‘unfortunate man’ whose remains Hobbs has seen. The jury filed out at 9.30 p.m. and were back within 15 minutes. To the cheering in the court, all the accused were pronounced not guilty. However, Plunkett immediately asked that the prisoners be remanded, as he wished to prepare another indictment. To hissing, Dowling granted the application. Two days later, the date of the second trial was set for Monday, November the 26th. Much of the publicity following the first trial expressed revulsion at the facts that had been revealed. For once, attacks on Aboriginals in sections of the press briefly abated. Instead, there were attacks on Governor Gipps, who, it was said, contributed to public ill feeling against Aboriginals by not ordering stronger measure against them. New waves of ‘attacks by lawless savages’ were reported from the Gwydir area.

### The Second Trial

Judge William Westbrooke Burton presided in the second trial. Only 7 of the original group were accused – Kilmeister, Oates, Foley, Parry, Russell, Hawkins and Johnstone. Plunkett hoped that the defence would put the others, Lamb, Palliser, Telluse and Blake on the stand for cross-examination. The charges now centred on the killing of an Aboriginal child. A total of 20 counts were alleged, including 5 that nominated a precise victim, ‘Charley’. A jury was sworn and asked to decide whether the prisoners had previously been tried for the murder of an Aboriginal child. When the jury decided in the negative, the trial recommenced on November 29th, before another jury. Thomas Foster was again the first witness. He firmly believed that none of the skulls he saw were those of children. Hobbs, as a second witness, gave definitive evidence concerning the presence of children. He said that the children’s skulls were in the centre of the mess and Foster had not examined as closely as he. On leaving the witness box, Hobbs was arrested for failing to settle
an outstanding debt. This appeared to be an attempt to hinder justice and the over zealous bailiff was fined two pounds for contempt of court. Next, Day repeated his evidence and suggested that Kilmeister had perhaps been coerced by other members of the group to join them in the atrocity. Anderson weakened the crown case as he was unable to swear that Anderson had been taken away. The defence began by stating that it was not even certain that the boy had been killed, but Burton ordered that the trial should proceed. The defence went straight to character witnesses, Dangar being first. As before, he supported Kilmeister and attacked Anderson. Plunkett sought to undermine Dangar’s credibility by drawing attention to his suspension from a public office. He was questioned about his dismissal of Hobbs, about Hobbs’ arrest and about Dangar’s contribution to the prisoners’ defence fund. The following witness, Thomas Hall, was discredited when he had to admit that he visited the northern stations only twice a year. There were no further witnesses.

In his summing up, Burton directed that the jury should first consider the question of Charley separately. He was scathing in his assessment of Dangar and noted that the murdered Aboriginals had given no provocation. Masters should ensure that their stockmen used arms only in extreme provocation. The jury filed out and returned after three quarters of an hour, the foreman pronounced the defendants ‘not guilty’ on all counts. However, when he sat down, another juror rose and announced an error. He said the men had been found guilty of the murder of an Aboriginal child whose name was unknown. This agreed, the judge complimented Hobbs on the part he had taken to report the murder.

Epilogue

The 7 convicted were executed at 9 a.m. on December 18th, 1838. Governor Gipps fought a losing battle with the squatters and his commitment to justice for Aboriginais waned. Major Nunn’s activities on the Gwydir were never investigated. Henry Dangar’s pastoral holdings grew. William Hobbs was unemployed for several years before becoming a constable at Wollombi in 1846.


E2 Identify the similarities and differences between this version or representation of history and that of The Eureka 13.

E3 What do you think are the strengths and weaknesses of each version?

F: Massacre at Myall Creek as a dramatised documentary

Massacre at Myall Creek is a dramatised documentary. Is it a good and effective one? To decide this you need to look at the variety of elements that make a dramatised documentary, and how well they are realised in the episode.

F1 Go to the Summary Table: Assessing the elements of a dramatised documentary on page 18 and summarise information and ideas about each of the features listed in the table.

The comments (left) from the director might help you consider some of the features.

You will also find useful information and ideas in the Additional Reference: Constructing a documentary on page 19 in which some of the filmmakers of the Australia On Trial series discuss their approaches.

F2 Do you think Massacre at Myall Creek is a good and effective dramatised documentary? Justify your views.
<table>
<thead>
<tr>
<th>ASPECT</th>
<th>COMMENTS</th>
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<tbody>
<tr>
<td>Does it explain the historical context well?</td>
<td></td>
</tr>
<tr>
<td>Does it clearly identify When, Where, What, How, Who?</td>
<td></td>
</tr>
<tr>
<td>Does it present the main facts accurately?</td>
<td></td>
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<tr>
<td>Does it contribute to your understanding of why events happened as they did?</td>
<td></td>
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<tr>
<td>Does it help you empathise with people of the past – to really understand their attitudes and values, and not just apply our attitudes and values today?</td>
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<tr>
<td>Does the film provide a variety of perspectives on the events?</td>
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<tr>
<td>Does the film explain if there are aspects where facts or interpretations are disputed or where there is not agreement?</td>
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<tr>
<td>Does the film present a particular message?</td>
<td></td>
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<tr>
<td>Does the film use evidence in a fair, accurate and balanced way?</td>
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<tr>
<td>Does the film explain the outcomes of the events?</td>
<td></td>
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<tr>
<td>Does the film explain the significance of the issue?</td>
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<tr>
<td>Are any judgements made by the film fair and supported by the evidence?</td>
<td></td>
</tr>
<tr>
<td>At the end do you feel that you know and understand what happened and why?</td>
<td></td>
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## Assessing the Elements of a Dramatised Documentary

<table>
<thead>
<tr>
<th>Aspect</th>
<th>Comments</th>
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<tbody>
<tr>
<td>Narration</td>
<td></td>
</tr>
<tr>
<td>Music</td>
<td></td>
</tr>
<tr>
<td>Structure of the film</td>
<td></td>
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<tr>
<td>Still and moving historical images</td>
<td></td>
</tr>
<tr>
<td>Contemporary (modern) images and locations</td>
<td></td>
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<tr>
<td>Historical reconstructions or re-enactments</td>
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<tr>
<td>Special visual effects</td>
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</tr>
<tr>
<td>Editing</td>
<td></td>
</tr>
<tr>
<td>Sound</td>
<td></td>
</tr>
<tr>
<td>Cinematography/filming style</td>
<td></td>
</tr>
<tr>
<td>Use of real participants in the events</td>
<td></td>
</tr>
<tr>
<td>Use of expert commentators or authorities</td>
<td></td>
</tr>
<tr>
<td>Use of modern locations</td>
<td></td>
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</tbody>
</table>
The second case was the combined murder of tribal Aborigines. Sent seven men to the gallows for the court hearing—a mass trial which laid bare the conflicts and debates which were shaping this emerging society.

In each of these trials, the fate of a group of accused men was decided by a jury of ordinary citizens. All three trials occurred before the coming of democratically elected parliaments—a time when the colonial courts themselves were the testing ground for the values and principles of the society which was coming to be. These juries were, in effect, making law. (As the great English judge, Lord Devlin pointed out in 1956, ‘Every jury is a little parliament.’) In each case, the jury reached a verdict which showed that the colonial legal system was capable of delivering a just—if sometimes terrible—decision.

In June 1838, a group of roughneck stockmen led by a squatter rode onto the newly established Myall Creek station to ‘teach the blacks a lesson’. They hacked around thirty Aborigines to death. The killers had not counted on two factors. The first was that a stockman named Anderson, who witnessed the crime, was determined to see his countrymen punished. The second was that the governor of New South Wales, George Gipps, shared Anderson’s horror of such brutality. Anderson was ready to testify. The government was determined to press the case. But the prosecutor did not obtain the conviction easily. The trial was fought out as bitterly in the press as it was in the courtroom. But in the end, a white jury sent seven men to the gallows for the murder of tribal Aborigines.

The second case was the combined trials in 1855 of the Eureka Stockade rebels. In the aftermath of the Eureka rebellion, the attorney general of Victoria, William Stawell, determined to hang the rebels for treason. After all, he said, these men had taken up arms against Her Majesty’s government. On the face of it, Stawell was on strong ground. The miners had indeed raised a ‘rebel flag’. They had drilled with weapons and they had denounced the governor. Twelve men were to stand trial, one by one. The first was a black American, probably an escaped slave, named John Joseph. The population of Melbourne was in no mood to hang a man who had been driven to desperate lengths by an inept and militaristic government—a government which was on the very eve of being abolished to make way for a new system of popular elections. In the end, all of the rebels walked free.

As in Myall Creek, the verdict was really determined by the newspapers. The Melbourne Age championed the Eureka rebels and denounced the government as the real ‘traitors’, while the more conservative Argus supported the government case. To the astonishment of the government, successive juries threw the cases out of court and public opinion turned against the government.

The final case was the trial of eleven youths who had raped a girl named Mary Jane Hicks, in broad daylight—before several witnesses. The trial took place in late 1886, a little more than twelve months before Sydney was planning to commemorate the landing of the First Fleet. As the residents of the harbour city worried about what they should celebrate, the brutal rape seemed like a throwback to the shameful days of the convicts. The newspapers unleashed a mighty fury against these ‘larrikins’. Only the Sydney Bulletin sided with the rapiests. The paper vilified Mary Jane as a slattern who had got the kind of treatment she was looking for. But the jury ignored The Bulletin’s nonsense. It convicted nine of the boys. The judge duly sentenced them to death. But the prospect of hanging nine boys was too brutal for the citizens and the officials. Sydneysiders were plunged into a storm of meetings, petitions and editorials as they argued about the appropriate fate for the rapists. In the end, four were hanged. Along the way, the court of public opinion sided resolutely with the victim. At a time when the rights of women were a matter for public debate, the case of Mary Jane Hicks became the third mass trial which turned on the question: What does it mean to be Australian?

PRODUCER GEORGE ADAMS

The idea from the start was to produce a thought provoking and challenging docu-drama series that chronicled three pivotal historical court cases that helped shape our legal and indeed social systems.

It was very important that the drama and storytelling of these historical events was powerful, informative and historically accurate, therefore the transcripts from the actual trials themselves were used to shape the dramatic narrative of the show. The outcome is three strong dramas supplemented with direct historical contextualisation from our historian Michael Cathcart.

The narrative input of Michael Cathcart is pivotal to the accessibility and understanding of the relatively complex social and legal issues that run through all three trials. What Michael does is give us a very valuable insight into the social and legal machinery of the 1800s. It was a tremendous asset from a storytelling point of view to have him to set out the historical context of the times.

While Australia on Trial is an historical drama-documentary it also has inescapable messages and parallels for us today. For example, within the context of the Mount Rennie rape trial you could draw parallels with the recent football sex scandals and how some areas of the press and public will back the male protagonists and turn against and indeed vilify the female victims of
these crimes. In the Myall Creek case you could argue that in relation to the treatment of Aboriginal peoples very little has moved on since the trial’s outcome. That outcome should have been a pivotal turning point in the way white and Aboriginal Australia lived together. The Eureka trial captured the moment that the Australian people, for whatever reason, took a stand against British rule and won. The Australian people were, of course, for the most part immigrants who arrived in boats – draw your own parallels there.

PRODUCER PENNY ROBINS

The trials we chose to feature for Australia On Trial were carefully picked from an array of possibilities. We were looking for iconic stories from Australia’s rich lexicon of landmark historical events, which will surprise, entertain and resonate with audiences today.

Formation of the nation was the key overarching thematic link. Historian Michael Cathcart’s overview of available historical sources was invaluable in guiding the initial selection of trials.

Ultimately the choices we made turned on cases that dealt with issues still living in the Australian psyche today: the land, Australian masculinity and workplace rights. Surrounding each of these events were powerful stories that reflected the big headline topics of race, class, gender and democracy.

Having made decisions and choices about which trials to feature, the challenge was to produce scripts that turned each courtroom into a vivid social microcosm of the day. We had access to extensive newspaper records, articles and historical texts, research and historical advice and very limited archival materials, and it had always been planned that dramatic recreation was the obvious way to tell the stories.

The job was to create a coherent style and approach which allowed us to faithfully recreate the characters and courtroom events, and at the same time point up the contemporary debates and reveal the underlying context for each of the decisions – oh yes, and of course to produce incredibly entertaining TV within a limited budget!

The series narrator Michael Cathcart is both broadcaster and historian and he was involved from the very beginning of the project. As series narrator he was used to provide some strategically placed all-important historical interpretation and context, and to punctuate the courtroom drama.

**Background production notes**

Faced with the challenge of recreating three distinctive historical periods, production designer Paul Heath and costume designer Louise McCarthy rose to the occasion, creating an authentic look that was enhanced through subtle lighting and attention to detail.

‘Each of the periods was quite different and had their own distinctive features – that’s been one of the main challenges – how to capture the feel of the period with a quite minimal budget and large cast,’ Louise says.

One location – an old church hall in Malvern, inner Melbourne – had to provide the backdrop for courtroom scenes ranging from 1838 to 1886.

‘There are fairly dramatic changes in terms of furnishings and the look so a lot of research was involved,’ Paul says. ‘We tried to make it as specific as possible, but also generic so it can work for each of the three stories.’

The earliest court case was the massacre at Myall Creek trial in the late 1830s. ‘The clothing of the time was quite lean and very simple because there wasn’t very much of it,’ Louise says.

‘There was a real distinction between your working class people who came from convict stock to the ruling classes or the middle and upper classes.

‘The middle and upper classes still had a very strong sense of the 1700s. They had very high collars and a quite flamboyant way of dressing. They have these beautiful high collars and rolled collars on their jackets and a lot of scarves. It’s quite a fascinating era in terms of menswear.’

During the Eureka period of the mid 1850s, crinoline was introduced so women’s clothing underwent a radical change. The bowler hat also became common. Louise says she found this era the easiest to illustrate because it had so many elements.

‘We had a lot of fun working with...’
our actors in terms of changing their neckties. In our research we found the neckties were many and varied and they had extreme bowties that might have been made out of lovely stiff taffetas,’ she says.

‘I found dressing the cast was the easiest because it was more a mixed era – more use of colour, more use of pattern, more use of print and particularly for men, a lot more options with creating a beautiful silhouette using hat shapes.’

Two decades later, and the Mount Rennie rape trial saw another shift in women’s clothing.

‘There was a scaling down from the large skirts of the 1850s to a much leaner line and the introduction of the bustle – a little padded bum cushion at the back,’ Louise says. ‘Men were moving away from the cutaway coat into more contemporary suiting styles.’

Louise says it was always a big challenge to research colonial Australian fashion as there wasn’t much documentation available, especially to describe lawyers’ and judges’ apparel.

‘I found some books but it was all written on the page, there weren’t any illustrations. So we ended up going to the Supreme Court in Melbourne and Sydney and looking at their oil paintings,’ she says.

‘When I was researching Redmond Barry in the State Library, trawling through their archives, the best research I found was going outside the library and looking up and there was a massive statue of him. I’d been walking into the library for days, walking past this statue. It was good to find a three-dimensional figure of Redmond Barry in his legal gown.’

Louise said the way to make history come to life on screen is to art-finish it by making the garment look as if it’s been worn before. ‘It’s a really big key to any historical work,’ she says. ‘You try to give the costume some sort of integrity and life and it’s hard to do that with a new garment that hasn’t been worn or weathered. Back then people had one or two outfits and just wore it and wore it. People’s body shapes get pressed into the fabric of the garment so we have to try and duplicate that here so our costumes look like the real thing.’

FURTHER RESOURCES

The Eureka 13
Weston Bate, Lucky City, Melbourne University Press, 1978.

The Mount Rennie Outrage

Massacre at Myall Creek

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