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FOREWORD

Beyond White Guilt
By Associate Professor Sarah Maddison

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In 2010, I launched an exhibition at the Australian Museum in Sydney. It contained works by the noted Aboriginal artist, Gordon Syron. A few days earlier, I had been invited by him to visit the Keeping Place, a large space near the Everleigh train sheds in which Gordon Syron and his wife maintained their unique collection of art by Aboriginal painters.

One painting in the collection caught my eye. It was part of a series that Gordon had produced, over the years, showing the fateful meeting between the ships of Governor Arthur Phillip's First Fleet, arriving off the Heads of what is now Sydney Harbour, and a lone Aboriginal witness. He seems to stand defiantly on the water, confronting the ghostly vessels, with their portents of profound change.

Executed in beautiful colours of dark blue and pale white, the painting was arresting both in its concept and its execution. Gordon Syron's most famous painting portrayed a courtroom in which all the actors (bewigged judge and barristers, the jury and attendants, clerks and members of the public) were black. Only the accused, sitting in the dock was white. It was a powerful allegory. And yet the sombre confrontation

of vessels and witness on the January day in 1788 bore a more subtle message: What if?

What if the British officials had been more attentive to the demands of the American colonists? What if they had quickly given away their obduracy and agreed to accord to their American cousins rights equal to those enjoyed by Englishmen at home? What if the need to find an alternative dumping ground for the British convicts had evaporated, so that there was no requirement to send the prisoners to the far-off coast that James Cook and Joseph Banks had reported in 1771? What if Phillip and his captains had got lost on the long journey? What if they had succumbed, as so many Netherlands vessels did, to the dangers of the Roaring Forties or the perils of landfall in Australia? What if Phillip had not been such a skilled commander but had lost his human cargo to disease or mutiny? What if he had quickly suffered the failure in his large project in Sydney town? What if they had not explored Farm Cove and, in search of water, had pressed on to the New Zealand? What if, on arrival at Farm Cove, Phillip or his successors had negotiated a treaty with the original inhabitants: acknowledging and respecting their rights, treating them as the first peoples, as would later be done at Waitangi? What if the Aboriginals and other indigenes had been more numerous? More warlike? Less transfixed and overwhelmed by the astonishing vessels off the Heads, with their pale human cargo and well-armed redcoats?

All of these questions are futile today because we know what happened. The First Fleet laid anchor in the pristine solitude of one of the largest and most beautiful spaces of water in the world. The home reports that followed made Australia a beckoning attraction to the waves of migration

that have continued, right up to the present time. The droughts and flooding rains have hardly caused in a dent in the ongoing arrivals of humanity that pour into the Great South Land searching for adventures, opportunities and human happiness.

Of course, many of those who have arrived have suffered pain and disappointment. But the chief disruption, as events turned out, was for that first solitary Aboriginal witness and his descendants. This book lays out the way modern Australia can right the wrongs that have occurred in the intervening years, and decades, and centuries that have passed since that first dramatic encounter.

In the middle of this book, the author tells of an exchange she had with the great Australian philosopher, Peter Singer. She records, with candour, that at a conference he accused her of being inadequately concerned with the real-life challenges confronting Aboriginal women and children in the here and now. No doubt, there will be readers of this book who will likewise “roll their eyes” at its title and put down its pages with distaste and exasperation. Rejecting the thought that they are racists. Embracing the idea that they live in a land of the “fair go”. Clinging to the notion that it is completely unnecessary to re-live the moments when British power and Aboriginal presence confronted each other on the fateful shore of Sydney Harbour. As Sarah Maddison repeatedly explains, the Australian reaction to the indigenous people of the continent has been ambivalent from the first. Most of the newcomers hoped to find, in the image of the country they grow up in, or later adopted as their own, honourable stories of good deeds, generous acts and magnanimous engagement with others.

Whilst there had been such events in the evolution of Australian nationhood, a defect quickly arose in our relations with the first peoples. Many were killed for daring to protect their lands, possessions and families against the onrush of the explorers and settlers. Quite quickly, the legal system rejected their claims for acknowledgement of land rights. It denied respect for the culture and traditions of their Aboriginal forebears. They were not eliminated in the kind of genocidal extermination pursued by the Nazi rulers of Germany. But they were certainly denied true equality; many driven to the outskirts of townships; exposed to crippling diseases; introduced to the debilitations of alcohol; and effectively kept from the benefits of modern shelter, education and health care. Equal pay (or pay at all) was very slow in coming to them. Few indeed were admitted to universities, the professions, or leadership opportunities. The Constitution itself for a long time contained disparagements, notions of assimilation and elimination of cultural identity. For generations, these represented the accepted policy of successive Australian governments. In the long term, it was expected, the 'Aboriginal problem' would simply disappear because they would die out and be fully assimilated.

Although by the 1970s, this story of deprivation began to change, the author's thesis is that the change has been too slow. It has not been whole-hearted. It is deeply flawed by a stubborn refusal of white Australia to acknowledge the wrongs, so that we can all move beyond unarticulated feelings, collective guilt and discomfort into a true sense of solidarity and community with Aboriginal brothers and sisters. This will not happen, it is suggested, so long as Australians cling to the notion that everything has been fixed up. That the tide has turned. That reconciliation has been achieved. That a national apology has been

given. And that enormous advances have been accomplished in land rights, shelter, education, health and opportunities.

The author acknowledges the power of the national apology delivered in the Australian Parliament by then Prime Minister Kevin Rudd, supported by Dr. Brendan Nelson, John Howard's successor as the leader of the Coalition parties. The cadences of Mr. Rudd's speech, and its contents, made a large contribution to moving all Australians beyond the denial of inter-generational guilt, so long maintained. But land rights litigation remains slow, frustrating, expensive and often dispiriting. The achievements in housing, health and education continue to disappoint. The response to the stolen generation report has not yet provided tangible recompense for the families dislocated and the individuals deprived of the most basic of human rights. The Northern Territory Intervention continues its deeply wounding intrusion into the Aboriginal communities of that most significant part of Aboriginal Australia.

As it happens, the challenge to the constitutional validity of the Northern Territory Intervention was the very last judgment of mine, delivered during my tenure on the High Court of Australia. Eight weeks before the 2007 federal election, Mr. Howard's government raced through the Australian Parliament a very large statute, ostensibly designed to respond to a report to the Northern Territory government *Ampe Akelyernemane Meke Mekarle* or *Little Children Are Sacred*[1].

Purportedly, the purpose of the new law was to introduce strong measures, aimed at stopping child abuse and protecting women and

1 1. Northern Territory (Board of Enquiry into the Protection of Aboriginal Children from Sexual Abuse) (Mr. Rex Wild QC and Ms. Patricia Anderson, Chairs), June 2007.

children. Those measures were supported, as the author points out, by the then Labor opposition in the Federal Parliament. The support has substantially been continued by the succeeding Labor governments.

The High Court of Australia rejected a challenge to the validity of the Intervention law. A majority held, indeed, that the challenge was even legally unarguable. I disagreed, fundamentally because I read the Australian constitutional promise to provide "just terms" for the acquisition of "property" as including something more than monetary compensation. In my view, at least arguably, as advocated by the Aboriginal objectors, it extended to a requirement of proper consultation with the Aboriginal individuals and communities affected. All of which had been denied in the helter skelter rush to enact the legislation in time before the election. Some unkind observers suggested at the time that the law was rushed for electoral purposes, to 'wedge' the Opposition and to tap deep feelings in the electorate, adverse to Aboriginal Australians.

In my reasons, in the High Court, I remarked[2]:

> "If any other Australians, selected by reference to their race, suffered the imposition on their pre-existing property interests of non-consensual five-year statutory leases, designed to authorise intensive intrusions into their lives and legal interests, it is difficult to believe that a challenge to such a law would fail as legally unarguable on the ground that no "property" has been "acquired". Or that "just terms" had been afforded, although those affected were not consulted about the process and although rights cherished by them might be adversely affected. The Aboriginal parties are entitled to their trial and day in court. We should not slam the doors of the courts in their face. This is a case in which a transparent, public trial of the proceedings has its own justification."

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2 2. Wurridjal v The Commonwealth (2009) 237 CLR 309 at 394-5 [214].

These words, and the outcome of the court case, were almost wholly ignored in Australia. For a long time, despite a change of government, the *Racial Discrimination Act* remained suspended in respect of all those affected by the Intervention. Signs outside Aboriginal townships referred to pornography, stigmatising entire communities. They remain firmly in place to this day. The bans and prohibitions of the earlier era of *Protection Acts* remained in force. Intrusions and affronts, as well as unequal treatment of citizens, continue to remain in place. A miserable number of houses have been built, as tokens of the "achievement" of the major intrusions of federal police and defence personnel. The authors of the report on children, invoked to justify the Intervention, always insisted on the imperative need for prior consultation. I agree with those authors and with the then world President of Amnesty International, Irene Khan, that what happened was "not merely disheartening; it was morally outrageous".

Many who read this book will come away angry. A few because of the 'polemics' of the author. Others because of failings of others that she reveals. Maybe some, because of these words of mine. But anger and guilt are not, as such, the purpose of Professor Maddison's text. Repeatedly she insists that we can learn from other societies in whose name great wrongs have been done. However, the lesson of other instances is that resolution only really occurs where there is a national apology; but one that is conjoined with specific identification of what exactly occasions the apology. And appropriate recompense is needed beyond words which come cheap. Only words with action will create the means to establish a new and healthy relationship.

I have not agreed with everything I have read in this book. Few Australian readers will. But to find a path towards true reconciliation and justice remains a very important challenge for the as yet incomplete Australia project. For the time being, the image in Gordon Syron's painting should remain in our minds. The vessels, in full sail, portending the presence of great power. The Aboriginal observer, watching and waiting. Guilt and fear are not enough. This book challenges us to contemplate and embrace restorative justice. It should be possible for our continent of privilege to take up this challenge. But is there now the will to do so?

MICHAEL KIRBY

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