

THE GOOD WHITE NATION ONCE MORE MADE GOOD? APOLOGY FOR ATROCITIES TO THE STOLEN GENERATIONS

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This article explores the issue of apology to the Stolen Generations by the federal government in light of the mythology of Australia as the ‘good white nation’. Drawing upon elements of critical legal theory and critical whiteness studies I argue that the mythology of the good white nation, which has always been central to Australia’s national identity, remains ingrained in the recent federal government apology. I contend that the perception of Australia as the good white nation continues in the apology – despite the acknowledgement of some of the grave injustices suffered by Indigenous Australians at the hands of colonial forces. It does this by suggesting that whatever the nation once was in terms of regularly engaging in colonial atrocities – the ‘stain’ on the national soul has now been removed through the apology – thus the nation has been made good once more, ‘unstained’ as it were by its troublesome colonial history.

I INTRODUCTION

The first item of business for the new Rudd Labor government, after its December 2007 victory, was to issue a long awaited apology to members of the Stolen Generations. The defeated Liberal government led by John Howard had consistently promoted a view of Australia as a nation characterised by moral goodness.¹ Ghassan Hage has referred to this as the ‘fantasy’ of the good ‘white nation’, a fantasy which was rigorously defended throughout the Howard regime.² Hage elaborates on the perception that Australia contains many ‘Good White Nationalists’³ who, according to the “‘White nation’ fantasy’,⁴ demonstrate their goodness through their remarkable tolerance of

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1 Ghassan Hage, *White Nation – Fantasies of White Supremacy in a Multicultural Society* (1998) 78–9; Suvendrini Perera, ‘The Good Neighbour: Conspicuous Compassion and the Politics of Proximity’ (2004) *Borderlands E-Journal* 4 <http://www.borderlands.net.au/vol3no3_2004/perera_good.htm> at 5 January 2010.

2 Hage, above n 1, 18, 78–9.

3 Ibid 78.

4 Ibid 18.

non-white others.⁵ This emphasis on the moral goodness of the nation has become ingrained in Australia's national mythology. As Suvendrini Perera points out, 'national mythologies' assert that Australia is 'a decent and good coloniser.'⁶

The apology brought to the fore an inner tension within Australia, the desire to appear as 'the good white nation' while at the same time maintaining the essential politico-legal framework of a society structured on white supremacy. The language of former Prime Minister Rudd was symptomatic of a desire for the nation to be made good once more, through the redemptive act of apology, using an almost religious symbolism. The ritual of the apology has thus been offered as a means of removing 'a great stain from the nation's soul'⁷ and as commencing a 'new chapter'⁸ in Australian history. However the apology was never going to be a simple case of uniting Australians around a common goal of remorse for the atrocities that have long been the legacy of colonisation – and unfortunately it did nothing to challenge and reconfigure the colonial power structure which continues to perpetuate racial discrimination through such means as the Intervention by the federal government into Aboriginal communities in the Northern Territory.⁹

There was much divergence between the two 'sorry' speeches – the first by Rudd as Prime Minister, and the second in response by then Opposition Leader Brendan Nelson. Although Rudd spoke in terms of a united Australia offering its apologies to members of the Stolen Generations in a spirit of remorse and reconciliation, the 'sorry' speech of then Opposition Leader Brendan Nelson showed that there were many who could not say 'sorry' without qualifications and finger pointing. Although admittedly a step in the right direction, the apology tinkers at the edges of a racist colonial order, leaving the essential foundations untouched and unexamined.

5 Ibid 79.

6 Perera, above n 1, 4.

7 Prime Minister Kevin Rudd, 'Apology to Australia's Indigenous Peoples' (Speech delivered at Parliament House, Canberra, 13 February 2008) <www.aph.gov.au/house/rudd_speech.pdf> at 26 November 2009.

8 Ibid.

9 Irene Watson, 'The Aboriginal State of Emergency Arrived with Cook and the First Fleet' (2007) 26 *Australian Feminist Law Journal* 3, 7–8; Irene Watson, 'Aboriginal Women's Laws and Lives: How Might We Keep Growing the Law?' (2007) 26 *Australian Feminist Law Journal* 95, 97, 104; Odette Kelada, 'White Nation Fantasy and the Northern Territory "Intervention"' (2008) 4(1) *Australian Critical Race and Whiteness Studies Association E-Journal* 1, 1–9 <<http://www.acrawsa.org.au/ejournalFiles/Volume%204,%20Number%201,%202008/Odette%20Kelada.pdf>> at 5 January 2010; Goldie Osuri, 'War in the Language of Peace, and an Australian Geo/Politics of White Possession' (2008) 4(1) *Australian Critical Race and Whiteness Studies Association E-Journal* 1, 1–2, 7–8 <<http://www.acrawsa.org.au/ejournalFiles/Volume%204,%20Number%201,%202008/GoldieOsuri.pdf>> at 5 January 2010.

Both apologies highlighted the white supremacy which lies at the core of Australia's national identity.¹⁰ Australia has long been founded on notions of whiteness, as evidenced by the development and implementation of the White Australia Policy. This privileging of whiteness has been reproduced in the legal system, leading to systematic disadvantage for Indigenous Australians, to the extent that being white in a society that privileges whiteness is something akin to a proprietary interest.¹¹ However white Australia has rarely welcomed analysis of the construction and maintenance of such privilege. In part such reluctance comes from a desire to hold fast to an idealised vision of Australia as a morally good nation, a haven of democracy which can be distinguished from various other (non-white, morally inferior) societies.¹² Many non-Indigenous Australians suffer from what Michelle Fine describes as '[w]hite glaucoma',¹³ a fundamental inability to see the position of privilege that whites enjoy, especially in a colonial society such as Australia. This involves a lack of awareness of the benefits that accrue to whites as a result of the founding and conserving acts of colonial violence.¹⁴ This is evident in the debates that have raged within the nation over the vexed issue of native title – with great reluctance by white Australia to give back what was wrongfully taken.¹⁵ Indeed in many quarters, particularly the mining and pastoral industries, there has been outright hostility to the notion that Aboriginal peoples should have any kind of rights to land.¹⁶

Just as the issue of land rights has brought white privilege to the fore, the calls for apology to members of the Stolen Generations did something to unsettle the settled nature of white colonial privilege,¹⁷ highlighting the

10 Hage, above n 1, 18.

11 Cheryl Harris, 'Whiteness as Property' in Kimberlé Crenshaw, Neil Gotanda, Gary Peller and Kendall Thomas, *Critical Race Theory – The Key Writings that Formed the Movement* (1995) 281.

12 Hage, above n 1, 67–8, 78–9.

13 Michelle Fine, 'Witnessing Whiteness/ Gathering Intelligence' in Michelle Fine, Lois Weis, Linda Powell Pruitt and April Burns, *Off White: Readings on Power, Privilege and Resistance* (2nd ed, 2004) 246.

14 Jacques Derrida, 'Force of Law: The "Mystical Foundation of Authority"', in Drucilla Cornell, Michel Rosenfeld and David Carlson (eds), *Deconstruction and the Possibility of Justice* (1992) 6, 55.

15 In contrast to the view of Xavier Herbert (cited in Henry Reynolds, *Dispossession – Black Australians and White Invaders* (1989) 66) who so powerfully stated:

'Until we give back to the black man just a bit of the land that was his, and give it back without strings to snatch it back, without anything but generosity of spirit in concession for the evil we have done to him – until we do that we shall remain what we have always been, a people without integrity, not a nation, but a community of thieves.'

16 Andrew Markus, *Race – John Howard and the Remaking of Australia* (2001) 55.

17 Irene Watson, 'Settled and Unsettled Spaces: Are We free to Roam' (2005) 1(1) *Australian Critical Race and Whiteness Studies Association E-Journal* 40 <<http://www.acrawsa.org.au/ejournalVol1no12005.htm>> at 18 January 2010.

manner in which atrocious acts were carried out on the basis of racist notions of superiority. Even so, the wording of both Rudd's and Nelson's apologies reveal a desire for national redemption so that the mythological good white nation is made good once more. However, to understand the context of the apology it is first necessary to briefly examine the legacy left by the Howard Liberal government (1996–2007).

II THE HOWARD LEGACY

In 1997 the Human Rights and Equal Opportunity Commission (HREOC) (now the Australian Human Rights Commission) submitted its findings to federal Parliament on the Stolen Generations of Aboriginal children who had been forcibly removed from their families to further national policies of assimilation. The *Bringing Them Home* report,¹⁸ which had been commissioned by the previous Labor government (1983–96), made numerous recommendations for government remedial action, including that an apology be issued to members of the Stolen Generations on behalf of the government. The Howard government expressed 'regret' about Australia's history of injustice towards Indigenous Australians, but could not manage an apology.¹⁹ The Howard government was opposed to what they considered 'symbolic' gestures of reconciliation, such as an apology, preferring what they dubbed 'Practical Reconciliation'.²⁰ Hollinsworth suggests that people may have more readily accepted 'the policy of practical reconciliation if it delivered the promised equity outcomes.'²¹ Yet despite the rhetoric of 'practical reconciliation' there is nothing to indicate that the Howard government "delivered better outcomes for Indigenous Australians than their predecessors."²² The 'practical reconciliation' approach simply denied governmental responsibility for the current circumstances of Indigenous communities and their connection with Australia's racist colonial legacy. It urged Aboriginal peoples to "move on" from the past, 'yet steadfastly [and] obstinately, refuse[d] to acknowledge what it is that they must move on from'.²³ As Reynolds observes, telling Aboriginal people to move on from the

18 Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997).

19 Sara Ahmed, 'The Politics of Bad Feeling' (2005) 1 *Australian Critical Race and Whiteness Studies Association E-Journal* 72, 80 <<http://www.acrawsa.org.au/ejournalVol1no12005.htm>> at 18 January 2010.

20 James Cockayne, 'More Than Sorry: Constructing a Legal Architecture for Practical Reconciliation' (2001) 23 *Sydney Law Review* 577, 578; David Hollinsworth, *Race and Racism in Australia* (3rd ed, 2006) 192–3.

21 Hollinsworth, above n 20, 193.

22 Altman and Hunter cited in Hollinsworth, above n 20, 193.

23 Colin Tatz, *With Intent to Destroy – Reflecting on Genocide* (2003) xv.

past 'is a strange prescription coming from a community which has revered the fallen warrior and emblazoned the phrase "Lest We Forget" on monuments throughout the land.'²⁴

Nevertheless former Prime Minister Howard clearly had support in relation to his refusal to give an official government apology to members of the Stolen Generations. For example, some conservative commentators, inhumanely, suggested that Aboriginal children forcibly removed from their families were 'rescued', not stolen.²⁵ They suggested that the Stolen Generations should be referred to as the 'rescued' generations.²⁶ Reginald Marsh, writing in *Quadrant*, even suggested that the *Bringing Them Home* report should have been named the "'Report on the Rescued Children'".²⁷ Kenneth Minogue, also writing in *Quadrant*, claimed '[a]pology is no real help to them, for they have their own lives to live and must find ways of coming to terms with their condition'.²⁸ Such responses, whilst remarkable in their callous indifference to the suffering experienced by Indigenous peoples, also conveniently avoid taking responsibility for that 'condition' which has been brought about in large measure by consistently oppressive laws and policies developed and implemented by colonial governments.

Throughout the Howard regime 'the members of the stolen generations were constructed as malcontents, themselves to blame for present circumstances'²⁹ and those who sought to sue the government to obtain compensation, or some acknowledgment of wrongdoing, were opposed ruthlessly.³⁰ As Hannah

24 Henry Reynolds, *The Other Side of the Frontier* (1982) 200–2, cited in Reynolds, above n 15, 22.

25 Peter Howson, 'Rescued from the Rabbit Burrow – Understanding the Stolen Generation' (1999) (June) *Quadrant* 10, 11; Reginald Marsh, "'Lost", "Stolen" or "Rescued"?' (1999) (June) *Quadrant* 15, 17.

26 Ibid.

27 Marsh, above n 25, 17.

28 Kenneth Minogue, 'Aborigines and Australian Apologetics' (1998) (September) *Quadrant* 11, 20.

29 Hannah McGlade, 'The "Fair Skinned" Children of Sister Kate's: Negotiating for the Past and Future' (2007) 26 *Australian Feminist Law Journal* 31, 36.

30 There have been numerous cases where unsuccessful Aboriginal claimants have sought to find redress in relation to the Stolen Generations issue via the courts in the face of unyielding colonial politics. For example *Williams v Minister, Aboriginal Land Rights Act 1983 (No 1)* (1994) 35 NSWLR 497; *Williams v Minister, Aboriginal Land Rights Act 1983 (No 2)* (1999) 25 Fam LR 86; *Williams v Minister, Aboriginal Land Rights Act 1983 (No 3)* (2000) Aust Torts Reports ¶81–578; *Cubillo v Commonwealth* (1999) 89 FCR 528; *Cubillo v Commonwealth (No 2)* (2000) 103 FCR 1; *Cubillo v Commonwealth* (2001) 112 FCR 455; *Kruger v Commonwealth* (1997) 190 CLR 1. For analysis of the unsuccessful litigation see Chris Cunneen and Julia Grix, *The Limitations of Litigation in Stolen Generations Cases*, Australian Institute of Aboriginal and Torres Strait Islander Studies Research, Discussion Paper No 15 (2004) <<http://www.aiatsis.gov.au/research/discussion.html>> at 26 November 2009; Julie Cassidy, 'The Best Interests of the Child? The Stolen Generations in Canada and Australia' (2006) 15(1) *Griffith Law Review* 111; Julie Cassidy, 'The Impact of the Conquered/Settled Distinction regarding the Acquisition of Sovereignty in Australia' (2004) 8 *Southern Cross University Law Review* 111; Valerie Kerruish, 'Responding to

McGlade argues:

Australian courts have instead utilised the cases brought by surviving members of the stolen generation as an opportunity to 'reconstruct and obscure' the experience of Aboriginal child removal and recast as benign the past racially discriminatory laws ... authorising the removal of children from their families. Analysis of the stolen generation judgements has shown that litigation has '...provided a forum where a revisionist colonial account of history has been privileged and legitimised.'³¹

The response of the Howard government to the Stolen Generations was extremely callous. The Howard government quibbled over numbers and contended that children could not accurately be described as 'stolen' when they were given over to government officials. As Robert Manne aptly points out:

To be informed by a government that there was no 'stolen generation' because some children had been removed because of neglect or voluntarily given up, or because 10% did not constitute, according to a dictionary definition, a generation was rather like telling the Jews that there had been no Holocaust (literally a burnt sacrifice) because Hitler's victims had died by gas or gun and not by fire.³²

Attempting to justify his refusal to apologise to the Stolen Generations, Howard claimed that this generation should not be made responsible for the sins of our white ancestors, as though the atrocities occurred in a long distant past. He consistently failed to acknowledge the connection between Australia's racist colonial legacy and the ongoing disadvantage still suffered by Indigenous Australians. Howard expressed a clear preference for a sanitised view of Australian history, stating the "black armband" view of our past reflects a belief that most Australian history since 1788 has been little more than a disgraceful story of imperialism, exploitation, racism, sexism and other forms of discrimination'.³³

Howard claimed that Australians should celebrate the historical greatness of our nation rather than reflect upon that which is shameful, as though the two are mutually exclusive. In Howard's estimation '[t]he balance sheet of our history is one of heroic achievement and ... we have achieved much more as

Kruger: The Constitutionality of Genocide' (1998) 11 *Australian Feminist Law Journal* 65. The only successful case thus far has been *Trevorrow v State of South Australia (No 5)* [2007] SASC 285. For analysis of this decision see Ann Curthoys, Ann Genovese and Alexander Reilly, *Rights and Redemption – History, Law and Indigenous People* (2008) 161–4.

31 McGlade, above n 29, 44. McGlade cites Cunneen and Grix, above n 30, 26.

32 Robert Manne, 'In Denial – The Stolen Generations and the Right' (2001) 1 *Quarterly Essay* 1, 83–4.

33 John Howard cited in Hollinsworth, above n 20, 17.

a nation of which we can be proud than of which we should be ashamed'.³⁴ It is illuminating that Howard spoke about a 'balance sheet' when Indigenous peoples raised concerns about human suffering caused by colonisation. This accountancy approach is inappropriate in the face of grave human suffering.

The very language Howard used attempted to trivialise the sufferings of Indigenous peoples. Throughout his term as Prime Minister, Howard referred to the discrimination faced by Indigenous Australians as a 'blemish' on the nation. For Howard the use of the word 'blemish' can be seen as a means of trivialising the atrocities that have been perpetrated against Indigenous Australians. It was part of Howard's determination to have a denialist version of Australian history. For example, as Howard spoke these words in the 2007 Federal Election Debate he became visibly animated and thumped the podium, proclaiming: 'Why as a nation have we become so ashamed of the Australian story? It's a wonderful story. It's a story of great achievement; it's a story of heroic endeavour. It's not a story without blemish, but it's a story of which all of us should be immensely proud.'³⁵

In his rush to emphasise the moral goodness of the nation, Howard trivialised the worst aspects of Australian history by simply referring to them as a 'blemish'.³⁶ In his desire to avoid a negative perception of national identity Howard refused to address the issues with integrity. He referred to the history of invasion, genocide, warfare, theft of land and theft of children as a 'blemish'.³⁷ A blemish implies that these events were a mere spot, rather than substantial events which have shaped the nation.³⁸ Of course the word 'blemish' is also used to refer to discolouration of the skin.³⁹ In this sense Howard's use of the word 'blemish' was very loaded indeed. Those with dark skin were indeed a blemish on the nation according to those aspiring towards a white racial purity in accordance with the "'White nation" fantasy'.⁴⁰ Howard quite literally wanted to 'white out the "black spots" in Australian history'.⁴¹ The

34 Ibid.

35 Transcript of the Leaders Debate, Parliament House, Canberra, 21 October 2007 <<http://www.alga.asn.au/Election2007/pdf/p071023265.pdf>> at 26 November 20.

36 *Howard's History*, YouTube <<http://au.youtube.com/watch?v=Ffnnf-eYPKU>> at 26 November 2009.

37 Transcript of the Leaders Debate, above n 35. For a counter position to former Prime Minister Howard's sanitised version of Australian history see Henry Reynolds, *Why Weren't We Told? A Personal Search for the Truth about our History* (2000) chs 10, 11; Watson, above n 17, 41.

38 *Howard's History*, above n 36.

39 Ibid.

40 Hage, above n 1, 18.

41 Anna Clark, 'History in Black and White: A Critical Analysis of the Black Armband Debate', *Australian Public Intellectual Network* 6 <http://www.api-network.com/main/index.php?apply=scholars&webpage=default&flexedit=&flex_password=&menu_label=&menuID=homely&menubox=&scholar=115> at 26 November 2009.

Howard government was concerned with promoting ‘a positive white identity, an identity that makes the white subject feel good’.⁴² Howard wanted white Australians to feel “‘relaxed and comfortable’”.⁴³ Indeed Howard declared that Australia was not a racist society and, by promoting the idealised imagery of the good white nation,⁴⁴ Howard sustained ‘the narcissism of whiteness’.⁴⁵ These views shaped Howard’s refusal to apologise to the Stolen Generations.

III SOME POSITIVE CHANGES UNDER RUDD

The election of the Rudd government in 2007 was greeted with enthusiasm by Indigenous Australians and their supporters. The laws and policies of the Howard government had been heavily critiqued throughout its duration, as had Howard’s refusal to issue an apology to the Stolen Generations.⁴⁶ After years of frustration with the refusal of the Howard government to apologise to members of the Stolen Generations in relation to horrific government oppression, the news that the Rudd government was going to issue an apology was like a cool breeze on a sweltering summer day. Yet almost immediately there were concerns as to what form the apology would take, how extensive it would be, what specific acts were to be covered, and, significantly, whether it would be used in the quest for compensation for members of the Stolen Generations. Much of this concern was baseless, as the Rudd government issued an apology which was conservative in terms of its consequences. Yet the apology of Rudd contained some positive changes compared to the response of the Howard government.

Rudd at least showed some indication of a willingness to examine Australia’s colonial history with a modicum of intellectual honesty. Like former Prime Minister Paul Keating, Rudd showed himself to be more concerned about issues of social justice for Indigenous Australians than Howard, who consistently showed a callous disregard for such matters.⁴⁷ Rudd at least had the grace to acknowledge that serious trauma has resulted from the forcible removal of Indigenous children from their families. He acknowledged that members of the Stolen Generations ‘have been damaged deeply by the decisions of parliaments and governments’.⁴⁸ Although he also chose to use the word ‘blemish’, placed in the context of his speech, it can be seen that

42 Ahmed, above n 19, 82.

43 Hollinsworth, above n 20, 19.

44 Hage, above n 1, 78–9.

45 Ahmed, above n 19, 82.

46 Antonio Buti, ‘The Removal of Aboriginal Children: Canada and Australia Compared’ (2002) *University of Western Sydney Law Review* 25, 37; Tatz, above n 23, 165.

47 Markus, above n 16, 41–2, 86.

48 Rudd, above n 7.

Rudd considered the events of forcible child removal as more significant in terms of national character than Howard ever did. Rudd spoke, for example, of the need ‘to deal with the unfinished business of the nation, to remove a great stain from the nation’s soul and, in a true spirit of reconciliation, to open a new chapter in the history of this great land, Australia’.⁴⁹ He stated that such events were ‘one of the darkest chapters in Australia’s history’.⁵⁰ This level of acknowledgement was long overdue. It was therefore an important ‘gesture toward peace, between non-Indigenous and Indigenous Australians’.⁵¹

The Rudd apology acknowledged the searing pain which ‘screams from the pages’ of the *Bringing Them Home* report.⁵² Rudd acknowledged that such accounts ‘cry out for an apology’.⁵³ Rudd’s response here was markedly different to Howard’s, which has been described as ‘pedantic and tactless in almost equal measure’.⁵⁴ Rudd condemned the ‘stony and stubborn ... silence for more than a decade’ on the part of the Howard government in response to the demand for an apology.⁵⁵ Unlike Howard’s response, Rudd’s apology demonstrated a willingness to dig beneath the statements of purported benevolence in relation to forcible child removal and examine the detrimental consequences of such removal in the lives of those removed. After referring to the blatantly eugenicist policies of the Northern Territory ‘Protector’ who clearly advocated a method for the eradication of Indigenous peoples, Rudd stated:

These are uncomfortable things to be brought out into the light. They are not pleasant. They are profoundly disturbing. But we must acknowledge these facts if we are to deal once and for all with the argument that the policy of generic forced separation was somehow well motivated, justified by its historical context and, as a result, unworthy of an apology today.⁵⁶

49 Ibid.

50 Ibid. This can be compared to former Prime Minister Paul Keating’s Redfern speech which spoke in much stronger terms of the need to recognise that white Australia bears an enormous responsibility for ‘failure to bring much more than devastation and demoralisation to Aboriginal Australia’ – Paul Keating, ‘Paul Keating’s Redfern Speech’ (Speech delivered at Redfern Park, Sydney, 10 December 1992) <<http://www.australianpolitics.com/executive/keating/92-12-10redfern-speech.shtml>> at 26 November 2009. It is also weaker than the reference made to Australia’s ‘national legacy of unutterable shame’ by Deane and Gaudron JJ in *Mabo v Queensland (No 2)* (1992) 175 CLR 1 at 104. These statements expressed far stronger views on the importance of these events in shaping Australia’s national landscape.

51 Osuri, above n 9, 1.

52 Rudd, above n 7.

53 Ibid.

54 Manne, above n 32, 83.

55 Rudd, above n 7.

56 Ibid.

These words were in marked contrast to the views expressed by the Howard government and by the many conservative commentators who had long argued that various Aboriginal people who had been removed were now ‘successful’ because of their superior education and opportunities. This reasoning was offered as some kind of justification that the experiences of removal could not therefore have been all bad, or as bad as some were now claiming. This type of thinking clearly influenced the denialism of the Howard government in its refusal to apologise for atrocities to members of the Stolen Generations and contrasts sharply with the approach taken by Rudd.

Rudd also dismissed another tactic Howard had used when trying to avoid accountability to members of the Stolen Generations – claiming these events happened in the long ago past. Rudd emphasised that the events are much nearer to this generation than Howard or the Howard-like intellectuals cared to acknowledge, stating ‘let us remember the fact that forcible removal of Aboriginal children was happening as late as the early 1970s. The 1970s is not exactly a point in remote antiquity. ... It is well within the adult memory span of many of us.’⁵⁷

Rudd laid responsibility for this atrocity on the Australian Parliaments, something that Howard had fiercely opposed. Rudd acknowledged ‘the laws that our parliaments enacted made the stolen generations possible. We, the parliaments of the nation, are ultimately responsible, not those who gave effect to our laws. The problem lay with the laws themselves.’⁵⁸ This was at least some acknowledgment of the role that law has played in facilitating colonial oppression. Rudd spoke clearly of the role of government in the oppression of successive generations of Indigenous Australians. He pointed out that the government was to bear responsibility for these atrocities because it was the Parliament which had enacted the legislation that authorised the forcible removals and thereby produced the machinery which facilitated the creation of the Stolen Generations. The logic of this concept seemed to elude Howard throughout his entire term of office. However the apology was never going to be a simple case of uniting Australians around a common goal of remorse for the atrocities that have long been the legacy of colonisation. Ingrained in the wording of the apology is the desire for national redemption.

57 Ibid.

58 Ibid.

IV THE NELSON 'APOLOGY' AND JUSTIFICATION FOR THE INTERVENTION

Nelson deliberately set out to justify the Liberal Party's previous stance toward the Stolen Generations. His 'apology' was saturated with 'good white nation' mythology. Although Rudd spoke in terms of a united Australia offering its apologies to members of the Stolen Generations in a spirit of remorse and reconciliation, the 'sorry' speech of Nelson made it clear that there were many who could not say 'sorry' without qualifications and finger-pointing. His was a strange form of apology, the kind one might make when caught out in some form of wrongdoing that one does not really regret. It resonated with elements of the same paternalistic dogma that caused the Stolen Generations. Essentially Nelson said 'we are sorry, BUT it was all so well intentioned' and then shifted the focus towards the problems he saw as arising from Aboriginal self-management in the Northern Territory. Nelson embraced the spirit of the policies of his predecessor, Howard, who found himself unable/unwilling to attend the ceremony and 'sorry' speeches. Nelson made repeated references to the 'good intentions' and 'the best of intentions' of white Australians.⁵⁹ He found himself unable to resist sympathising with those poor white 'decent Australians' who 'are hurt by accusations of theft in relation to their good intentions'.⁶⁰ Nelson found it desirable to state '[i]t is reasonably argued that removal from squalor led to better lives'⁶¹ – with traces of the 'rescued children' dogma highlighted above. Odette Kelada has recently written of the way in which the 'White Nation Fantasy ... depends on paternalism'⁶² and this is evident in the Nelson 'apology'. It reeks of the same kind of white saviour complex⁶³ that led to the oppressive assimilation laws and policies being implemented in the first place.

Nelson's speech moved from bad to worse. On a day that was meant to be commemorating the suffering of Indigenous Australians, Nelson saw fit to mention the ANZACs. This was a desperate plea to highlight the suffering of white Australians too, and totally inappropriate for the spirit of the occasion. It merely functioned as an attempted diversion from colonial responsibility for atrocities committed against Aboriginal Australians. As though this was not bad enough, Nelson then saw fit to argue that the 'disgraceful circumstances [in] which many Indigenous Australians find themselves today' could be

59 Opposition Leader Dr Brendan Nelson, 'Apology to Australia's Indigenous Peoples' (Speech delivered at Parliament House, Canberra, 13 February 2008) <www.aph.gov.au/house/Nelson_speech.pdf> at 26 November 2009.

60 Ibid.

61 Ibid.

62 Kelada, above n 9, 4.

63 Greta Bird, *The Civilizing Mission: Race and the Construction of Crime* (1987) 5.

attributed in large measure to ‘alcohol’ and what he described as ‘welfare without responsibilities’.⁶⁴ These factors, according to Nelson, led many Aboriginal people to live ‘lives of existential aimlessness’.⁶⁵ In saying as much, Nelson demonstrated a complete lack of respect for cultural differences of lifestyle and failed to take into account that what may look like ‘existential aimlessness’ to one cultural group may well look like enlightenment or at least the beginning of wisdom to another. Although the speech had well and truly plummeted by that point, Nelson aimed even lower, using the occasion as an opportunity to try to justify the government’s military presence in Northern Territory Aboriginal communities, knowing full well that numerous protestors had gathered outside Parliament that day to object to the Intervention. He saw fit to describe male abuse against Aboriginal children occurring in the context of ‘their mothers ... drinking alcohol’⁶⁶ – as though the mothers were partly at fault for the abuse. His allusion to the drinking of alcohol on the part of Aboriginal mothers ties in with traditional negative stereotypes about Aboriginal mothers being unfit to care for their children,⁶⁷ and is incongruous with genuine apology to the Stolen Generations.

The ‘sorry’ speeches provided an opportune moment to address the issue of racism against Indigenous Australians that remains interwoven throughout the fabric of Australian society.⁶⁸ Racism degrades those who are subjected to negative stereotypes along with those who engage in subjecting others to negative stereotypes.⁶⁹ ‘Racism and racial stigmatisation harm not only the victim and the perpetrator of individual racist acts but also society as a whole.’⁷⁰ Yet somehow Nelson saw fit to resort to negative racial stereotypes of Indigenous peoples as a group who are incapable of caring for their children and needing government intervention in the form of the racist legislative package passed by the Howard government in 2007,⁷¹ legislation

64 Nelson, above n 59.

65 Ibid.

66 Ibid.

67 Hollinsworth, above n 20, 127.

68 Crystal McKinnon, Interview with Gary Foley, *Duplicity and Deceit: Rudd’s Apology to the Stolen Generations* (2008) The Koori History Website <http://www.kooriweb.org/foley/essays/essay_28.html> at 26 November 2009.

69 Marilyn Lake, ‘The White Man under Siege: New Histories of Race in the Nineteenth Century and the Advent of White Australia’ (2004) 58(1) *History Workshop Journal* 41, 54.

70 Richard Delgado, ‘Words That Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling’ in Richard Delgado and Jean Stefancic (eds), *Critical Race Theory –The Cutting Edge* (2nd ed, 2000) 133.

71 The *Northern Territory National Emergency Response Act 2007* (Cth); *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth); *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth).

that has been strongly criticised by many within Indigenous communities.⁷² This legislation was allegedly enacted in response to the *Little Children are Sacred* report,⁷³ yet the government conveniently neglected the fact that the ‘national emergency’ in relation to child sexual abuse in remote Aboriginal communities has been, as Judy Atkinson rightly argues, an ‘emergency’ for at least ‘twenty years’.⁷⁴ The Intervention legislation has been described by HREOC (now the Australian Human Rights Commission) as bringing about ‘significant actual and potential negative impacts upon the rights of Indigenous people which are discriminatory’.⁷⁵ Like the ‘protection’ legislation which facilitated the Stolen Generations, the Intervention legislation has been created in a ‘discourse of protection and problem-solving [and] is racially framed, directed and applied’.⁷⁶ On the day of the ‘sorry’ speeches, objections to this legislation and its implementation were the subject of protest at the Aboriginal Tent Embassy. One of the chief complaints has centred on the lack of consultation with Indigenous people and the imposition of yet another paternalistic ‘top down’ approach on Indigenous communities.⁷⁷

The ‘sorry’ speeches provided an ideal opportunity for Australia to deal with its racist colonial legacy – to consider the ‘the moral and ethical complexities of confronting racism and genocide’.⁷⁸ However this opportunity was not fully

72 The Hon Alastair Nicholson, Larissa Behrendt, Alison Vivian, Nicole Watson, and Michele Harris, *Will They be Heard? A Response to the NTER Consultations – June to August 2009* (November 2009) <<http://www.socialpolicyconnections.com.au/Portals/3/docs/wil%20they%20be%20heard%20report%20nov%2009.pdf>> at 17 June 2010; Patricia Karvelas, ‘“Invasion” Must End, Say Indigenous Leaders’, *The Australian*, 5 December 2007 <<http://www.theaustralian.news.com.au/story/0,25197,22872208-5013172,00.html>> at 26 November 2009; Kelada, above n 9, 5; Watson, above n 9, 7; Sarah Maddison, *Black Politics – Inside the Complexity of Aboriginal Political Culture* (2009) 16; Jennifer Martiniello, ‘Howard’s New Tampa – Aboriginal Children Overboard’ (2007) 26 *The Australian Feminist Law Journal* 123, 123–4; and a range of Aboriginal people who are negatively affected by the Intervention legislation have formed the *Prescribed Area People’s Alliance* to petition the UN regarding the Intervention laws – Leo Shanahan and Andra Jackson, ‘Kirby’s Last Dissent: My Fellow Judges Racially Biased’, *The Age* (Melbourne), 3 February 2009 <<http://www.theage.com.au/national/kirbys-last-dissent-my-fellow-judges-racially-biased-20090202-7vr7.html>> at 26 November 2009.

73 *Ampe Akelyernemane Meke Mekarle – ‘Little Children are Sacred’ Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse* (2007) <<http://www.inquirysaac.nt.gov.au>> at 26 November 2009.

74 Judy Atkinson, *Remote Communities – What I Would Do* (25 June 2007) Australian Policy Online <<http://www.apo.org.au/commentary/what-i-would-do>> at 26 November 2009.

75 Human Rights and Equal Opportunity Commission (HREOC), *Submission of the Human Rights and Equal Opportunity Commission (HREOC) to the Senate Legal and Constitutional Committee on the Northern Territory National Emergency Response Legislation* (10 August 2007) [6] <http://www.aph.gov.au/Senate/Committee/legcon_ctte/completed_inquiries/2004-07/nt_emergency/submissions/sublist.htm> at 26 November 2009.

76 Osuri, above n 9, 2.

77 HREOC, above n 75, [18]; Nicholson et al, *Will They be Heard? A Response to the NTER Consultations – June to August 2009*, above n 72, 3–4.

78 Hollinsworth, above n 20, 20.

grasped. Nelson's 'sorry' speech glossed over the atrocities perpetrated by the colonisers. He even saw fit to remind everyone of the justifications for the most recent set of oppressive laws detrimentally affecting Aboriginal peoples in the Northern Territory – a legislation package that authorised military invasion of Aboriginal lands, inspections of Aboriginal children even without evidence of abuse, extreme levels of surveillance, quarantining of Aboriginal people's welfare payments, and removal of their land rights.⁷⁹ This legislation, Nelson condescendingly claimed, was 'for their own good' – an approach resonating with the same racist assumptions that the 'sorry' speeches were meant to be addressing – which was ironic indeed. This inference that such actions are carried out 'for their own good' is intricately connected with the fantasy of the good white nation,⁸⁰ because the good white nation claims to act for the good of others – even if those others have very different perceptions of what is 'good'. The fantasy declares that pure benevolence lies behind the actions taken by the good white nation; that such actions are not tainted with colonial arrogance, racism and greed.

V APOLOGY AS REDEMPTION

Although the Rudd apology was dramatically better than Howard's or Nelson's approaches to the Stolen Generations, a closer reading shows that it too contains traces of similar 'good white nation' mythology. Like Howard, Rudd also used the word 'blemish' to describe horrific acts which arguably define the character of the nation. Rudd spoke of the need to reflect on 'this blemished chapter in our nation's history'.⁸¹ As explained earlier, the use of the word 'blemish' is quite loaded in terms of Australia's racist history; as such it was poorly chosen both by Rudd and by Howard who preceded him. It implies that the colonial history of oppression towards Indigenous peoples is not really that significant.

Rudd's language was also symptomatic of a desire for the nation to be made good once more, through the redemptive act of apology. Rudd therefore spoke of reconciliation being 'a core value of our nation' which embodies 'a fair go for all',⁸² drawing upon Australia's popular rhetoric about 'tolerance', 'equality', and the land of the 'fair go'. These concepts were greatly emphasised under Howard and can be seen as hallmarks of

79 Martiniello, above n 72; Watson, above n 9; Osuri, above n 9, 7; Kelada, above n 9, 5; Tom Calma (The Aboriginal and Torres Strait Islander Social Justice Commissioner) on SBS, 'Are They Safer', *Insight*, 18 March 2008.

80 Kelada, above n 9, 7.

81 Rudd, above n 7.

82 Ibid.

the mythology of the good white nation.⁸³ Rudd also referred to the nation 'wrestling with our own soul', language with deep religious symbolism, as it faces 'the truth: the cold, confronting, uncomfortable truth' of the Stolen Generations.⁸⁴ Rudd opened by saying the Parliament was in session 'to deal with this unfinished business of the nation, to remove a great stain from the nation's soul'.⁸⁵ Therefore it seems that Rudd saw the apology as significant in terms of removing the national 'stain' of Australia's appalling treatment towards Indigenous peoples. This seems to resonate with an almost religious symbolism, as the national narrative is rapidly recast into the now redeemed nation entering its 'new chapter' where a 'fair go' will be provided for all. The words were uttered by one with a priest-like authority, and now it has been declared that the stain of past sins has been removed.

Rudd's symbolic language also correlates with what Hage has written about the way in which the 'white nation fantasy' involves a construction of an aspirational or idealised nation – here it involves the nation being made good by atonement which was said to be delivered via the apology. Rudd's use of religiously symbolic language raises interesting questions, such as, *what would it actually take to remove the stain from the soul of the nation? Can the stain be removed by words alone or is some form of 'repentance', in the sense of heading in the opposite direction of the wrongful conduct, actually required? Is it possible to remove such a deeply embedded stain? Or does the nation need to learn how to relate to this stain in a different way?*

It is certainly worthwhile considering what it might take to remove this stain from the national soul. However it is premature to declare the national soul cleansed from any former stain regarding treatment of Indigenous Australians. The stain is deeply embedded within the fabric of the nation.⁸⁶ Whatever it might take to launder the stain from the soul of the nation, I suggest it is not something that can be achieved by words alone, however fine those words may be. It undoubtedly will not be achieved without reparation. Yet the Rudd apology implies that the soul of the nation is now cleansed via the apology. He spoke of the apology as the vehicle for 'righting the wrongs of the past',⁸⁷ and it has now been declared so by the seat of white colonial power. A new reality is therefore constructed – what was discriminatory in terms of historical treatment of Indigenous Australians has been declared wanting – but the 'new chapter' is said to begin. Despite this, there are links between past and present racist discrimination which remain unacknowledged

83 Hage, above n 1, 78–9.

84 Rudd, above n 7.

85 Ibid.

86 Irene Watson, 'Buried Alive' (2002) 13 *Law and Critique* 253, 260.

87 Rudd, above n 7.

and unaddressed. Although Rudd identified the responsibility of Parliament in creating laws which made the Stolen Generations possible, there was no acknowledgement of the continued acts of legislative paternalism via the more recent Intervention legislation, and no commitment to repealing the aspects of this legislation which have rightfully been condemned as continuing in the same paternalistic vein as the assimilation legislation that the apology was meant to address.⁸⁸ In this sense the Rudd apology failed to address contemporary acts of racist discrimination being perpetrated by Parliament, still failing to provide Indigenous people with the famed Australian 'fair go for all'.

Of course the Rudd apology went a long way towards addressing the stain on the federal government over its failure to apologise to the Stolen Generations. This had become a source of shame for many non-Indigenous Australians, yet this too was interlinked with the mythology of the good white nation.⁸⁹ Ahmed has deftly explored the place of shame in the construction of national identity, suggesting that for non-Indigenous Australians 'our shame means that we mean well, and can work to reproduce the nation as an ideal'.⁹⁰ She explains how the 'politics of shame is contradictory' because it is inevitably linked with a desire to restore national pride.⁹¹ This dynamic can be seen at work in the apology where the apology itself 'becomes evidence of the restoration of an identity of which we can be proud'.⁹² This was alluded to by Rudd who emphasised the importance of the apology in its capacity 'to transform the way in which the nation thinks about itself'.⁹³ In this way the apology became central in reconstructing national pride and reconfiguring Australia as the good white nation.⁹⁴ It was a vehicle through which non-Indigenous Australians were encouraged to feel better about the nation.⁹⁵ Ahmed writes that 'feeling better' is important, but emphasises that '[f]eeling better, whatever form it might take, is not about the overcoming of bad feeling, which are effects of histories of violence, but of finding a different relationship to them'.⁹⁶

88 Kelada, above n 9, 4–6; Osuri, above n 9, 2; Sandra Onus, *Shame on you Jenny Macklin – Sandra Onus on the Intervention*, YouTube <<http://www.youtube.com/watch?v=dLwdhsKytHI&feature=Playlist&p=606086F4FED779E9&index=0>> at 24 August 2009.

89 Ahmed, above n 19, 78.

90 Ibid 77, emphasis removed.

91 Ibid 79.

92 Ibid 77; see also Crystal McKinnon, Interview with Gary Foley, above n 68.

93 Rudd, above n 7.

94 Crystal McKinnon, Interview with Gary Foley, above n 68.

95 Ahmed, above n 19, 83.

96 Ibid 84.

Similarly I argue that feeling better – in terms of the stain on the soul of the nation regarding Australia’s racist colonial legacy – is not about overcoming national shame and converting it into national pride, but of finding a different relationship to the stain. I suggest that the stain on the soul of the nation is what it is – what is done cannot be undone. Yet as a nation we can determine not to go down the same destructive, even if well-intentioned, paths of paternalism. This would require, at the very least, drastic amendment or complete repeal of the current Intervention legislation⁹⁷ and nothing less than full consultation and collaboration with Indigenous Australians.⁹⁸

However the federal Labor government is committed to continuing the Intervention.⁹⁹ Although the government has proposed amendments to the Intervention legislation,¹⁰⁰ these fail to fully reinstate the *Racial Discrimination Act 1975* (Cth) (RDA).¹⁰¹ Proposed in November of 2009, the new legislation will extend the operation of the Northern Territory Emergency Response.¹⁰² Although the government believes its new legislation will reinstate the RDA,¹⁰³ others dispute this.¹⁰⁴ The Senate Community Affairs Legislation Committee has claimed that the proposed legislation will reinstate the RDA and furthermore that such measures are ‘special measures’.¹⁰⁵ Yet the Committee

97 However in some Aboriginal communities the Rudd government took an even more draconian stance than the Howard government, ‘insisting landowners lease their land to the Government for 40 years in return for new housing’: Lindsay Murdoch and Joel Gibson, ‘Rudd’s Indigenous Homes Plan for Just 26 Communities’, *Sydney Morning Herald* (Sydney), 25 March 2009 <<http://www.smh.com.au/national/rudds-indigenous-homes-plan-for-just-26-communities-20090324-98wx.html>> at 26 November 2009.

98 On the significance of government collaboration and the promotion of autonomy amongst Indigenous people see Maddison, above n 72, 240–1.

99 Department of Families, Housing, Community Services and Indigenous Affairs, *Closing the Gap in the Northern Territory* (2009) 4 <http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/Documents/closing_the_gap_nter/NTER_Monitoring_Report_p1.pdf> at 26 November 2009.

100 Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 [Provisions], Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 (Cth).

101 Senate Community Affairs Legislation Committee, *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 [Provisions], Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 [Provisions] and the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009* (10 March 2010) 77–8, 94 <http://www.aph.gov.au/senate/committee/clac_cte/soc_sec_welfare_reform_racial_discrim_09/report/index.htm> at 18 June 2010.

102 Australian Government, *Policy Statement: Landmark Reform to the Welfare System, Reinstatement of the Racial Discrimination Act, and Strengthening of the Northern Territory Emergency Response* (25 November 2009) 3.

103 Ibid.

104 Senate Community Affairs Legislation Committee, above n 101, 77–8, 94.

105 Ibid 24.

is simply echoing the Government's assertions about this.¹⁰⁶ There are many issues regarding the Government's definition of 'special measures' that are yet to be satisfactorily addressed.¹⁰⁷ The amendments are likely to draw increased criticism. Challenges to the Intervention legislation under the RDA are likely to occur with these amendments.¹⁰⁸ The new legislation still leaves many of the concerns of Indigenous people unaddressed. The inadequacy of the response of the Labor government in relation to this critical issue has been disappointing and it remains to be seen whether it will effectively address or merely perpetuate Australia's racist colonial legacy.

VI CONCLUDING COMMENTS

Like Howard before him, Nelson claimed that it was necessary to evaluate Australia's history on balance, and he concluded his 'sorry' speech by honouring the suffering of all Australians in building the nation, not focusing on members of the Stolen Generations. In doing so he honoured the efforts of all the good white colonisers who had such benevolent intentions. This lack of statesmanship was well deserving of the single-digit approval rating Nelson earned in the days following. His speech was met with frustration by many Indigenous people, many of whom turned their backs on him as he moved on to offer paternalistic justifications for the Intervention. As Graham Ring observes, 'Nelson started off well and then got steadily worse. His reference to the service of Australian soldiers overseas was distracting, and his harping about the NT intervention was unnecessary and jarring'.¹⁰⁹

However even Rudd's speech, sensitive though it was in many respects, left several significant issues unaddressed which could have been dealt with differently. As mentioned above, Rudd failed to address the issue of the Intervention carrying on in the same paternalistic vein as the removal legislation. He also made several broad claims about what was being achieved by the apology – the removal of the stain on the national soul and the righting of past wrongs. Yet although '[t]he recognition of injury and injustice does matter',¹¹⁰ I argue that the stain on the soul of the nation remains. In Rudd's

106 Commonwealth, *Parliamentary Debates*, House of Representatives, 25 November 2009, 12785 (Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs).

107 Alison Vivian and Ben Schokman, 'The Northern Territory Intervention and the Fabrication of "Special Measures"' (2009) 13(1) *Australian Indigenous Law Review* 78, 97.

108 Senate Community Affairs Legislation Committee, above n 101, 70–1, 82.

109 Graham Ring, "'Sorry' a Triumph, But Only the Start" (2008) 147(7) *National Indigenous Times* 26, 26.

110 Sara Ahmed, 'The Politics of Good Feeling' (2008) 4(1) *Australian Critical Race and Whiteness Studies Association E-Journal* 1, 14 <<http://www.acrawsa.org.au/ejournalFiles/Volume%204,%20Number%201,%202008/acrawsa%205-1.pdf>> at 5 January 2010.

speech there was also an absence of a reference to ‘genocide’, which arguably is an apt term to describe the conduct of Australian colonisers.¹¹¹ Rudd could have gone further in addressing Australia’s racist colonial legacy and drawn stronger links between past injustice and present day disadvantage facing Indigenous Australians.¹¹² He neglected to address the manner in which the federal Parliament suspended the RDA in order to sidestep the protection afforded under it for Indigenous peoples.¹¹³ He also failed to appropriately address the issue of compensation, along with Nelson, who expressly stated that there should be no compensation for members of the Stolen Generations.¹¹⁴

Yet despite claims that compensation for members of the Stolen Generations will not be forthcoming and is not appropriate, many Indigenous leaders have argued that compensation is part of the way forward and that those who have been treated unjustly under the law ought to be compensated for their suffering.¹¹⁵ It has been suggested that ‘Rudd’s apology to the Stolen Generations was moving, but did not go far enough’.¹¹⁶ Michael Mansell has argued that the government should compensate members of the Stolen Generations and that it is unfair of the government to force Indigenous Australians to seek redress through the courts.¹¹⁷ While calls for compensation may have thus far found little favour in the mainstream political realm, there are strong justifications for compensating members of the Stolen Generations.¹¹⁸ Sam Garkawe argues strongly that ‘in a materialistic society such as Australia a monetary award is probably the best form of acknowledgment that any government can provide. It represents a societal recognition in a very public manner that a wrong has

111 HREOC, above n 18, 271–5; Matthew Storey, ‘Kruger v The Commonwealth: Does Genocide Require Malice’ (1998) 21(1) *University of New South Wales Law Journal* 224, <<http://www.austlii.edu.au/journals/UNSWLJ/1998/17.html>> at 26 November 2009, 5; Tatz, above n 23, 97–9, ch 3; Irene Watson, ‘Law and Indigenous Peoples: The Impact of Colonialism on Indigenous Cultures’ (1996) 14(1) *Law in Context* 107, 108; Watson, above n 86, 254, 258, 263; Watson, above n 17, 48; Irene Watson, ‘From a Hard Place: Negotiating a Softer Terrain’ (2004) 7(2) *Flinders Journal of Law Reform* 205, 209; Tony Barta, ‘After the Holocaust: Consciousness of Genocide in Australia’ (1985) 31(1) *Australian Journal of Politics and History* 154, 157; Bruce Elder, *Blood on the Wattle – Massacres and Maltreatment of Aboriginal Australians Since 1788* (3rd ed, 2003) 245; Alison Palmer, *Colonial Genocide* (2000) 1–3; Bird, above n 63, 10, 40; Hollinsworth, above n 20, 187–8.

112 Crystal McKinnon, Interview with Gary Foley, above n 68.

113 Larissa Behrendt, Chris Cunneen and Terri Libesman, *Indigenous Legal Relations in Australia* (2009) xiv, 333.

114 Nelson, above n 59.

115 ‘Speech Moving, But Not Far Enough’ (2008) 147(7) *National Indigenous Times* 7; ‘Pearson Backs Comp Push’ (2008) 147(7) *National Indigenous Times* 7.

116 ‘Speech Moving, But Not Far Enough’, above n 115, 7.

117 Interview with Michael Mansell, SBS Television (13 February 2008).

118 Sam Garkawe, ‘Compensating the “Stolen Generation”’ (1997) 22(6) *Alternative Law Journal* 277; Julian Burnside, ‘Stolen Generation: Time for Change’ (2007) 32(3) *Alternative Law Journal* 131; Maddison, above n 72, 226.

been committed'.¹¹⁹ Garkawe maintains that 'reparations are essential to the reconciliation process'.¹²⁰ There are also arguments based on the need to act with '[m]oral responsibility', the inappropriateness of 'unjust enrichment', and '[p]romoting social justice and equality of outcomes'.¹²¹ Governments regularly engage in programs designed to compensate and assist whites, but balk at making payments to members of the Stolen Generations, while at the same time denying the racist undercurrent of their objections. As Martha Mahoney so astutely points out, '[p]rograms such as aid to agribusiness and bailouts for large corporations are officially treated as if they are "non-raced" when in actuality they are "white-raced"'.¹²² Also, as James Cockayne asserts, '[u]nless we create a ... space for the reparation of members of the stolen generations, we will not be able to heal the injustices wrought by these past practices of forcible removal. Without such a space, there will be no home for reconciliation.'¹²³

Reparation is a significant aspect of the journey towards healing.¹²⁴ Thus far we have had via the apology a partial confession of the sins of the nation (a full confession would involve admission of genocide) and no reparation. Yet without reparation claims to national 'goodness' remain illusory.¹²⁵ Andrew Lynch rightly argues '[a]n apology without any attempt at atonement is a meanly given thing'.¹²⁶ Surely a 'good nation' is willing to take full responsibility for its failings as well as its successes.

Whilst a Compensation Tribunal has been set up in Tasmania,¹²⁷ other Australian jurisdictions have yet to follow suit. No doubt the calls for compensation for members of the Stolen Generations will continue. Time will tell how the Labor government will address this issue, whether it will merely be a matter of fine words or the substantive justice that is longed for. There is clearly a long path to travel if non-Indigenous Australia is serious about healing the wounds inflicted by over 200 years of racial oppression.

119 Garkawe, above n 118, 278.

120 Ibid 281.

121 Behrendt, Cunneen and Libesman, above n 113, 44–5.

122 Martha Mahoney, 'Segregation, Whiteness, and Transformation' in Richard Delgado and Jean Stefancic (eds), *Critical White Studies – Looking Behind the Mirror* (1997) 657.

123 James Cockayne, above n 20, 583.

124 Hollingsworth, above n 20, 22.

125 Crystal McKinnon, Interview with Gary Foley, above n 68.

126 Andrew Lynch, *When 'Sorry' is Not Enough* (11 January 2008) Australian Policy Online <<http://www.apo.org.au/commentary/when-sorry-not-enough>> at 26 November 2009.

127 Human Rights and Equal Opportunity Commission, *Us Taken-Away Kids – 'Commemorating the 10th Anniversary of the Bringing Them Home Report'* (2007) 27.

The reality is, white Australians have ‘benefited and continue to benefit from Aboriginal dispossession and exploitation’.¹²⁸ The fact that politicians quibble over compensation when ‘there is an accumulated debt that needs to be acknowledged and repaid’ is a tragedy.¹²⁹ However there seems to be little acknowledgment by government of this existing debt. The apology to members of the Stolen Generations did not address this issue either.

The apology tinkers at the edges of a racist colonial order, leaving its essential foundations untouched and unexamined. It ‘presupposes both the existence of and the legitimacy of existing hierarchical institutions’,¹³⁰ leaving intact the assumptions of white supremacy which remain at Australia’s core.¹³¹ Yet at the same time it resonates with concern about Australia being perceived as a morally good nation with all stains removed from the national soul. I argue that the white power to shape the nation is still endorsed throughout the apology, but there is a change in the desired perception of how white power operates in the construction of national identity. According to Rudd the apology removed the stain from the national soul. I suggest that this is wishful thinking. Recognition of the injustice suffered by members of the Stolen Generations does not do away with the injustices themselves.¹³² Although acknowledgement of wrongdoing is extremely important it does not right those wrongs. To launch into celebrations over the moral goodness of the nation now that an apology has been issued to the Stolen Generations is premature. As long as oppressive laws and policies remain in force national self-congratulation is misplaced.¹³³ The apology was a gesture which laid the foundations for more positive outcomes to be achieved in the area of Australian race relations, it was a good first step, but many more steps are necessary on the journey towards substantive justice for Indigenous peoples.¹³⁴ As Graham Ring states, ‘this is the beginning of the race, not the end’.¹³⁵ Following the apology, many Indigenous people have concluded that ‘what really matters is what happens the day after.’¹³⁶

128 Hollingsworth, above n 20, 21, 244.

129 Ibid 21.

130 Peter Gabel and Paul Harris, ‘Building Power and Breaking Images: Critical Legal Theory and the Practice of Law’ (1982–83) 11 *Review of Law and Social Change* 369, 373.

131 Hollingsworth, above n 20, 244.

132 Ahmed, above n 110, 14.

133 Crystal McKinnon, Interview with Gary Foley, above n 68.

134 Maddison, above n 72, 213.

135 Ring, above n 109, 26.

136 Maddison, above n 72, 226.

