

THE HON T F BATHURST AC
CHIEF JUSTICE OF NEW SOUTH WALES
RACIAL EQUITY SEMINAR
INTRODUCTORY REMARKS: MURDER AT MYALL CREEK LECTURE*
5 MAY 2021[†]

1. I would like to begin today by acknowledging the traditional custodians of the land on which we meet, the Gadigal people of the Eora nation, and pay my respects to their Elders, past, present and emerging. I also acknowledge and pay my respects to the Wirrayaraay people of the Gamilaraay nation. I extend that respect to Aboriginal and Torres Strait Islander peoples here today.
2. Australia has a shameful history when it comes to racial equality and equity. The 1838 Myall Creek massacre is only one example of hundreds of massacres¹ with genocidal intention committed against First Nations peoples during the colonial period. These atrocities are an indelible stain on the fabric and history of our nation.
3. The prosecution of the white perpetrators that occurred in the aftermath of the Myall Creek massacre was one of the rare occasions where justice was sought and achieved, at least in part. However, if anything, it was anomalous. Even this remarkable success was fraught with difficulties and setbacks.
4. Today, such terrible crimes would rightly be met by collective horror. Yet, as we reflect on the past, we must also be mindful of the present. Our history should

* Introduction to a lecture by Mr Mark Tedeschi AM QC on his book, "Murder at Myall Creek". A video of the presentation can be accessed at <www.youtube.com/watch?v=w0K_kig_vzE>.

[†] I express my thanks to my Research Director, Ms Rosie Davidson, for her assistance in the preparation of this address.

¹ Lyndall Ryan et al, 'Colonial Frontier Massacres in Australia, 1788-1930', *Centre for 21st Century Humanities* (Website, 2019) <<https://c21ch.newcastle.edu.au/colonialmassacres/>>. Funded by ARC: DP 140100399

draw us to sombre reflection on the systemic injustices still faced by First Nations today. Such injustices are not merely relegated to the past.

5. The recent New South Wales Legislative Council Select Committee Report² paints all too stark a picture of the deficiencies of our criminal justice system for First Nations people. Thirty years after the Royal Commission into Aboriginal Deaths in Custody, there has been a significant failure to properly implement, monitor and provide resources for the recommendations which were made.
6. The report shines a light on matters which cause us national shame. It shows us the extreme over-representation of First Nations people in the criminal justice system. It sets out the systemic injustices faced by many Aboriginal and Torres Strait Islander peoples which act as drivers and causal pathways to incarceration. It highlights the tragedy of continuing First Nations deaths in custody, as we grieve the deaths which have occurred so recently. It reveals failings in the system to support First Nations families and communities as they mourn the loss of loved ones who have died in custody, and the pain, frustration and trauma this brings.
7. Equality before the law for Aboriginal and Torres Strait Islander peoples should be the bare minimum. This is not controversial. Yet, the overincarceration and deaths in custody of First Nations people speaks of a failure to achieve this bare minimum. It should also not be controversial that the practical effect of our laws should be equitable. Yet this is not what we see. A recognition of this reality can only assist in encouraging efforts to achieve not only equality before the law but also the fundamental rights of First Nations people, who for millennia were the sole inhabitants of this land.
8. The lack of effective implementation of the Royal Commission recommendations shows just how easy it is for these things to become sidelined if they do not remain in the forefront of our national consciousness. If we do not move forward, we will drift backward.

² Legislative Council Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody, Parliament of New South Wales, *The High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody* (Report, 15 April 2021).

9. The Select Committee report makes many well-considered, important recommendations in pursuit of true justice for First Nations people within our criminal justice system. I commend them to you. The next step, however, is carrying them out. It must be remembered that doing little or nothing is a choice in itself, a choice which has consequences. A great number of the problems which we now confront are due either to the fact that non-Indigenous people have done little or nothing, or have sought to take action without the one factor which is vital to success. This factor is the involvement and guidance of First Nations communities who alone have a real appreciation of their histories, customs and the challenges they face.
10. “Doing nothing” was in many ways the embraced norm when it came to community expectations in 1838 for dealing with the perpetrators of the Myall Creek massacre. We will presently hear from Mr Tedeschi about a man who rejected this norm. This was, of course, John Hubert Plunkett, Attorney-General of New South Wales, who prosecuted the case.
11. John Plunkett was an extraordinary man, convicted in his beliefs and tenacious in putting them into practice. He was not a perfect man. But he played an indisputably important role in being a counter-cultural voice and advocating for justice for the twenty-eight murder victims, irrespective of the colour of their skin.
12. In many ways, despite Plunkett’s success, the fallout and public backlash from the trials showed that it was not to be the watershed moment he may have hoped for. White colonists continued to commit widespread atrocities against First Nations people with impunity for years to come. However, Plunkett’s achievements were nonetheless remarkable and paved the way for greater legal equality of all people in this country.
13. Today, we too find ourselves at a juncture, which may be a watershed moment in reversing systemic injustices and creating equity for First Nations people, if we take action now. Such action requires proper resources, and active commitment from all of us. When this time is remembered in history, what will it be remembered for?
14. I now welcome Mr Tedeschi to speak to us.