

A Death in Alice Springs

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Abstract

The 2010 prosecution of five white men in Alice Springs following the death of an Aboriginal man resulted in their conviction on manslaughter and subsequent sentencing to custodial terms of up to six years each. This article reviews the circumstances of the death and its aftermath to question whether another recent account of the case as an instance of ‘white supremacist settler violence’ in Central Australia can be sustained. Far from being typical of Central Australian homicides, this case was exceptional in its inter-racial character, and far from being exceptional in its sentencing result, this article shows that the prosecution resulted in outcomes for the defendants that appear consistent with the principles in other manslaughter cases. It is argued that interpretation of these events demands an account sensitive to the changing political and social contexts of Central Australia, as well as a contextual account of sentencing practices and outcomes in the Northern Territory jurisdiction.

Introduction

In 2009 the death, in Alice Springs, of an Aboriginal man after he was attacked by a group of five white men attracted widespread national attention. A prosecution in the Northern Territory (NT) Supreme Court in 2010 saw the five defendants plead guilty to charges of manslaughter. Three of them were sentenced to six years’ imprisonment, with a non-parole period of four years. One was sentenced to five years and six months’ imprisonment, with a non-parole period of three years and six months, a sentence that acknowledged his role in assisting police in the investigation and prosecution of the case. The fifth defendant was sentenced to four years’ imprisonment, to be suspended after 12 months, acknowledging his lesser role in the physical assault (he struck no blows) and, hence, reduced moral culpability. One of the men sentenced to six years’ imprisonment was also charged and convicted of recklessly endangering life for his actions in driving a vehicle dangerously close to Aboriginal people in the dry sands of the Todd River where they were sleeping — to this charge he also pleaded guilty and received a sentence of imprisonment, to be served concurrently. All sentences received a discount of between 12 and 18 months because of the

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guilty pleas, such discounts being a standard (and legislated) practice in sentencing in all Australian jurisdictions (Edney 2007:205–8; Douglas 2008:140–1; Fox 1999; Gray 2004:214).

Was this a racially motivated killing, to which the policing and judicial establishment responded defensively to reassert white dominance over the spaces and Aboriginal peoples of Central Australia? National reporting of the case in the country's 'national daily', *The Australian*, emphasised that view (Hall 2010). Even more so did *The Observer* in London a few months later, in a lengthy piece on 'the latest race-hate crime' in 'Australia's Dark Heart' (Storr 2010). The article in *The Observer* appears to be the main source for a recent reading of the case by cultural studies academics Suvendrini Perera and Joseph Pugliese (Perera and Pugliese 2011). For them, the episode is an exemplary instance of the politics of whiteness as property and privilege.

In the sentencing of the five white men responsible for the death of Kumantaye [sic] Ryder, the defendants do not lose their case; rather, they are awarded the consolation prize of whiteness: a reduced sentence situated 'at the lower end of the scale of seriousness for crimes of manslaughter', significantly sweetened by the prospects of white futures replete with inventoried prospects of full employment, fulfilling careers and attendant property accumulation and wealth generation (Perera and Pugliese 2011:84).¹

In what follows, this article questions whether this representation is adequate to the task of understanding what happened in Alice Springs in these events of 2009–10. It is argued that Perera and Pugliese read the event and outcomes of this homicide through a theoretical (and metropolitan) lens that might be helpful for debating the discourses of race and racism, but which has very limited purchase as a tool for understanding the intersections of races and peoples in Central Australia today. What looms large in the text produced by Perera and Pugliese are the theoretical paradigms of a metropolitan discourse of critical cultural studies. What is strikingly absent are any of those sources that might bring us closer to understanding the particular history of the place where an Aboriginal man died and his five assailants were arrested, prosecuted and sentenced to imprisonment. Instead, we are led to rely on a summary account published in a London newspaper,² and a select handful of articles in a volume prompted by the Northern Territory Intervention in 2007 (Altman and Hinkson 2007). The only criminal justice work cited by Perera and Pugliese is Cunneen (2001). Although Alice Springs and Central Australia are among the most intensively researched areas in world anthropology, only one anthropological article (Musharbash 2010) is cited by Perera and Pugliese. No other work on the anthropology or sociology or the history of race relations locally or regionally appears to inform the article, in spite of the rich research available (Rowse 1998; McGrath 1987; Long 1992; Austin-Broos 2009; Merlan 1998; Kimber, Long and Kean in Batty 2006; Roberts 2005; Nettelbeck and Foster 2007; Hill 2002). This article argues that these shortcomings diminish the contribution that might be made by such an approach.

The comments in this article are limited to providing a context that aims to understand the death of Kwementyaye Ryder, the subsequent prosecution of the five white men and the

¹ The article was first published on the web, with an introduction by Uncle Ray Jackson at the Indymedia site: <<http://www.indymedia.org.au/2011/01/25/black-life-white-property-parched-justice>>.

² Contra their claim (Perera and Pugliese 2011:69) that the case received 'comparatively little coverage at the national level', the case was very widely reported in the national press and media — examples include: *The Sydney Morning Herald* (a feature article on 12 December 2009 and an article on the sentencing of the five men on 24 April 2010) and *The Australian* (an article on the sentencing on 24 April 2010; the judge's interview on violence in the Northern Territory and a separate editorial on 28 May 2010).

sentencing outcomes. This article does not provide a full account or interpretation of the events described — in our view the events are, in fact, too recent to enable the kind of neat interpretative frame imposed on them by Perera and Pugliese. The perils of rushing to judgment are evident in the equally complex proceeding and outcome of another Alice Springs inter-racial killing (this time of a white man), for which one Aboriginal defendant was acquitted, while another was convicted and sentenced to prison.³

The death of Kwementyaye Ryder

Kwementyaye Ryder died on Schwarz Crescent in Alice Springs, not far from the dry bed of the Todd River, which passes through the middle of town. It was the early morning of 25 July 2009. He was 33 years old. An Arrernte man, his traditional lands to the east of Alice Springs included Corroboree Rock, N'Dhala Gorge, Trephina Gorge, and the Ross River area, country said to have inspired him to train as a park ranger, his occupation at the time of his death. He had previously done stock work and fencing on a number of cattle stations. The eldest son of the respected artist Theresa Ryder, he had three brothers and five sisters. He spoke English and Arrernte fluently and could also speak some Anmatjere, as well as some Adnyamathanha, the language of the Port Augusta region. He had gone to school in Alice Springs, making friends 'with a lot of white kids', as his mother has recalled. Along with his brothers, he was a long-time Federals Football Club player and supporter in the local Australian Rules league. He loved spending time with his family; he could not walk past a family member's house without stopping and talking for a while. In a statement to the media, his family recalled him as 'a young man full of compassion and love with a vibrant energy for life' and 'who always held a welcome smile with a "hello" for everyone he met'. His mother described him as 'the happiest in the family — he brightened up everything'. His favourite music was modern country, and he would sing along to Mike Chestnutt, Clint Black and Alan Jackson, to name a few. He would pick up the words to new songs straightaway, and all of the family would sit and listen to him sing. When he went out on the town he would 'dress to the nines' in his Western wear, complete with Akubra hat and boots. This is how his fiancée first met him at Bojangles Saloon in Alice Springs.⁴

Like the men convicted of his manslaughter, Ryder had been drinking heavily the night before he died. Toxicology reports revealed that his blood alcohol reading was 0.22. There are no readings available for his assailants, but four of them by their own admissions had had a great deal to drink: of the three who actually struck Ryder, one had drunk a 700ml bottle of Bundaberg rum in the course of the night, the equivalent of about 20 standard drinks; another had drunk six cans of rum cruisers, followed by 4–6 vodka and oranges, later

³ In *R v Woods & Williams* [2011] NTSC 24 the defendants pleaded not guilty to a charge of murder of a white man by stabbing in Alice Springs in April 2009. Earlier proceedings in the case raised the issue among others of racial bias in jury selection. One proceeding resulted in a Supreme Court direction that the process of jury selection in Central Australia be reviewed (*R v Woods and Williams* [2010] NTSC 69): see Goldflam 2011b. The majority of the jury eventually empanelled was non-Aboriginal (several Aboriginal potential jurors were excused on the grounds that they were related to or knew the defendants or their families). The jury acquitted one of the accused and found the other guilty of the lesser charge of manslaughter. Graham Woods was subsequently sentenced to nine years and six months' imprisonment, with four years and nine months' non-parole (Finnane (2011)). In contrast to the Ryder case, this inter-racial trial with Aboriginal defendants received almost no national publicity.

⁴ Biographical information is sourced from statements by his family, his mother and a tribute by Alison Anderson MLA in the NT Legislative Assembly, reported by Finnane (2009), Finnane (2010a) and Alice Springs News (2010).

adding Strongbow cider to the mix; the third had started the evening with a beer, then bought a carton of Strongbow cider and had been drinking it steadily throughout the night. In the early hours of Saturday, two of these three were admitted to Lasseter's Casino where they had a beer.⁵

Ryder had had an argument with his fiancée and was making his way to a relative's home in Charles Creek town camp when he was assaulted. He had stopped at one of the camps in the river and, according to the evidence of a man who spoke to him shortly before he died, had witnessed and was angry about a vehicle which had driven at speed towards the campers, narrowly missing an old man who was unable to move quickly out of the way.⁶

Leaving the riverbed, according to the facts agreed on sentence, Ryder was walking westwards along Schwarz Crescent (an extension from the causeway crossing the river) when he threw a bottle at a White Hilux ute, the car that had been driven at the campers. The bottle smashed against one of the right-hand side panels. The driver immediately did a U-turn and drove right up to Ryder, close enough for him to put his hands on the bullbar before he turned to run away. The three back seat passengers got out of the car, followed by the front seat passenger; the driver remained at the wheel.

Ryder fell to the ground. Again, according to the agreed facts, one assailant kicked him once; another, twice in the forehead; the third struck him on the head with a stubby bottle (it did not break). The fourth did not get involved physically. The four then all got back into the car and drove away. Ryder died at the scene. These events happened in a matter of seconds.

According to a police media release at noon that day, police were alerted to the death by a member of the public who had witnessed contact between the dead man and occupants of a white dual-cab Toyota. Other witnesses told police that the same vehicle had driven 'through two itinerant camps in the area causing a disturbance'. The police immediately treated the death as suspicious and issued a call for the occupants of the vehicle and anyone with information about the incident to come forward. By the next afternoon, police information was that the occupants of the vehicle had engaged in a 'physical confrontation' with the deceased man and they circulated a photo of a vehicle similar to the one of interest, now described as a 'ute'.

Four days after the death police were calling it murder and had issued individual descriptions of two of five men involved, describing all five as Caucasian. On the fifth day a 'comfit' of one of the men was released. It was published the next day, 31 July 2009, in the *Centralian Advocate*, one of two local newspapers, taking up most of the front page. At the same time, Ryder's family released his full name, an unusual step in Central Australia in relation to an Aboriginal deceased person, as well as the now well-known photograph of him, seated outside an Alice Springs bistro, wearing his Akubra, smiling broadly, with a beer in his hand. In their statement to the media, police expressed their 'deepest condolences to the family and friends of Mr Ryder', adding: 'We will continue to do everything we can to investigate this matter and find those responsible'. Over the weekend, together with

⁵ The summary here and in the following paragraphs draws on reports of the case by Kieran Finnane as published in the *Alice Springs News*, and on her notes of proceedings at the committal and sentencing hearings.

⁶ 'Town camps' is the colloquial name for 'Aboriginal Living Areas' under special lease to a number of Aboriginal housing associations and now subleased for 40 years to the Australian Government. Currently being upgraded from their notoriously squalid state, they are nonetheless comparable to small housing estates, distinct from the camps in the river, which are simply people gathered around a campfire, possibly with some basic camping gear like swags or blankets and a billy.

Darwin Major Crime Detectives, Alice Springs Regional Detectives arrested the five men and charged them with murder, as well as eight counts of recklessly endangering life.

From the moment the news became known, both of Ryder's death and the apparently related endangerment of Aboriginal people camped in the river, there was widespread anxiety in Alice Springs, in everyday private conversation as well as in local media coverage, over the possibility that the behaviour of the white occupants of the vehicle had been racially motivated. Police statements from the beginning attempted to dismiss this, emphasising rather the prevalence in the Northern Territory of alcohol-fuelled violence.

Equally there was anxiety that racial tension might lead to further violence. When the five defendants made their first court appearances in early August, Ryder's family took the initiative of appealing for calm in the community in the lead-up to the anticipated trial. Their moving statement was widely reported, together with photographs and footage of the large family group, which included Ryder's white fiancée. Among many points they made, the family acknowledged the quick response by police, who had combined 'professionalism' and 'cultural sensitivity'. They also said: 'This is a crucial time for the whole community and governments to come together through compassion and understanding as human beings and as one community' (Finnane 2009).

Anxiety over racial tension resurfaced in late September 2009 when the cross erected at the spot where Ryder had died was burnt. Initially believed to have been a deliberate desecration, and widely reported as such, the burning was later revealed to have been accidental, the result of candles lit to honour the memory of Ryder. A group of local residents, some if not all white, responded to the burning by making and erecting a new cross on the site (ABC Radio 2009). Several hundred residents raised the funds to pay for and put their name to a large advertisement in the *Centralian Advocate* (2 October 2009), rejecting all acts of racism and advocating harmony in Alice Springs.

The committal hearing of the charges against the five began in mid-December 2009. Witnesses included Aboriginal campers who had been endangered in the river. Several gave evidence about their fear as the car approached them at speed; more than one said that the car had driven over their blankets or swags and that they had to move quickly out of the way; one old man had been unable to move out of the way and was narrowly missed; one, a woman, told of throwing a stick at the car in retaliation; another gave evidence of racist taunts from the five — terms like 'black bastards' and 'niggers'; and another said she heard two of the five say, 'You mob stink like this Todd River'. All this was reported on the ABC, whose Alice Springs staff covered the committal hearing intensively, with many reports going national (ABC Radio News 2009).

Evidence from the pathologist who conducted the autopsy on Ryder was also heard at the committal. No previous information had been made public about the cause of death. The pathologist told the court that Ryder had died from a sub-arachnoid haemorrhage, most likely to be the result of a ruptured pre-existing aneurism. The rupture was likely to have been caused by 'blunt force trauma', but the pathologist could not isolate a single cause of that trauma — whether one blow, a number of blows or possibly a fall. None of the abrasions, lacerations and bruising to Ryder's head and face, and abrasions to shoulder and arms was described as severe and all could be consistent with a fall, said the pathologist.

At the conclusion of the committal, the five were ordered to stand trial. At arraignment, on 6 April 2010, the Director of Public Prosecutions offered to drop the charges of murder

in exchange for a guilty plea to manslaughter. The charges of recklessly endangering life were also dropped for four of the five, with only the driver of the vehicle facing a single count of engaging in conduct 'that gave rise to a danger of death' for one man, aggravated by 'use of an offensive weapon, namely a motor vehicle'. The driver also pleaded guilty to this charge.

From there, events moved quickly. The hearing, before Chief Justice Brian Martin, began on 17 April 2010. On the basis of the case put to him by the prosecution and by counsel for each of the defendants, the Chief Justice said he was satisfied that the conduct leading to the death of Kwementyaye Ryder was a matter of negligence, rather than recklessness — negligence being a less serious form of manslaughter.

The Chief Justice addressed directly the issue of racial motivation. Early in his remarks he observed that he was

satisfied that there were racial elements in the earlier events [the hooning in the river-bed] and that a tone or atmosphere was set of antagonism towards and harassment of Aboriginal persons that is likely to have influenced the later conduct of all offenders (*R v Doody* at [4]).

In subsequent remarks under the heading of 'Racial overtones', the Chief Justice concluded that: 'It is relevant that it was an Aboriginal person who threw the bottle which smashed against the side of the vehicle' (at [42]). He then considered the hypothetical case of whether the assault would have been different in the case of a white man.

If a drunk white man had done likewise, I am satisfied that as a group, the offenders would have reacted angrily and sought to confront him. However, it is difficult to avoid the conclusion that the nature and rapidity of the reaction, and the actions of some offenders in kicking and striking the deceased while he was on the ground were influenced, at least to some degree, by the fact that the deceased was an Aboriginal person. Ultimately it remains unknown whether the attack would have gone as far as it did if the deceased had been a drunk white person. I doubt that any of the offenders now know the answer to that question (at 43).

During sentencing submissions the Court saw for the first time a part of the filmed record of interview by police of the defendant Glen Swain. He broke down and wept when he was asked if he had intended to kill Kwementyaye Ryder. 'No way!' he said through his sobs, 'I would never do that, intentionally do that, to anyone'. He was also asked whether he had ever kicked anyone else in the head, as he had admitted doing to Mr Ryder. Through continued sobbing he said 'no' and added: 'It was such a dog act ... to kick him on the ground' (Finnane 2010b). This was one of very few occasions during the hearing that there was evidence from one of the defendants in their own words.

After sentencing on 23 April 2010, all five were returned to the Alice Springs gaol, where they had been in custody since the date of their arrest.

The place called Alice Springs

Inter-racial killing is uncommon in contemporary Australia, and non-Indigenous killing of Indigenous victims even more so. Data from the National Homicide Monitoring Program annual report, collated by the Australian Institute of Criminology, suggests that over the last two decades (1989–2009), cross-race homicide involving Indigenous offenders or victims accounts for less than 6% of all Australian homicides (378 of the 6519 homicides). Over

that period, there have been 280 homicides committed by Indigenous offenders on non-Indigenous victims compared with 98 by non-Indigenous offenders on Indigenous victims — a difference accounted for mainly by the disproportionate populations of Indigenous and non-Indigenous potential victims. Convictions of Aboriginal people for homicide are principally on account of the killing of other Aboriginal people. This is especially true in the Northern Territory, which has the highest per capita imprisonment (crude) rate in Australia (Australian Bureau of Statistics 2010: Table 3.3).⁷ The killing by non-Aborigines of Aboriginal people is rare; it attracts and for long has attracted notoriety where it does occur. Aboriginal homicide victims are distinguished by the fact that they almost always know their assailants.⁸ One would not imagine these facts from reading the account of Alice Springs and Australian race relations given by Perera and Pugliese. For them, it is enough to describe the events that occurred in the Todd River resulting in Ryder's death to invent what for them is an all too obvious determination — 'The setting of this story alone makes it clear that the victim was an Aboriginal man. Those responsible for his death, as surely, were not' (Perera and Pugliese 2011:69). In tying the setting to the event, their inference betrays a failure to appreciate the awful reality of violence against Aboriginal victims, in or near the river, and elsewhere in Central and Northern Australia. Most of Alice Springs' many murders and many of the town's many rapes are committed in or near the dry Todd River bed (Goldflam 2011a)⁹. It is common knowledge in Alice Springs that the majority, if not all, of the murder victims are Aboriginal, a high proportion women dying at the hands of their men. The assault victims are also mostly Aboriginal, although some white people have also been assaulted in the river.

The infrequency of inter-racial homicide does not imply that harmony rules in inter-racial relations in Australian country towns with large Aboriginal populations. Angry politics, discrimination in policing and civic affairs, derogatory and racist attitudes — all are widespread, have a very long history, and are well documented.¹⁰ The legacy of dispossession and failed government policies to address its consequences are in plain view in such towns. Alice Springs is no exception, but it is distinctive in the particular character of its governance, demography and property relations. Its particularity is totally obscured in the account given by Perera and Pugliese. In their tale, a gothic parable in which Alice Springs and the death of Ryder are metaphors for the history of Australian white settlement,

⁷ The age-standardised as well as crude imprisonment rates for Indigenous people are, however, lower in the Northern Territory than in three of the states: New South Wales, South Australia and Western Australia.

⁸ 2000–09 data on request from Australian Institute of Criminology (2011); 1989–2000 data from Mouzos 2001. The latest National Monitoring Program annual reports (2006–7 and 2007–8) both show an absence of 'stranger relation' in the homicides of Aboriginal people — *all* victims were killed by intimate partners, other family or 'friends/acquaintances' (Dearden and Jones 2009:30–1; Virueda and Payne 2010:23). In 2001, Mouzos reported on the 11-year data (1989–2000) of the National Homicide Monitoring Program that only 2.7% of Indigenous victims were killed by a stranger, compared to more than 20% of non-Indigenous victims. A detailed analysis of Western Australian crime statistics in the 1990s concluded that levels of cross-race (Aboriginal and non-Aboriginal) violence were low: Harding et al 1995:31–3). For a contextualised interpretation of Aboriginal crimes of violence see especially (Broadhurst 2002).

⁹ Russell Goldflam, the author of an article detailing the impact of alcohol on Aboriginal people in Alice Springs, is a senior legal aid lawyer of many years experience in the town. He has appeared in many local cases involving serious drunken violence. He acted for white defendant Anton Kloeden, convicted of the manslaughter of Kwementyaye Ryder; he acted for Aboriginal defendant Graham Woods, convicted of the manslaughter of Ed Hargraves (discussed above n 3). He is also a long-standing critic of the treatment of Aboriginal people in the criminal justice system, see eg (Goldflam 1995).

¹⁰ For race relations in contemporary Australian towns see Cowlshaw 2004; Cowlshaw 1999; Cowlshaw 1988. For crime and Indigenous peoples in rural towns in Australia see Cunneen and Robb 1987; Hogg and Carrington 2006; Barclay 2007. For a compelling account of inter-racial relations in contemporary Alice Springs, see Moss 2010.

there is no distance between past and present. Consequently, they fail to observe the transformation of this place, which they prefer to capture through the lens of globalised cultural studies: 'Alice Springs is a place still marked by the territorial (that is, spatial, racial, epistemic) demarcations that hold in place relations between colonised and coloniser, black and white (see Mbembe 2003)' (Perera and Pugliese 2011:66). Consider, against this characterisation, the following realities of Central Australia's capital, where so many factors complicating the colonial past are now in play.

Land rights and native title have transformed property relations in Central Australia over the last 35 years. Just under half the land mass is now under Aboriginal ownership (Central Land Council no date), including most national parks, with the remainder likely to follow; while recognition of native title has been determined in substantial areas of Alice Springs.

This transformation has contributed to the rise of an Aboriginal middle class, the rise of black business and the accumulation of black capital. Black capital is now very significant in Alice Springs where Aboriginal corporations own the premises of two major shopping centres, half of the biggest car retail company in town and half of the biggest real estate agency in town. Entities related to the native title holder corporation, Lhere Artepe, are involved in a major residential land development in the town and have recently bought three suburban supermarkets, each of which has a profitable takeaway liquor shop. A fourth supermarket and bottle shop is owned by Tangentyere Council, the long-established Aboriginal corporation that has played a key role in Aboriginal and urban governance in Central Australia since its establishment in 1974 and incorporation in 1979 (Rowse 1998; Tangentyere Council 2008). These economic developments accompany and are frequently in tension with the main focus of Australian (Federal) Government investment in the town, which is Aboriginal 'welfare' in its many manifestations (housing, health, social security etc), catering to the needs of a large and mobile central Australian population. Perera and Pugliese (2011) paint a picture of a white town in a white country, showing no awareness of the growing power of Aboriginal organisations, of the presence of Aboriginal parliamentary representatives or of Aboriginal councillors in local government. In doing so, they reproduce a stereotype of Aboriginal people as victims, lacking agency. Their analysis cannot apprehend the prevalence of mainstream acknowledgment of the importance of Aboriginal culture, from the design of the mayoral robes and the acknowledgment at every public occasion of traditional owners, to the central place of Aboriginal art in the town's cultural institutions and programs, and its tourist economy. Neither can such images of a downtrodden people explain the rapidly changing social picture: where local state primary schools currently have a 50 per cent Indigenous enrolment; where there is a slow but steady rise in Aboriginal graduates of Year 12; where there is a strong and well-funded Aboriginal organisation sector; where Aboriginal interests are substantially catered to not only by welfare services specific to them but by, for instance, the creation of the Desert Peoples Centre (for education and training) and the Cooperative Research Centre for Remote Economic Participation; and where Aboriginal contributions are recognised by their representation on major boards and committees. Aboriginal people are not marginal to Alice Springs, they are central to its politics and to many aspects of its life and economy.

Looming large in 'Death in a Dry River' is the spectre of the Intervention. Adapting Franz Fanon's critique of military occupation under colonial conditions Perera and Pugliese (2011:66) describe the Intervention as buttressed by 'military force'. While the task force was headed by a military commander, on the ground the army only provided logistical support; the soldiers were unarmed and dressed in fatigues; their numbers were minimal

alongside the health professionals, police and above all the bureaucrats. The controversy over the rejection by Tangentyere Council of government buy-back of the Alice Springs town camp leases has only one possible explanation for Perera and Pugliese: ‘The incredulity and impatience with which this rejection was received is explicable only in the context of an occupying (neoliberal) rationality that continually erases the conditions of its own generosity’ (Perera and Pugliese 2011:67). For them, the town camps are ‘spaces of respite and survival’, and of course resistance to the ‘territorialising practices, values and “social logics” of settler society’. The indifference to historical accounting for the existence of the camps enables Perera and Pugliese to ignore the possibility that the town camps’ condition is a shared responsibility of the individual Aboriginal housing associations, of Tangentyere Council and of Aboriginal individuals and families, as well as of the Alice Springs Town Council and the Territory and national governments. The superficiality of Perera and Pugliese’s interpretation of the state of the town camps is highlighted by the more recent condemnation of their condition by the Aboriginal Social Justice Commissioner, Mick Gooda (Schliebs 2011).

The Alice Springs depicted by Perera and Pugliese (2011) is a caricature of the place that exists, drawn for the sake of an argument they want to make about the discourse of race in a still colonial society. Consequently, the authors show no awareness of the nuances of human affairs in such a mixed society. Arguing that the sentencing remarks effect a silencing of the victim and of Aboriginal people generally in this town, their approach cannot take note of or interpret what Ryder’s aunt said outside the court after the sentencing:

We all live in this community as Aboriginal and non-Aboriginal people and long-term residents must stick together. We’re satisfied with what has happened. They are only young men and their sentences, they are going to spend a long time in there (Finnane 2010a).

In the mixed society to which she referred, the relatedness of black and white resists simple racial polarities.¹¹

Ryder's fiancée was white. Together with his mother and sisters, she cropped her hair in mourning; she sat with the family throughout the hearings; she wept in his mother's arms after the verdict.

There was a close past history between the family of one of the five (Timothy Hird) and Ryder's aunt, Karen Liddle, who was one of the main family spokespeople throughout the proceedings. After the verdict Mrs Liddle approached Mr and Mrs Hird and held them in her arms. A little later Mrs Hird and the mother of another of the five (Joshua Spears), came out of the courthouse and went to see Ryder's mother; they all held each other and cried together.

The parents of Anton Kloeden, the sober driver of the vehicle used by the five men, both had long work history and ties with Western Arrernte people, and were living at the Aboriginal community of Ntaria (Hermannsburg) at the time of Ryder’s death.

Ryder's mother, deeply and justifiably angry though she was at the death of her son, made a point of saying she did not and had never blamed the families of the five. She knew that, like her, the parents were at home, not knowing what their sons were up to.

¹¹ These observations draw on the continual reporting of the case by Kieran Finnane, as published in *Alice Springs News*, as well as on her knowledge of the people concerned.

A superintendent of Alice Springs police, a white man, and like the Ryder family a practising Catholic, was still visiting Ryder's mother regularly, as he had done since the death, until he was posted to Darwin in early 2011. This was simply out of compassion, not part of his official duties and not known to many. The police officer, a white man, who identified Mr Ryder's body was a former school friend of the deceased. He had the unenviable job of telling Theresa Ryder that her son was dead. Knowing the family as he did, he went first to ask a close relative to accompany him so that Mrs Ryder would have immediate family support when she was told the tragic news.

Not without reason the first observation of the sentencing judge was to draw attention to 'this tragedy for all concerned'.

The scales of justice

In their article, the substantial focus of which is the sentencing remarks of the Chief Justice, Perera and Pugliese (2011) pay no attention to the structures of criminal law, the principles of punishment in contemporary sentencing, the protocols of judicial procedure and conventions of judicial reasoning. Their start and end point is the proposition that the sentences awarded in this case must be read as a product of white privilege, a reassertion of property relations in a colonised space marked by Aboriginal dispossession and continuing disadvantage.

Against this determinism, this article proposes a number of more mundane readings of the proceedings in *R v Doody* in order to address a number of questions raised by Perera and Pugliese (2011) about the sentencing remarks of the judge. Was the focus on the biographies of the defendants at the expense of the victim? Was the sentence awarded indicative of the kind of leniency that would be expected in a court exercising white privilege? How were the defendants' histories and antecedents assessed by the court? In short, is the outcome a 'consolation prize' (Perera and Pugliese 2011:84) for the privilege of being white, a reassurance of barely interrupted progress to white prosperity and accumulated wealth? A contextual reading of the sentencing remarks suggests nothing like the analysis proffered by Perera and Pugliese.

Before doing so, it is important to recall the function of sentencing proceedings in a case in which the adjudication of guilt was not at issue. The purpose of the sentencing remarks in *R v Doody* was to estimate the degree of responsibility of the individual defendants and calculate an appropriate punishment. In those remarks, the focus on the biographical detail of the *five* defendants' lives required a lengthy proportion of a document that flowed not from an indifference to the life of their Aboriginal victim, but from the narrower purpose required of a judge in determining a sentence. In that task, a judge is guided by specific legislation (in the Northern Territory, the *Sentencing Act* (NT)), which sets out the purposes for which sentences may be imposed (s 5(1)), and the factors to be weighed by the judge in exercising the discretionary power of determining a sentence (s 5(2)). Among those factors is one that was directly relevant to issue of discounting of sentence: 'whether the offender pleaded guilty to the offence and, if so, the stage in the proceedings at which the offender did so or indicated an intention to do so' (s 5(2)(j)); see also Gray 2004:213–4).

It should be recalled first that the defendants were convicted on a charge of manslaughter (and Kloeden of the additional charge of recklessly endangering life). The charge was not,

contra the implication of Perera and Pugliese (2011:69), reduced by the judge from a charge of murder. The decision on charge was one made by the Director of Public Prosecutions. The count of murder was dropped in exchange for a plea of guilty to manslaughter (Finnane 2010c). Further, as discussed earlier, the evidence of the autopsy was that Ryder was most likely to have died from a haemorrhage caused by a ruptured aneurism, which in turn was most likely to have been caused by blunt force trauma, a blow or blows or possibly a fall. Such evidence seems likely to have jeopardised the prospect of any conviction on a charge of murder in a criminal law system requiring proof to the standard ‘beyond reasonable doubt’. Unlike other Australian cases in which non-Aboriginal assailants have been prosecuted for homicide of an Aboriginal person, the defendants pleaded guilty. In doing so, they surrendered their opportunity to defend individually their culpability for Ryder’s death. The depth of their remorse was widely acknowledged in the course of the sentencing proceedings, surely a far cry from the conventions of ‘white supremacist settler violence’ in which Perera and Pugliese (2011) seek to situate this death.¹² Remorse, it should be noted, is a relevant sentencing consideration in Australian law (Edney 2007:175–6; Fox 1999:305–6).

For Perera and Pugliese (2011:71) the ‘biographies of the defendants detailed in the judgement are inventories of whiteness as property, understood in the broadest sense of the word: inventories that will supply the legitimate grounds for the virtual redemption of the crime’. Their analysis does not contextualise the function of sentencing remarks, nor their relation to sentencing principles. In particular, the analysis does not compare these sentencing remarks with those of any other case. Were they to notice the realities of Indigenous sentencing, they would have to confront the reality that sentencing jurisprudence has long considered *disadvantage* to be a mitigating factor in the sentencing of Aboriginal defendants. Criminal law takes notice of positive social attributes (a consistent work history, personal reputation, a clean police record) in calculating the possibilities of rehabilitation (one of the elements in the sentencing calculus), and it also takes notice of disadvantage in calculating blameworthiness and the scale of retribution. Courts also take note of personal attributes that bear little or no relation to property or privilege, such as fulfilment of kin and filial obligations, and caring behaviours and histories.¹³

¹² Contrast, for example, the plea of not guilty by the 19-year-old defendant Clifford — in the only other prosecution cited by Perera and Pugliese (2011: 80) — on a charge of manslaughter of Kane Mason. Clifford’s teenage accomplice was later convicted for murder (on a guilty plea), and sentenced to 14 years’ gaol. Clifford (sentenced to six years’ gaol, three years’ non-parole) was described during sentencing by the judge as having been diagnosed with ‘a major psychotic illness’ (Wallace 2005) — a fact not mentioned by Perera and Pugliese. For a notorious historical case still provoking community debate in Alice Springs where a street is named after him, see the 1891 prosecution of the Central Australian colonial police officer William Willshire, in which Willshire pleaded not guilty to the charge of murdering two Aboriginal men, and was acquitted to the delight of a cheering Adelaide courtroom (Nettelbeck and Foster 2007).

¹³ From many examples that might be cited, see this extract from Justice Riley of the NT Supreme Court in sentencing an Aboriginal woman for the negligent manslaughter (by stabbing) of her husband:

At the time of the plea and again today, members of your family were present in the Court. They have made a significant sacrifice to travel the long distances necessary to be with you and support you. I am told and I accept that you have a very close family and their presence in Court has proved that to be so. I have subsequently received a series of references from people who know you. They confirm that you are not known as a violent person and that you have been a good mother to the children of your sister. They talk of your work history which I note is commendable. They also talk of your history of relationships which involved significant violence against you. However the relationship which you had with the deceased was said to be a good relationship (*R v Jodie Johnson* at 4).

For many comparable comments in sentencing of Aboriginal male defendants see, eg, *R v Joachim Golder*, a case involving a man beating his wife to death with rocks, in the Todd Riverbed, in which Kelly J observed:

But is it possible, nevertheless, that in administering judgment in this case, the Court has ended up with a ‘virtual redemption of the crime’ (Perera and Pugliese 2011:71)? The work of sentencing is an ‘unenviable task’, as Martin CJ noted. Can it be argued that the judicial act of awarding a sentence of six years’ imprisonment, with four years’ non-parole, in a Central Australian prison, initially at least in almost perpetual confinement, can constitute a ‘virtual redemption’ of the crime for which these defendants were convicted? Certainly two of the defendants did not think so, since they applied to appeal the severity of the sentence, one later withdrawing and the second failing in his application for leave to appeal (Henderson 2010). In a victim impact statement, Ryder’s mother called for life imprisonment, though following the sentencing his aunt suggested the family had accepted the outcome. But how does the sentence appear against the standard for manslaughter? Can it possibly be viewed as somehow signalling a redemption?

While in the Northern Territory a person convicted of manslaughter is liable to life imprisonment (*Criminal Code* (NT) s 161), that penalty (unlike that for murder) is not mandatory. Martin CJ concluded that the circumstances of Ryder’s death placed it at ‘the lower end of seriousness’, a statement for which he elaborated a detailed context:

[I]f a greater degree of violence had been inflicted, or if the attack had been prolonged, or if the offenders had been aware of a substantial risk of causing the deceased’s death, the crime would have been in the more serious category. None of these types of aggravating features existed (*R v Doody* at [111]).

There were, however, a number of other aggravating factors detailed by the Chief Justice during sentencing, including those of antagonism towards Aboriginal people, collective violence (offence committed in company with others), use of a weapon (the bottle), as well as other matters. While racial motivation is not specifically named in the *Sentencing Act* (NT), the statute requires a judge to consider factors including where the offence is ‘motivated by hate towards a group of people’ (s 6A). Racial motivation was a factor distinguishing the sentences imposed on the convicted defendants in an earlier case involving two young white men wantonly assaulting an Aboriginal man in 2007. In that case, the sentencing judge (Angel J) told one defendant during sentencing that: ‘your crime was racially motivated. As courts in the past have said, it cannot be too strongly emphasised by the court that where there is a racial element in an offence of violence that is an aggravating feature’ (*Grivell & Mackley v The Queen* at [12]). On appeal against the length of non-parole periods imposed in that case, the NT Court of Criminal Appeal was even clearer. It was Martin CJ who observed during resentencing:

In my opinion Mackley’s culpability and the gravity of his conduct was significantly greater because he was motivated by racial hatred. In addition, the element of general deterrence looms larger in Mackley’s offending by reason of that motivation. Men like the appellant who perpetrate acts of violence by reason of racial hatred must understand that their violence is reprehensible and completely unacceptable to the reasonable members of our community’ (*Grivell & Mackley v The Queen* at [39]).

I am told that you are an initiated man with strong traditional values when you are not drinking and that you have, for long periods of time, worked out bush as a stockman and station worker, happily and contentedly away from alcohol and out of trouble. ... You come from a respectable family from Santa Teresa. Your sisters have been in Court to support you throughout the course of your trial and are present today to hear you sentenced. It is a very sad matter for them. You have caused great sadness to your family from what you have done and the fact that you will now have to go gaol until you are an old man (at 3).

The racial element was again identified by Martin CJ in the sentencing of the defendants involved in Ryder's death, when he listed *first* among those aggravating factors in the offence, the antagonism, aggression and abuse towards Aboriginal people displayed by the defendants, two of them in particular (*R v Doody* at [119]).

In the language of official statistics, the sentences received by the five defendants fell in the mid-range of 5–10 years (Department of Justice, Northern Territory Government 2009:24). Custodial sentences for manslaughter in Victoria over the decade 1986–1996 had a median in any year between four-and-a-half and seven years (Fox 1999:889).

In his remarks in sentencing the five defendants in this case, Martin CJ also observed of manslaughter penalties in the Northern Territory that 'a significant number of cases resulted in head sentences in the approximate range of four to six years' (*R v Doody* at [114]). He also observed of recent manslaughter sentencing cases that '[n]one of the individual cases are of particular assistance to me because none of them involved circumstances close or similar to the circumstances of the crime with which I am concerned' (*R v Doody* at [114]). Nevertheless, some indication of the relative weight of the sentences in this case can be conducted by reviewing recent appeals in other manslaughter cases in the Northern Territory. They include, for example, a sentence in 2002 of five years' imprisonment for a manslaughter at Elcho Island involving stabbing, suspended at the time of sentencing after the defendant had spent two years in custody (*R v Daniel Batutjula Yunupingu*); a sentence of four years' imprisonment, with two years' non-parole, for a manslaughter at Tennant Creek involving an assault with a metal bar after a fight over beer (*R v Sebastian Walker*); a sentence in 1993 of seven years' imprisonment with a three-year non-parole period, for a manslaughter involving a multi-person attack in Darwin in which the deceased was beaten with a variety of weapons by others, but kicked in the head and body by the defendant (*Shane Chenery v R*); a sentence of 14 years' imprisonment, nine years' non-parole, for a manslaughter conviction of a man who had killed his wife in an Alice Springs town camp, a stabbing involving no less than 18 knife wounds to her body (*Bryce Jabaltjari Spencer v The Queen*).

Comparative sentencing data, as well as more considered application of the context and protocols of sentencing remarks, lends no support to the view that the sentencing of the five white men for the manslaughter of Ryder was a 'virtual redemption' of the crime.

Conclusion

This article has considered some of the context that should be considered when analysing a crime, its prosecution and sentencing. These are social events with histories and consequences that can rarely be interpreted without unsettling theoretical frameworks constructed for other purposes. By focusing on the single factor of 'race', critics like Perera and Pugliese risk simplifying the complex conditions shaping the events discussed in this article. A tendency to displace close description and contextualised appreciation of the phenomena being studied will only perpetuate illusions and preconceptions, distancing analysts from the world they purport to understand. When intellectuals go down such a path, they run the risk of not being heeded at all. Dealing with such an event as this, a death and its aftermath, it is suggested that more is demanded of those who choose to write about it.

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