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1998

## Preface: putting the question

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### Recommended Citation

Perrin, C., Preface: putting the question, *Law Text Culture*, 4, 1998, i-v.

Available at: <http://ro.uow.edu.au/ltc/vol4/iss1/1>

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## Preface: putting the question

### **Abstract**

Terra nullius is the principle of aviolence that inheres in every origin. And in its wake there is no law, no text, no culture, free of that violence. The origin is no accident. Terra nullius is not an historical error.

Our conceptual legacy is the unsettled and unsettling history of this violence. It demands critical and creative thinking. Or else, in the name of justice, equality, freedom, identity, community, sovereignty, history and, indeed, of violence itself, we are condemned to repeat this origin again and again.

## ***Preface:***

### ***Putting the Question***

***Colin Perrin***

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Our conceptual legacy is the unsettled and unsettling history of this violence. It demands critical and creative thinking. Or else, in the name of justice, equality, freedom, identity, community, sovereignty, history and, indeed, of violence itself, we are condemned to repeat this origin again and again.

Thinking demands something other than the preservation of existing meanings. It also requires something other than their renunciation. When it comes to colonialism, Frantz Fanon has said, our concepts should always be a little stretched.

In the wake of terra nullius, this then is the obligation, the invitation. To think otherwise. To think through unsettled territory.

With different perspectives, varying in focus, in orientation, in inspiration, this is the invitation, the obligation, to which these texts are the response.

I am not going to add to these words here. Their elaboration will follow in these texts as each, in its own way, addresses the fact that terra nullius is not dead.

The ambition of this volume of **Law • Text • Culture** is, as these texts will doubtlessly indicate, to open the space for a rather different discourse about terra nullius and Australia's relationship to its Indigenous peoples.

In particular, and somewhat behind the immediate political situation, this volume seeks to broaden and to deepen the conceptual approaches according to which the majority of current concerns seem to be framed and the majority of current debates seem to take place.

In the multi-disciplinary context of this journal, this volume brings together artists, philosophers, writers, political activists and, of course, lawyers. And it does so with the ambition, not only of multiplying conceptual approaches but, in this engagement and in this juxtaposition, with the ambition of opening up for question, of putting into question, the very concepts through which terra nullius is approached.

We are constrained to thinking through concepts which are, themselves, implicated in the violence of terra nullius. And this is why we are compelled to think through them: to think through that violence which unsettles them and according to which, therefore, they might be, they must be, put into question.

I have imposed as little as possible upon the organisation of these texts.

There are twenty of them and I have hinted, in the list of contents, at their division into four equal sections. These sections are not, however, named. And they do not signify a demarcation along thematic or theoretical lines. They do, however, indicate a series of breaks in an order that — for various reasons of focus, of style, and of orientation, though here, as I have intimated, in their engagement and juxtaposition — just about presented itself. For a variety of reasons, then, certain texts seemed more apt near the beginning, and others near the end.

The first five texts offer a range of introductions to the concerns of the volume. Irene Watson's 'Naked Peoples: Rules and Regulations' considers the imposition of, and resistance to, colonial law, a law clothed in rules and regulations, in the context of colonial attitudes to the nakedness of what she calls raw law. In his 'Traversing Terra Nullius', Peter Fitzpatrick then discusses Freud's influential origin myth of law as he considers how, in its violence, 'savagery' comes to name the burden of Freud's, and indeed law's own, logical incoherence. Joseph Mallard's series of six photographs, entitled 'Terra Nullius', present, without presenting, its violence in the representational tradition of a landscape photography that his photographs nevertheless, subvert. In his 'Error of Disclosure', Nicholas Strobbe provides an ethical elaboration of this presence/non-presence, as he takes up the problem of the 'nullius' in law. This section then finishes with Garth Nettheim's elaboration of the legal/political history of terra nullius in Australia: a history according to which he locates the Government's Native Title Amendment Bill.

The second set of texts take up aspects of this legal/political history, offering various contextualizations. John R. Wunder approaches *Mabo* from the perspective of a series of U.S. cases and Statutes concerning the recognition of Indigenous peoples. Penny Pether reads this decision hermeneutically and in the context of law's relation to national identity. And Val Kerruish and Jeannine Purdy approach it in the context of a history of colonial relations. Bernhard Ripperger then pursues, and somewhat against my prospectus, a critical theoretical argument concerning the recognition of Indigenous peoples and the persistence of terra nullius. To end this section, Alex Reilly extends the discussion of recognition and native title in a consideration of the hearing of evidence before the Federal Court.

The texts contained in the third section of this volume take the problem of recognition into other areas. Dany Celermajer employs a psychoanalytic framework to consider terra nullius as disavowal. Scott Veitch and I take up a similar problem in the terms of conceptions of reconciliation discernible

in the Stolen Generations Report. Desmond Manderson provides another account of reconciliation which devolves upon the distinction between shame and guilt in Australia's relationship to its past. Hannah McGlade then takes up one aspect of this relationship in the media's coverage of the return of Yagan's head. And, finally for this section, Larissa Behrendt's critique of the 'noble savage' in 'new age literature' opens onto the problem of representation.

It is this problem that, in various ways, the final series of texts take up. Joel Butler, in his 'Framing the Black Body', considers the politics of a recent exhibition of Indigenous art at the Law School of the University of Sydney. Ian McLean provides a discussion of the representational reflexions which Gordon Bennett poses in the cover image for this volume, and in the series of images to which this belongs. In her 'Untitled', Robyn Ferrell plays upon the idea of 'title' as a claim to ownership and to knowledge in order to raise the aesthetic of judgment. Richard Edwards then elaborates something of this as he elicits, in the mis-naming of terra nullius, the possibility of another law, a 'Dreaming From Law's Dark Night'. Finally, this volume is brought to a close by the Grassroots Aboriginal Peoples Address to the Nation.

Three themes, then, emerge: recognition, representation and reconciliation. And, through them, perhaps, the question might be put of every law, every text and every culture.

I would like to take this opportunity to thank the many people who have helped this volume at various stages of its conception, preparation, and production. In addition to those whom he has already mentioned, thanks to Desmond Manderson, not only for inviting me to edit this issue of **Law • Text • Culture**, but for giving me more space than I could have hoped for and doubtlessly more than he bargained for.

Thanks also to: Dean Bell, Joel Butler, Robyn Ferrell and other members of the editorial board for their confidence and hard work; the Faculty of Law

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at the University of New South Wales and the Sir Robert Menzies Institute for Australian Studies at the University of London for the resources, and again the space, which have allowed me to carry out research in connection with this project; all of the contributors who have graciously received and acted upon I hope not too unreasonable requests for changes and cuts. I would particularly like to thank Gordon Bennett for providing this volume with such an astonishing cover image. Thanks to Alex Mullan and Clare Moss at Prospect. My thanks also to Sarah Pritchard and Valerie Kerruish for putting me on to potential contributors; and, finally, to Dany Celermajer and to Scott Veitch for their suggestions and support.