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In the wake of Terra Nullius?

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Abstract

Terra nullius is the principle of a violence 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... thinking. Or else... we are condemned to repeat this origin again and again.

In the Wake of Terra Nullius?

Colin Perrin & Bernhard Ripperger

Terra nullius is the principle of a violence 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... thinking. Or else... we are condemned to repeat this origin again and again.

The previous issue of Law • Text • Culture, under the special editorship of Colin Perrin, thus foreshadowed and forearmed itself. It was perhaps a frame or ergon and a claim to identity or community to which membership was invited (and in the spirit of which this Forum provides a space for continuing exchange).

One such contribution to that issue came from Bernhard Ripperger, who took this manifesto as the origin and ground of his own critique. For Ripperger, the very origin of *In the Wake of Terra Nullius*, by assuming the impossibility of a ground of legitimacy of law “free of that violence”, could only serve as collusion or indulgence. Ripperger argued that legal legitimacy, though only ever partial, was not either circular or oxymoronic. Ironically, then, he developed this argument precisely by focusing on the prospectus quoted above as itself a kind of origin without foundation – a law of the text.

There followed an exchange between Ripperger (BR) and Perrin (CP), an edited version of which is reproduced below. It is an argument which centres around the notions of violence and unsettlement, silence, disaster, and experience. What began as

an interlocution of the synopsis or prospectus of the journal became an interlocution of its critique: Perrin argues strongly in defence of a position which seeks to escape any crude dichotomy between legitimate/illegitimate, inside/outside, same/other, thus to attempt to “think otherwise” as a way of neither legitimating the law of the past, nor of repeating its claims to authority and violence in the name of a present justice or history. Ripperger insists that there is always a ground to philosophy, always a claim to legitimacy, whether it is acknowledged or not. For Ripperger, a claim of legitimacy is always contingent and relative, but always possible too, particularly if it is grounded not in abstract concepts but in the concrete experience of suffering of individuals.

The debate – in which nothing is settled – focuses on how *conceptual* distinctions matter to the way we act in the world and whether a *practice* of justice or the *experience* of suffering can somehow finesse or overcome the estrangement between law and the other.

The relationship of law, text, and culture, to violence is of enduring interest to this journal. The following, it is hoped, will shed further light on what is at stake in the study of the claim of sovereignty of Western law which the previous issue of Law • Text • Culture addressed.

—Desmond Manderson

CP: I disagree that what you have called an ‘economy of violence’ can be taken as ‘implied’ by my editorial prospectus for *In the Wake of Terra Nullius*. Whilst I can – and will – point out, in the terms of that prospectus, why I disagree, this may well

miss what I take to be the basis of such a 'reading' in your own argument for a 'normative ground' as the pre-requisite of any critique of violence. What this comes down to, as I see it, is that – given the explicit absence of such a ground in my prospectus – you have been unable to regard it as anything but, as you say, implying an 'economy of violence' or else secretly maintaining such a ground.

I will add right away, though, that it is exactly this either/or – ground or no ground, openness or closure, the straightforward possibility or impossibility of an 'outside' to such an economy – which is my concern.

Perhaps, then, this is why you have been unable to read any other possibility into the following. First, my claim that 'there is no law, text, culture free of violence' – when this does not, of course, imply that these are equated with violence (only that they are not simply non-violent). Second, my invitation to a 'thinking' that is pitched against (what you call) the 'fatalism' of (what I call) 'the preservation of existing meanings' (hence: 'thinking demands' something other... *or else* we are condemned to repetition). Third, my contention that an 'economy of violence' is both 'unsettled and unsettling' (which is to say, as you rightly suspect, that what is being invoked here is not a closure or a totality – although it is also not the secret invocation of a 'normative ground' (this is, as I see it, is the central point between us and I will come back to it)). Fourth, my suggestion that what is required is a 'thinking through' (of) this unsettlement (in all of the difficulty implied here – according to the more or less psychoanalytic notion of 'working through – as, for example, *both* a thinking 'with' and a thinking 'past').

BR: My argument is, in effect, that there is a normative ground to every theory, whether it is recognised theoretically or not. My either/or is therefore more in relation to an evaluation of theoretical resources; either a theory can acknowledge this ground, or it cannot and so attempts to conceal it. My interest is in the possible practical effects that flow when a lack in theory is projected as an absence or lack in its object.

CP: OK, but I still disagree with this either/or because my point here – bearing upon what seems to be the undue haste of your ‘and’ – is, in a sense, against that of a concealment which proceeds via ‘acknowledgment’: such that here it is rather out of ‘a lack in theory’ that ‘the object’ arises.

Essentially, I think that it is this ‘conception’ of ‘unsettlement’ (not, as you say, just that ‘one’ is unsettled, as if it were a matter of conscience, but that ‘our conceptual legacy’ is, in itself – again, I will come to this – unsettled) which lies at the heart of the matter. At least, in my own work, it is something like this conception that I have been struggling to elaborate, not only against the possibility of a ‘ground’, an ‘outside’ of economy, discourse, etc. but against the claim to this impossibility.

There is a certain irony here for your reading attributes to my prospectus for *In the Wake of Terra Nullius* an implied position – that of an economy of violence – (which, in the names of ‘constructivism’, ‘exclusion’, ‘relativism’ and indeed, ‘Foucault’ (and here I would insist upon Derrida against Foucault or, along the lines of impossibility that you indicate, Foucault against Foucault) the problematization of which has been at least the sub-text of all of my work to date.

This conception of unsettlement which I am trying to work out is not unrelated to what Derrida has called a 'lapse' in law/economy (from L. *lapsus* – to slip), or indeed what he calls justice in his paper 'Force of Law'.

What I am trying to imply, therefore, is something like the impossible closure of economy – the 'failure' of language or law in their own terms, and so in terms of their claims to truth, and to justice: claims which, it seems to me, are necessary for the very integrity of law (as law), or for language (as language); necessary, that is, for their very *being*. Hence, my argument is that their unsettlement devolves upon a kind of 'internal' (although this term is problematised by the 'lack' of closure that I am trying to describe) contradiction/tension. Such that the violence according to which they are 'constituted' (but now never fully) pervades them as a 'lack' of integrity: as, for example, a silence in law, or, indeed, what Stanner has called a "great... silence" in Australian history.

BR: I agree that there is an impossibility of closure of an economy of violence – my argument is that the whole idea of such an economy betrays (in both senses – it presents and wrongs) its normative commitments while eliminating the theoretical possibility of conceiving their grounds. Note that the inadequacy of the 'concept' to do justice to this sphere of normativity does nothing (well not much) to eliminate it – though it does tend to legitimate social practices that do.

This is my concern – the reduction of the problem of justice to the critique of the failure of metaphysics to secure the identity of the concept and the non-conceptual; my starting point is after

the realisation of the inadequacy of this ambition of metaphysics and so any argument I may have is an attempt to dialectically transform the problem of justice (meaning etc) itself— after which, to some extent, I feel the answers are actually unavoidable.

CP: When you say that ‘the inadequacy of the “concept” to do justice to this sphere does nothing (well not much) to eliminate that sphere’, I agree. But my point is slightly, but I suspect crucially, different: this ‘sphere’ arises *because* of the inadequacy of the concept. Perhaps, then, one could say that the concept is not ‘simply’ inadequate: such that my focus, as you say, upon the failure of metaphysics might be considered as a focus upon the way in which it does not ‘simply’ fail.

I have not intended ‘unsettlement’ to be taken as ‘effusively’ as you seem to suspect. The term is not, of course, accidental insofar as it evokes the quite precise place of terra nullius as the basis of a supposedly legal settlement: the classification of the colony (recalling *Cooper v Stuart*: ‘without settled inhabitants or settled law’), but also the sense of an economic settlement and, of course, the sense of feeling settled/settling in, which opens onto the broader issues of colonial and national identity.

BR: My concern is that something like ‘unsettlement’ or justice as aporia involve drawing improper conclusions from otherwise sound(ish) arguments. I doubt that such ideas, as they are, could explain how or why theoretical attention is cast on any given issue. That is, I fail to see how such an effusive notion could have ever revealed that the ‘law of history’ governing the oppression of indigenous people was terra nullius.

As I say in my paper, approaches such as yours demonstrate a remarkable sensitivity to violation etc, but I have yet to be convinced that they have the theoretical resources to account for such sensitivity – ie they draw on a normative insight/ground that they simultaneously conceal due to a conceptual inadequacy.

CP: With respect to normativity and the possibility of a ground, it seems to me that it is on the basis of what I can only presume amounts to a language that would be true (or, as I understand it, ‘expressive’ in Benjamin’s terms) that you could contend – on the basis, I am guessing, of its ‘recognition’ of Indigenous Peoples – that *Mabo* is ‘right’. Here, then, I read something like a demand for purity – now that of a ground – in your own account. And whilst I appreciate your many reservations with respect to ‘fallibility’ and that such a ground is ‘never pure’, I am left wondering what the latter might mean if not the impossibility of such a ground, which is to say of the non-violent *as such*.

BR: The ‘impossibility of the non-violent as such’ is exactly what I mean by an effusive ground for critique. How do you get from that ‘non-place’ to terra nullius? I suggest that it is the experience of suffering that creates the potential for insight into the necessary conditions of an undamaged life – but there is no need to ‘ontologise’ these, either positively or negatively. My argument is that *Mabo* is right to the extent that it recognises that a law of history which has governed relations between indigenous and non-indigenous peoples breaches one of those conditions. This does not mean that *Mabo* is ‘just’ – even if we accept that there can never be a justice which can redeem the suffering caused by past wrongs, this particular decision is too

constrained by a range of factors to 'remedy' current wrongs. However, the decision is no doubt 'right' in terms of it being better than a decision that would have reinscribed 'undisturbed' (to the extent this is possible – which would be a far greater violence) the terms of *terra nullius*.

CP: But the problem of such a 'ground' also seems to be there in your argument with respect to 'history': in the necessary pre-requisite of a ground which is presumably non-historical, since it is brought to history, on the one hand, and your many references to the 'specific', the 'concrete' etc. which would seem to imply that a 'sphere of non-violence' needs to come from history, on the other hand. Coming from outside of history and from within it, such a ground would then appear as the condition and the consequence of what you seem to be calling 'critique': presumably the task of a 'disentanglement of violence and non-violence' and so, it would seem, of the belated grounding of critique's own possibility.

I will just add that it is exactly this belatedness that Derrida takes up in the circular relation between justice ('non-violence') and law ('violence') – though bear in mind that what Derrida names as law is already subject to the problematisation of its closure etc. It would seem, then, that this difficulty of disentangling oneself from violence, where the task of this disentangling can only take place in terms which are not – and cannot, before this task is over, be – disentangled from violence, is exactly the problem. And it is, of course, this which I have tried to raise in the context of *terra nullius*.

BR: I have no idea what a ground outside of history would mean. History is more than temporality – myth is a condition of

the absence of history even though it characterises a long period of human existence (and still prevails – as Benjamin says, while there is one beggar there is still myth). The ground of history, if such a thing makes sense (I mean reason not foundation – I will come to this) would be something like the development of modern consciousness through various formative experiences.

Critique is fundamentally self-referential within history *per se*. However it is the object of critique that is subject to learning processes as well as critique itself. The distinction here is between limiting and enabling conditions. The possibility of critique is the same as that of unsettlement, though its forms will be historically and socially contingent (though not relative). By this parenthetical I mean that critique cannot be forgotten, though it can be repressed. Just so with what I call learning in the normative domain – the wrong of terra nullius, that it is wrong, cannot be forgotten, only repressed. Further, the insight into the normative basis of this decision (even if not recognised within the judgment, nor its consequences played out) draws on previous insights which can only be repressed at the cost of great suffering – and so lends itself to potentially more profound insight etc. This is what I mean by a concrete, fallible learning process – attention to suffering, which is always particular.

Disclosing this ground of critique is my central concern; and your entanglement with the notion of ‘unsettlement’ appears to me to be of the same character. In this regard, I suspect that the dispute of what a concept of a ‘ground’ is/does is a misunderstanding that could be easily cleared up between us. Ground as reason (without a capital – in the sense that a desire can be a reason to act), not foundation.

CP: Consistently, the problem here as I see it is that of formulating something like the 'sense' of an outside which cannot be presented 'as such' and, hence, cannot (without being missed or lost (again)) constitute a ground. And here, of course, the struggle towards such a formulation does – and I imagine that on this we disagree – receive its impetus from the argument that, in becoming a ground, in entering the field of a discourse/economy that could only clarify/classify it ('the other') according to a schema, a grammar, and so the generality of a language that would always fail to grasp its singularity, this 'outside' – of non-violence, for example – is violated. Or, again with Derrida, it is en-forced.

BR: Only if truth is understood as adequation, representation etc. It seems to me that the Kantian schema (or at least the subsumption model of understanding) has been supposed here, and so informs this criticism. That is, a different, perhaps 'pragmatist' idea of knowledge is simply not confronted with this as a transcendental problem. I guess, this is the difference between Derrida and Adorno; the latter sought to rescue the non-conceptual from the concept using concepts (the only tools of thought); which is to simultaneously rescue the concept from itself.

CP: For me, this retrieval/rescue isn't possible without (again) 'betraying' the 'non-conceptualisable. But I am still seeking adequate formulations as to the way in which language is pervaded (unsettled) by what it must lose (always the essential, the singular, the referent) in order to 'be': the way in which the origin, by virtue of its insufficiency, insists as a concern for what is originated but never, for this reason, founded.

In this respect, I have found Derrida more thoughtful and more rigorous than he is usually taken to be. His theorisation of a justice that comes 'before' the law, but only retrospectively – which is to say that this 'before' comes after a law that fails to present a justice which is discernible (outside of law) only because of this failure – provides an example of this problem of 'reference'. It is, moreover, this 'mystique' of the referent which is also addressed in all of Derrida's work on 'the supplement', on 'iterability' and so on.

BR: I agree that these lapses can form the basis of an interrogation of the failure of language, however this must be undertaken determinately, ie in each case. This is because this failure is (and here is where an apparent tension with your prospectus arises – at least, for me, it was the 'flashpoint') an historical failure – both at the level of the concept, and the non-conceptual. Proper conceptualisation of this failure also involves consideration of the non-conceptual, and so must be particular to every language game, indeed every concept/utterance. Only on this basis which your approach erases could your idea of unsettlement have any heuristic value – eg how could it have directed you to examine terra nullius?

CP: Your use of 'betrayal' gets somewhere near to what I have in mind, although here there is a whole question of realism. For me, there is a temporal difficulty indicated, as I have said, by the problem of what comes 'before the law'. Certainly, this 'before' is betrayed. But in the sense that it is both revealed and wronged by what is, succinctly, neither law's closure nor its openness. More precisely, this 'before' is revealed *because* it is wronged. Hence it is not simply revealed.

BR: I think what is at stake between our perspectives can be usefully characterised through the tension between Adorno and Derrida. As emblematic of this tension (and so, of course, merely provisional), I will quote Jay Bernstein on this difference:

Like Adorno, Derrida places non-identity at the 'margins' of identity thinking, the outside that makes the inside possible while simultaneously eluding its grasp (comprehension). But there really is no 'other' for Derrida except in terms of the (transcendentally conditioned) failure of identity thinking to totalize itself, to achieve presence and self-presence. And while this gesture temporarily prevents triumphal history from unproblematically laying claim to the trophies of culture, it equally prohibits cognition of what the other, underside of culture was and is. The moments of excess in texts are hardly equivalent to the comprehension of those texts as equally documents of barbarism, even if we concede that, perhaps, differance etc. are transcendental markers for that other history. The deconstructive gesture can do no more than interrupt effective historical consciousness while making the law governing that history necessarily unknown and unknowable.

CP: Bernstein's point that 'there *really* is no "other" for Derrida except in terms of the... failure of identity thinking to totalise itself' is a problem for me. Derrida opens texts, concepts etc. up to an 'outside' which is not, 'in itself', his concern to conceptualise and so, for him, to totalise. The other is other by virtue of its non-conceptualisability. And, in this sense, its otherness names a relation: a relation of obscurity. This is a difficult point to express, but it is not clear to me that Bernstein really 'gets' Derrida's concern here.

Is there 'really' any 'other'? Not (as other) outside of this relation. How could the other be 'real'? Again, of course, not as 'other'. Bernstein's characterisation of Derrida, in this respect, would only seem accurate if the 'is' in his sentence were italicised to signal the problem of presenting/presencing the other which is, of course, Derrida's concern. Re-reading Bernstein, in this way, the difficulty of engagement here perhaps becomes a little clearer.

It is this 'obscurity of the other' (not, of course, intrinsically but only 'in relation' to law, language etc.) which Bernstein reads as a 'prohibition of cognition'. Or, more expansively: 'the deconstructive gesture can do no more than interrupt effective historical consciousness while making the law governing that history necessarily unknown and unknowable'. But the 'terms' of deconstruction do not so much 'prohibit cognition' as maintain its limits and so a vigilance with respect to its claim to a cognition (which, as cognition, and given the terms in which Derrida moves, could never be) *of* the other. Despite Bernstein's tone, therefore, this 'unknowability' does not imply a resignation or refusal of cognition or the passing of desire. Rather, as Lyotard has said, it is a matter of bearing witness (in an impossible responsiveness) to what is (therefore) unrepresentable: but which, in this unrepresentability, is 'there' in, moreover, the singular failure of its presentation. Or, with Blanchot, in the silence of (the word) silence, the writing of the disaster... etc.

There is, then, something of a proximity to Blanchot here, particularly in his elaboration of this 'writing of the disaster': as the effort to represent, to write, the disaster; and as the writing that the disaster does, as it ruins this effort, this writing. Here, the disaster writes 'itself', or it expresses itself, in/as this ruin: the

'failure' of language – although now as a kind of 'success' because, in this failure, the disaster is 'there'. Although it is not, of course, represented. It is not there 'as such' or, extending the point, in any way that could provide any kind of a ground. Heidegger's elaboration of the 'speaking or languaging of language', how language 'needs and uses human speech' in order to sound (as 'the peal of stillness') would also seem to open this out in the direction of Benjamin. As you say, the echo of what language has lost is 'there' in language. And I cannot but be reminded of these formulations from Heidegger and, particularly for me, Blanchot: 'my language kills' but 'speech is the life of [this] death'. Here, then, I sense that we are quite close.

BR: The limits on cognition and the view that the non-conceptual sphere arises because of the inadequacy of the concept strike me as derivative of, here, a linguistic idealism.

First, the experience of the disaster as disaster (and not just as stuff that happened) is clearly the ground of its own expression (just so you see how I word use the word ground); without it, the failure of language would not be expressing anything – and here, I would strongly urge that, despite Benjamin's occasional and contradictory failings in this area, we can do without such hoary metaphysical claims that what is expressed is the fall of language, or the forgetting of Being. Rather, what is expressed in such 'failures' of language is the suffering of concrete human identities, mediated through the possible conditions on expression of experience which any given language both limits and permits.

Second, language fails to 'represent' the disaster only on a metaphysical understanding on representation. Once we move beyond the limitations of this concept of truth and/or justice, we will be able to 'represent' the disaster (or any determinate wrong) in a non-effusive (and therefore heuristically valuable) way. Something here reminds me of Schiller in reverse – that rather than have the experience expand the concept, the limitations of the concept (or, in truth, the form of the concept) is used to obscure the experience.

CP: I wonder about your concept of 'experience' when, for me, what is at stake here is, again with Derrida, something like an experience which cannot be experienced: where it is in this experience that the non-conceptualisable is 'there' *because* it cannot be experienced.

In this regard, our differences no doubt arise over something like Honneth's framework which, it seems to me, is constrained to be only ever a recognition of the same and, hence, a reduction of the other's experience. My concern, then, is to elicit something of *this* 'experience' in the failure of conceptualisation. And here, the demand for conceptualisation devolves upon that failure and, indeed, the 'sense' of a conceptual inadequacy according to which the demand for recognition/justice arises, but always remains to be met.

So, yes, I take these conceptual/theoretical limitations more seriously than, perhaps, you would. But this is because, for me, the singularity of justice is 'there', is 'experienced', because it cannot be brought to conceptualisation or to experience.

Silence has taken me farthest here: particularly with respect to the temporality of a silence that, in its perpetuation, could not be heard and which, therefore, can only be heard if it is spoken/broken. Here, one could conceive of the effort to speak in order to communicate this silence: an effort that would, of course, be both violent – since it would say too much – and non-violent – since in/as this ‘too much’ (also ‘too little’) one might discern something else, something other (I should add that it is the way in which language here might ‘manifest’ – not what but – that ‘there is’ something which it cannot say which is the important point). This, then, would be to grasp, to try and grasp, the way in which a word like silence – and what is generally called ‘writing’ or ‘literature’ in post-structuralist thought – is at odds with, or unsettled in, itself. Perhaps, then, this would be to get somewhere near what Blanchot has called ‘the silence of the word silence’.

BR: Silence may not be able to be heard, but is readily experienced. Silence may also be reactive. But, is the point really the silence of silence (which has the benefit of irony) or rather the silence of every word/concept? Would not the silence of justice be more interesting? I mean, I guess, on your terms, every word/concept performs the same operation of silencing as does ‘silence’, and for the same reason. Is the silence of silence any different to the silence of ‘justice’?

As discussed above, my basic orientation to ‘determinate negation’ comes out here again – so the question is, what does ‘silence’ silence in any particular usage and how (and so, what also does it reveal)? In this respect, a version of Adorno’s ideas about the way concepts ‘preform and truncate’ the non-

conceptual seems preferable. Although silence can 'speak' it cannot say anything/be heard until interpreted/experienced – and this interpretation must simultaneously modify the concepts it is employing in order that it does not reinscribe the silence, and it can only do this if it partakes in an historically situated learning process.

CP: The conceptual failure/non-conceptual success which the silence of silence tries to get at seeks, as with any deconstructive reading, to elicit this failure/success in its singularity. Words, texts, concepts, are inadequate to themselves and, as I have said, it is out of this inadequacy that the non-conceptualisable arises. It does so, therefore, according to the terms which, one might say, it 'resists': the silence of (the word) silence, and so, the alterity of alterity, the justice of justice etc. such that, in each instance, one might say that what is, in one sense, betrayed (wronged) is, of course, betrayed (revealed) in another sense – and, of course, vice versa.

BR: I take what you say about the singularity – I do not think we are very distant on that point. Also, I think your comments on the (non) experience of that which cannot be experienced go to the heart of the matter. And this is where my, I guess rather obtrusive, comments on Kant come in.

Kant, of course, argues that the conditions of experience cannot themselves directly be an object of experience but can be thought – if we are generous, this would seem to be what we are talking about, especially if we come up with some better sense of 'singularity' than Kant could. Now my sense is that this singularity

must also come from the side of the 'object', otherwise these conditions of experience will remain both 'purely' transcendental and somewhat effusive (ie. non-singular). 'Object' is, of course, an unfortunate term, but I know you will be charitable. As Kant would say, there must be something of which the appearance is an appearance. So, again, the singularity is more than a specific failure (and also, therefore, a success – on this point I entirely agree) of language; or, perhaps rather, language fails specifically because of something more than its non-identity.

Now, the conditions of the failure are also protected by the Kantian block; however, the experience of failure is an experience (not a non-experience). Yet the conditions of failure can be retrieved conceptually (this is the task of philosophy for Hegel – and is what characterises his thought as speculative), which is also the bringing to thought of the non-conceptual 'object'. Your paradoxical formulation of 'experience' is a challenge to transform the concept in the direction of the non-conceptual, and I would seek to develop Honneth's work on the recognition of/by the other. (The Adornoese for what it is that 'appears' in this failure and success of language is 'constellation' – as in the idea of stars 'forming' a constellation – being both real and illusory etc.) This involves the transformation of the concept itself. In this way the block on experience, which is social as well as conceptual, can be transformed. I do not think we disagree on this last point.

CP: Our difference here may be a matter of emphasis: mine upon (not just the fact, but) the way that conceptual frameworks always fail to recognise; yours, I guess, upon the learning processes which you invoke. Perhaps, then, the question is whether one

gets any 'closer' to the experience of the other. Here, although in a sense just repeating the problem, our difference may well be that I (also) think one does but, importantly, only in the recognition that one does not; again, in the recognition that the experience of the other is an experience which cannot be experienced.

For me, then, it is as the High Court in *Mabo* circumscribes the limits of its own capacity to do justice, and hence to be non-violent, that it attests to such an excess: here, of what comes 'before' it. As such, it betrays the force of its law in both senses (in its violence and its vitality). It is here that I discern the *unsettlement* which I have tried to indicate and, according to which, such a decision cannot simply be regarded as a further, fateful and repetitious, instance of terra nullius.

BR: This is correct. But this is the limit of the law to do justice. That is, theoretically, the limits on undecideability that law must impose should be seen as enabling, not limiting, conditions for the articulation of justice.

CP: But out of the High Court's acknowledgment that – according to existing meanings – justice cannot be done, which is to say, out of this *unsettlement*, isn't it exactly the demand for 'thinking', and for 'thinking otherwise' that can be heard, echoing throughout its decision in *Mabo*?

BR: Yes.