



'Terra Nullius', Legal Sovereignty, and the Effect of British Attitudes on Indigenous People

Introduction

This resource outlines what the doctrine of terra nullius means and how this fiction came to describe British rule in Australia. It also outlines how the British legally claimed sovereignty over Australia via occupation and its effect on the Indigenous people. Lastly, we look at *Mabo (No 2)* - the 'native title case' - and the overturning of the terra nullius doctrine.

What is Terra Nullius?

The term terra nullius means 'nobody's land' or 'land belonging to nobody.' In legal jargon, terra nullius means 'land over which no previous sovereignty has been exercised.' However, it wasn't until the late 20th century that this term was used in connection to justify British rule in Australia. At the time of the First Fleet's arrival in Botany Bay in 1788, the British legally acquired Australia by **occupation**: this is one way that Europeans could acquire legal sovereignty of another country in the 18th century. As such, terra nullius is merely a modern term that is used, which, in essence, has a similar meaning to sovereignty by occupation.

Legal Sovereignty by Occupation

As mentioned above, the British gained legal sovereignty – legally justified rule – of Australia by **occupation**. During the 18th century, Europeans could legally gain sovereignty of a country in three distinct ways:

1. **By conquest**: sovereignty by way of force, such as through military force.
2. **By cession**: sovereignty by means of a treaty, whereby the previous government gives power to the new government.
3. **By occupation**: sovereignty by acquisition of a land currently ruled by no government or sovereign power.



People Of Terra Nullius

Robert Clarke



People Of Terra Nullius:

People of Terra Nullius Boyce Richardson, 1993 Discussion of the situation of native peoples in Canada Aboriginal Peoples, Colonialism and International Law Irene Watson, 2014-10-17 This work is the first to assess the legality and impact of colonisation from the viewpoint of Aboriginal law rather than from that of the dominant Western legal tradition It begins by outlining the Aboriginal legal system as it is embedded in Aboriginal people s complex relationship with their ancestral lands This is Raw Law a natural system of obligations and benefits flowing from an Aboriginal ontology This book places Raw Law at the centre of an analysis of colonisation thereby decentring the usual analytical tendency to privilege the dominant structures and concepts of Western law From the perspective of Aboriginal law colonisation was a violation of the code of political and social conduct embodied in Raw Law Its effects were damaging It forced Aboriginal peoples to violate their own principles of natural responsibility to self community country and future existence But this book is not simply a work of mourning Most profoundly it is a celebration of the resilience of Aboriginal ways and a call for these to be recognised as central in discussions of colonial and postcolonial legality Written by an experienced legal practitioner scholar and political activist Aboriginal Peoples Colonialism and International Law Raw Law will be of interest to students and researchers of Indigenous Peoples Rights International Law and Critical Legal Theory **Indigenous Peoples, Title to Territory, Rights and Resources**

Cathal M. Doyle, 2014-11-20 The right of indigenous peoples under international human rights law to give or withhold their Free Prior and Informed Consent FPIC to natural resource extraction in their territories is increasingly recognized by intergovernmental organizations international bodies and industry actors as well as in the domestic law of some States This book offers a comprehensive overview of the historical basis and status of the requirement for indigenous peoples consent under international law examining its relationship with debates and practice pertaining to the acquisition of title to territory throughout the colonial era Cathal Doyle examines the evolution of the contemporary concept of FPIC and the main challenges and debates associated with its recognition and implementation Drawing on existing jurisprudence and evolving international standards policies and practices Doyle argues that FPIC constitutes an emerging norm of international law which is derived from indigenous peoples self determination territorial and cultural rights and is fundamental to their realization This rights consistent version of FPIC guarantees that the responses to questions and challenges posed by the extractive industry s increasingly pervasive reach will be provided by indigenous peoples themselves The book will be of great interest and value to students and researchers of public international law and indigenous peoples and human rights

Human Rights and the Borders of Suffering Anne Brown, M. Anne Brown, 2013-07-19 This electronic version has been made available under a Creative Commons BY NC ND open access license This book argues for greater openness in the ways we approach human rights and international rights promotion and in so doing brings some new understanding to old debates Starting with the realities of abuse rather than the liberal architecture of rights it casts human rights as a language for

probing the political dimensions of suffering Seen in this context the predominant Western models of rights generate a substantial but also problematic and not always emancipatory array of practices These models are far from answering the questions about the nature of political community that are raised by the systemic infliction of suffering Rather than a simple message from us to them then rights promotion is a long and difficult conversation about the relationship between political organisations and suffering Three case studies are explored the Tiananmen Square massacre East Timor's violent modern history and the circumstances of indigenous Australians The purpose of these discussions is not to elaborate on a new theory of rights but to work towards rights practices that are more responsive to the spectrum of injury that we inflict and endure The book is a valuable and innovative contribution to rights debates for students of international politics political theory and conflict resolution as well as for those engaged in the pursuit of human rights

Native Peoples of the World Steven L. Danver, 2015-03-10 This work examines the world's indigenous peoples their cultures the countries in which they reside and the issues that impact these groups

First Peoples In Canada Alan D. McMillan, Eldon Yellowhorn, 2009-12-01 First Peoples in Canada provides an overview of all the Aboriginal groups in Canada Incorporating the latest research in anthropology archaeology ethnography and history this new edition describes traditional ways of life traces cultural changes that resulted from contacts with the Europeans and examines the controversial issues of land claims and self government that now affect Aboriginal societies Most importantly this generously illustrated edition incorporates a Nativist perspective in the analysis of Aboriginal cultures

Trapped by History Darryl Cronin, 2021-04-15 The Australian nation has reached an impasse in Indigenous policy and practice and fresh strategies and perspectives are required Trapped by History highlights a fundamental issue that the Australian nation must confront to develop a genuine relationship with Indigenous Australians The existing relationship between Indigenous people and the Australian state was constructed on the myth of an empty land terra nullius Interactions with Indigenous people have been constrained by eighteenth century assumptions and beliefs that Indigenous people did not have organised societies had neither land ownership nor a recognisable form of sovereignty and that they were savage but could be civilized through the erasure of their culture These incorrect assumptions and beliefs are the foundation of the legal constitutional and political treatment of Indigenous Australians over the course of the country's history They remain ingrained in governmental institutions Indigenous policy making judicial decision making and contemporary public attitudes about Indigenous people Trapped by History shines new light upon historical and contemporary examples where Indigenous people have attempted to engage and dialogue with state and federal governments These governments have responded by trying to suppress and discredit Indigenous rights culture and identities and impose assimilationist policies In doing so they have rejected or ignored Indigenous attempts at dialogue and partnership Other settler countries such as New Zealand Canada and the United States of America have all negotiated treaties with Indigenous people and have developed constitutional ways of engaging cross culturally In Australia the limited

recognition that Indigenous people have achieved to date shows that the state is unable to resolve long standing issues with Indigenous people Movement beyond the current colonial relationship with Indigenous Australians requires a genuine dialogue to not only examine the legal and intellectual framework that constrains Indigenous recognition but to create new foundations for a renewed relationship based on intercultural negotiation mutual respect sharing and mutual responsibility This must involve building a shared understanding around addressing past injustices and creating a shared vision for how Indigenous people and other Australians will associate politically in the future

Nomadic Peoples and Human Rights

Jérémie Gilbert, 2014-03-26 Although nomadic peoples are scattered worldwide and have highly heterogeneous lifestyles they face similar threats to their mobile livelihood and survival Commonly nomadic peoples are facing pressure from the predominant sedentary world over mobility land rights water resources access to natural resources and migration routes Adding to these traditional problems rapid growth in the extractive industry and the need for the exploitation of the natural resources are putting new strains on nomadic lifestyles This book provides an innovative rights based approach to the issue of nomadism looking at issues including discrimination persecution freedom of movement land rights cultural and political rights and effective management of natural resources Jeremie Gilbert analyses the extent to which human rights law is able to provide protection for nomadic peoples to perpetuate their own way of life and culture The book questions whether the current human rights regime is able to protect nomadic peoples and highlights the lacuna that currently exists in international human rights law in relation to nomadic peoples It goes on to propose avenues for the development of specific rights for nomadic peoples offering a new reading on freedom of movement land rights and development in the context of nomadism

QUALITY OF HUMAN RESOURCES: GENDER AND INDIGENOUS PEOPLES

Eleonora Barbieri-Mas, 2009-10-23 Quality of Human Resources Gender and Indigenous Peoples theme is a component of Encyclopedia of Human Resources Policy Development and Management in the global Encyclopedia of Life Support Systems EOLSS which is an integrated compendium of twenty one Encyclopedias The Theme appears extremely important in a world which more than ever is in need of all its human resources for life support systems Many of such resources have yet not been adequately tapped and are either not visible or unrecognized The contributions to this volume range from the indigenous populations in different parts of the world to women youth and children This volume provides some of the essential aspects and a myriad of issues of great relevance to our world such as Human Resources Challenge Major Potentially Disadvantaged People The Forest in Indigenous Culture Tribal Autonomy and Life Support Systems Emerging Environmental Issues for Indigenous Peoples Cultivation and Households The Basics for Nurturing Human Life Gender Men and Masculinities Gender Dimensions to Life Sustainable Systems Women and Family and Sustainable Development Gender and Environment Lessons to Learn Environment and New Generations Environmental Education Youth Towards the Third Millennium The Convention on the Rights of the Child Education and Children s Rights Immunization and Children s Health International Regulation of Children

s Rights which are then expanded into multiple subtopics each as a chapter This volume is aimed at the following five major target audiences University and College Students Educators Professional Practitioners Research Personnel and Policy Analysts Managers and Decision Makers NGOs and GOs Sovereignty, Property and Empire, 1500-2000 Andrew Fitzmaurice, 2014-10-23 This book analyses the laws that shaped modern European empires from medieval times to the twentieth century Its geographical scope is global including the Americas Europe Africa Asia Australia and the Poles Andrew Fitzmaurice focuses upon the use of the law of occupation to justify and critique the appropriation of territory He examines both discussions of occupation by theologians philosophers and jurists as well as its application by colonial publicists and settlers themselves Beginning with the medieval revival of Roman law this study reveals the evolution of arguments concerning the right to occupy through the School of Salamanca the foundation of American colonies seventeenth century natural law theories Enlightenment philosophers eighteenth century American colonies and the new American republic writings of nineteenth century jurists debates over the carve up of Africa twentieth century discussions of the status of Polar territories and the period of decolonisation *Travel Writing from Black Australia* Robert Clarke, 2015-11-19 Over the past thirty years the Australian travel experience has been Aboriginalized Aboriginality has been appropriated to furnish the Australian nation with a unique and identifiable tourist brand This is deeply ironic given the realities of life for many Aboriginal people in Australian society On the one hand Aboriginality in the form of artworks literature performances landscapes sport and famous individuals is celebrated for the way it blends exoticism mysticism multiculturalism nationalism and reconciliation On the other hand in the media cinema and travel writing Aboriginality in the form of the lived experiences of Aboriginal people has been exploited in the service of moral panic patronized in the name of white benevolence or simply ignored For many travel writers this irony the clash between different regimes of valuing Aboriginality is one of the great challenges to travelling in Australia *Travel Writing from Black Australia* examines the ambivalence of contemporary travelers engagements with Aboriginality Concentrating on a period marked by the rise of discourses on Aboriginality championing indigenous empowerment self determination and reconciliation the author analyses how travel to Black Australia has become for many travelers a means of discovering new and potentially transformative styles of interracial engagement

Becoming Weather Sarah Wright, 2024-09-17 Following a relational Indigenous led approach grounded in 25 years of collaborative work this book looks to weather and climate tracing the embodied emplaced and affective ways weather co constitutes people place and time s raising critical questions of ethics politics and becoming Becoming weather leads the reader through a reflexive engagement with weather seeking to shed light on pressing issues around climate change and its entanglements from the body where contours of weather are intimately felt and known to the ways that agencies of weather are implicated in the construction of nations to global topologies of climate in justice Reflecting on deep and ongoing collaborative work undertaken with Indigenous led research collectives in Australia and the Philippines the book traces

contours of response ability learning from weathery relationships to speak back to constructions of climate that see it as aer nullius belonging to no one and that deny ongoing responsibilities becomings and belongings The book aims to support more than human and relational understandings of weather that situate us all within an ethics of differential cobecoming and that demand attention to the connections that bind and co constitute The book is intended for those interested in thinking differently about weather and climate particularly those who feel an urgent dissatisfaction with mainstream responses and understandings It will be beneficial for those who would learn from weather from and with place in ways led by Indigenous scholars and their allies though an engaged reflexive more than human and ethnographic account It does not shy away from critical engagement nor the changes desperately needed to learn and unlearn to attend to positionalities and responsibilities and to engage with what it means to weather on unceded Indigenous land Hybrid Constitutions Vicki Hsueh,2010-01-27 Demonstrates that in the early English colonies in North America constitutional thought and practice were more diverse than historians and political theorists have thought **Following Jesus in Invaded Space** Chris Budden,2011-07-27 Christianity is never just about beliefs but habits and practices for better or worse Theology always reflects the social location of the theologian including her privileges and prejudices all the time working with a particular often undisclosed notion of what is normal Therefore theology is never neutral it defends particular constructions of reality and it promotes certain interests Following Jesus in Invaded Space asks what and whose interests theology protects when it is part of a community that invaded the land of indigenous peoples Developing a theological method and position that self consciously acknowledges the church's role in occupying Aboriginal land in Australia it dares to speak of God church and justice in the context of past history and continuing dispossession Hence a Second People's theology emerges through constant and careful attention to experiences of invasion and dislocation brought into dialogue with the theological landscape or tradition of the church Being a descendant of some of the first English invaders in Australia and a witness to the continuing inadequate recognition of the Church's past mistakes in this country theologian Chris Budden felt a strong need to write this book Leaving the past behind does not mean ignoring it and an acknowledgement of mistakes is a prerequisite to any fruitful discourse between invaders and invaded In our endeavours to help the marginalised and the indigenous Budden warns us against the arrogance of pitying them as poor superstitious things who can only be helped by our own superior concept of divine grace As Budden puts it We need to keep listening for voices that remind us that our normal is not necessarily everybody's normal His book encourages us to recognise and appreciate the diverse perspectives of minority theologians It is not just about giving a voice to these people It is about being able to hear their own voice to understand it and then reinterpret our own tradition according to it **Indigenous Mobilities** Rachel Standfield,2018-06-07 This edited collection focuses on Aboriginal and M ori travel in colonial contexts Authors in this collection examine the ways that Indigenous people moved and their motivations for doing so Chapters consider the cultural aspects of travel for Indigenous communities on both sides of the Tasman

Contributors examine Indigenous purposes for mobility including for community and individual economic wellbeing to meet other Indigenous or non Indigenous peoples and experience different cultures and to gather knowledge or experience or to escape from colonial intrusion This volume is the first to take up three challenges in histories of Indigenous mobilities First it analyses both mobility and emplacement Challenging stereotypes of Indigenous people as either fixed or mobile chapters deconstruct issues with ramifications for contemporary politics and analyses of Indigenous society and of rural and national histories As such it is a welcome intervention in a wide range of urgent issues Second by examining Indigenous peoples in both Australia and New Zealand this volume is an innovative step in removing the artificial divisions that have arisen from national histories Third the collection connects the experiences of colonised Indigenous peoples with those of their colonisers shifting the long held stereotypes of Indigenous powerlessness Chapters then convincingly demonstrate the agency of colonised peoples in shaping the actions and the mobility itself of the colonisers While the volume overall is aimed at opening up new research questions and so invites later and even more innovative work this volume will stand as an important guide to the directions such future work might take Heather Goodall Professor Emerita UTS

Australian Principles of Property Law Samantha Hepburn, 2013-05-13 Australian Principles of Property Law now in its third edition covers all aspects of Australian real property law Each chapter has been expanded and updated to incorporate the latest developments and theories Incorporating academic discussion of historical and theoretical issues underlying the property system as well as practical discussion of relevant legislative schemes this textbook is the ideal accompaniment to any undergraduate property law course Focusing on Victorian law the text also outlines developments in other states and provides technical explanations where necessary It is supported throughout by extracts from a wide range of cases and materials *Principles of Property Law* Samantha J. Hepburn, 2001 This comprehensive text covers all of the materials relevant to property law in a detailed and thorough manner The second edition examines the basic tenants of property law as well as specific property interests such as land interests and the way in which these interests are conveyed registered and co ordinated The book considers the development of native title as a legally recognised form of property in Australia and how such an interest sits within the common law and statutory infrastructure Principles of Property Law is a vital book for students studying this complex area and is also a valuable addition to the library of academics and practitioners interested in this field **Possessing the**

Pacific Stuart Banner, 2009-06-30 During the nineteenth century British and American settlers acquired a vast amount of land from indigenous people throughout the Pacific but in no two places did they acquire it the same way Stuart Banner tells the story of colonial settlement in Australia New Zealand Fiji Tonga Hawaii California Oregon Washington British Columbia and Alaska Today indigenous people own much more land in some of these places than in others And certain indigenous peoples benefit from treaty rights while others do not These variations are traceable to choices made more than a century ago choices about whether indigenous people were the owners of their land and how that land was to be transferred to

whites Banner argues that these differences were not due to any deliberate land policy created in London or Washington Rather the decisions were made locally by settlers and colonial officials and were based on factors peculiar to each colony such as whether the local indigenous people were agriculturalists and what level of political organization they had attained These differences loom very large now perhaps even larger than they did in the nineteenth century because they continue to influence the course of litigation and political struggle between indigenous people and whites over claims to land and other resources Possessing the Pacific is an original and broadly conceived study of how colonial struggles over land still shape the relations between whites and indigenous people throughout much of the world

A First Nations Voice in the Australian Constitution Shireen Morris, 2020-08-06 This book makes the legal and political case for Indigenous constitutional recognition through a constitutionally guaranteed First Nations voice as advocated by the historic Uluru Statement from the Heart It argues that a constitutional amendment to empower Indigenous peoples with a fairer say in laws and policies made about them and their rights is both constitutionally congruent and politically achievable A First Nations voice is deeply in keeping with the culture design and philosophy of Australia's federal Constitution as well as the long history of Indigenous advocacy for greater empowerment and self determination in their affairs Morris explores the historical political theoretical and international contexts underpinning the contemporary debate before delving into the constitutional detail to craft a compelling case for change

International Law Donald R Rothwell, Stuart Kaye, Afshin Akhtar-Khavari, Ruth Davis, Imogen Saunders, 2018-06-19 The third edition of International Law Cases and Materials with Australian Perspectives examines how international law is developed implemented and interpreted

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