

History Establishment is on terra infirma

In October 2020, I self-published my history, *The Colonisation of Australia, as told by a nine-year-old in 1960*.

This history consists mainly of 57 unedited full-scale colour scans of consecutive pages of my Grades 5 and 6 Social Studies exercise books, written and illustrated in my own child's hand.

I set out to write this history for researchers and teachers in response to claims that Aboriginal people "did not exist" in the History that was taught in schools in my era. Some of these claims are quoted in my freely available introduction. I believe that I at least cast doubt on the claims by providing unambiguous evidence that there was significant Aboriginal content in the History curriculum at my school six decades ago.

I recently received an email from a member of the History Establishment telling me that, while my book is certainly interesting and includes workbooks that are a rich primary source that show that there was some Aboriginal content in Australian schools in the 1950s, the organisation that my correspondent represents cannot promote its use in schools. For one thing, how Aboriginal history was taught is not a part of the curriculum. But more compellingly, what I was taught was seriously flawed and it would be painful for Indigenous children to read, and potentially damaging to non-Indigenous children as well.

In addition, they continue, there are some contradictions between my historical interpretations and the current curriculum, including my discussion about terra nullius and the fact that I (allegedly) imply that there is an equivalence between acts of cruelty and acts of kindness by white settlers and their descendants towards Indigenous people.

For now, though, I want to simply focus on the issue of terra nullius.

I think that it would be clear from any fair reading of my book that my cohort was not taught that Cook was the first man to discover Australia, nor that Australia was empty when he sailed his converted coal barge up the east coast of the continent. The term terra nullius appears in neither my primary school exercise books, nor in our class history book.¹

My correspondent writes:

There are ... contradictions between your historical interpretations and the current curriculum. You suggest on page 60 that Terra Nullius was related to the question of whether or not Australia was inhabited, and was a notion that was 'reinvented' hundreds of years after European settlement because it 'suited the purposes of the Great Powers'. Under the current curriculum, students learn that Terra Nullius was a legal concept used by the British to negate Batman's treaty with the Aboriginal people of Port Phillip, and it referred to whether inhabitants could be considered to have ownership rights over land that they had not 'improved'.

This is what I actually wrote on page 60 of my book:

On the question of *Terra Nullius*, Europeans have known full well since the voyages of discovery that Australia was already inhabited. It may have suited the purposes of the Great Powers to reinvent the notion a hundreds [sic] years after European settlement, but suggesting that successive generations of teachers in Australia taught that Australia was uninhabited when Cook arrived is one of those conspiracy theories that is too far-fetched to be credible.²

Terra nullius literally means empty land, or land devoid of people. As Luke Pearson from Indigenoux wrote:

As Terra Nullius translates into 'land belonging to no one' it is effectively a debate about whether Indigenous people existed before 1788, and whether what happened to Indigenous people during and after 1788 actually matters... or not.³

¹ *The Australia Book*, written by Eve Pownall. *Young Dark Emu* won the 2020 Eve Pownall Award for Information Book of the Year at the 2020 Children's Book of the Year Awards.

² There was a typographical error in this passage: "a hundreds" should have read "a hundred".

³ <https://indigenoux.com.au/the-changes-to-the-national-curriculum-have-nothing-to-do-with-education/>

I think that that literal definition is the “popular” definition as well (to the extent that members of the general public have an opinion on the matter). Based on comments in social media, many people attest that they were indeed taught that Cook discovered Australia — implying that he was the first to discover Australia — and that Aboriginal people either did not exist or were regarded as flora and fauna. “We didn’t even exist,” wrote Stan Grant.

Whether we are differentiating between crows and ravens, or discussing the semantics of historical terms, what an academic thinks is probably nothing more than academic when the “rest of the world” thinks something quite different, especially when it is doubtful that many academics have done anything much to disabuse *hoi polloi* of their “misconceptions”. I assume, for example, that no-one from the History Establishment attempted to disabuse ABC presenter, Adnyamathanha Kokatha man Dwayne Coulthard, of this misconception when he said on the popular children’s education program, *Behind the News*:

During settlement in 1788, the British then employed the doctrine of Terra Nullius, which means that nobody essentially lived in Australia when the British arrived, which we know today is untrue.⁴

I further assume that no-one complained when, in an episode called “Terra Nullius” in “Netflix’s blockbuster royal drama” *The Crown*, a jocularly abrasive Bob Hawke tells Prince Charles:

Terra Nullis — that’s what your ancestor King George the Third called us when the Brits arrived — nobody’s country. Well, by God, we were somebody’s country then. We are our own country now.⁵

In any case, I feel that my correspondent is straw-manning me into a position where I am supposedly *denying* in my book that any officials or colonists of the day rationalised their dispossession of Indigenous people with racist notions based on an assumptions about European superiority and/or a lack of proper acknowledgement of Indigenous property rights.

What I actually argue in my book that it is not credible to claim that schools taught over many decades that Australia was *first* discovered by James Cook, or similarly, that Australia was uninhabited when Cook arrived, even though absolutely everybody knew full well, long before Cook arrived and even long before he was born, that Australia had already been discovered, originally by abORIGINAL people, and much later by other Europeans. (The voyages of the Lapintas and “Macassans” and others were presumably not widely known decades ago.)

The fact that terra nullius has come to mean that Australia was sparsely inhabited, or inhabited by people who lived in a state of nature and did not till the soil (and therefore were considered to have had no land rights) seems to have come about exactly because it was so well-known that Australia was already inhabited when Europeans arrived. According to the Gustavus Adolphus College:

Starting in the 17th century, *terra nullius* denoted a legal concept allowing a European colonial power to take control of ‘empty’ territory that none of the other European colonial powers had claimed. Of course, most of these ‘empty’ territories were inhabited, so **the meaning of terra nullius grew to include territories considered ‘devoid of civilized society.’**⁶ “ (My bold)

In the view of British researcher Peter Kilroy:

Contrary to a common reading of terra nullius as ‘empty’ or no-one’s land, Cook and his advisers were eminently aware that ‘Australia’ was not empty.⁷

Watkin Tench describes Governor Phillip being unable to safely plant the British flag near a large group of unwelcoming Indigenous people:

We found the natives [at Botany Bay] tolerably numerous ... we had reason to conclude the country more populated than Mr Cook thought it. For on the *Supply’s* arrival in the bay on the 18th of the month they were assembled on the beach at the south shore in the number of not less than forty persons, shouting

⁴ Behind the News, broadcast on Tuesday 3 Jun 2014, 10:00am

⁵ *The Crown*, Season 4, Episode 6, cue: 12.10 remaining. Strangely, I could find no mention in the historical record of George III actually saying this.

⁶ <http://homepages.gac.edu/~lwren/AmericanIdentitiesArt%20folder/AmericanIdentitiesArt/Terra%20Nullius.html>

⁷ <https://theconversation.com/discovery-settlement-or-invasion-the-power-of-language-in-australias-historical-narrative-57097>

and making many uncouth signs and gestures... but as prudence forbade a few people to venture wantonly among so great a number, and a party of only six men were observed on the north shore, the governor immediately proceeded to land on that side in order to take possession of his new territory and bring about an intercourse between its old and new masters.⁸

Tim Flannery maintains that Tench's two accounts of the initial European settlement of NSW were best-sellers in Britain in their day. This suggests that no-one should have been under any illusion about NSW being uninhabited, or even sparsely inhabited, at least in the areas first occupied or visited by the "new masters".

I have not seen any evidence that the early British settlers used *terra nullius* as a legal doctrine to justify colonisation, nor in fact that they were even aware of the term. But leap forward to Governor Bourke's Proclamation of 1835, following Batman's treaty with elders of a Wurundjeri willam on the Plenty River in the Port Phillip district of Victoria. This proclamation, I assume, is what my correspondent meant by the "legal concept used by the British to negate Batman's treaty with the Aboriginal people of Port Phillip ..."

What does this proclamation say? Essentially, it says that Batman's treaty had no legal force. Burke does mention "vacant land", but only in contradistinction to land that the Crown had already allotted to settlers. Bourke is saying that no unauthorised settlers had the power to make agreements with Aboriginal people. He asserts the Crown's ownership and control of all land within NSW, but offers *no* rationalisation for that assertion. Nor does he mention Aboriginal ownership rights (or lack of them) over land that had not been "improved". And nor does he use the term *terra nullius*. (See Appendix 1.)

So, is my correspondent wrong? Is the curriculum wrong? Or am I missing something?

In any event, it is darkly ironical that, while Bourke reasserted the absolute sovereignty of the Crown over the whole of NSW in 1835 in the form of a proclamation, just a few months later, in the same year, in our part of the world, other colonisers asserted their absolute sovereignty over the Chatham Islands by the ritual killing of 300 of its inhabitants.⁹ You are unlikely to find this incident in the curriculum, but it ought to be there because it gives some perspective on the evil things that happened in our colonial past. (More on Bourke's proclamation later.)

All that aside, in a parallel universe, if I supported the accepted wisdom in relation to *terra nullius*, I would seriously worry that a stronger case had not been made. I would be troubled that the term *terra nullius* does not seem to have appeared in our lexicon until nearly a hundred years after the British colonised Australia. I would be troubled that the doctrine of *terra nullius* seems to have been applied *only* to Australia, and not to other British colonies. And I would be troubled that the literal definition does not match the evolved (and arguably conveniently revisionist) meaning of the term, namely, land that has not been farmed.

I did — as you might expect — reply to my correspondent, and I directly addressed this point (among others). I wrote:

The earliest use of the term *terra nullius* that I can find is in 1908 in reference to imperial powers redividing the globe (which is what led to WWI). I may well be wrong, but I think that as far as the British Colonial Office was concerned, in the late 18th century, the land belonged to whichever colonial power planted their flag first, and cemented their claim by establishing a settlement. They did not need any other justification. If the curriculum is saying anything very different to all of this, then it would seem to me that the curriculum is wrong. In any case, this issue ought to be reviewed in light of the points above.

Since then, I asked History teachers for the earliest reference to *terra nullius* that they could find, and one found a short article republished in Trove that was originally published in the *South Australian Register* on 28 February 1885. It was essentially about the realpolitik in which Bismarck engaged. (See Appendix 2.)

The issue of worked land is a different kind of issue because there has been a persistent belief from the outset by European settlers and their descendants that Indigenous Australians were not farmers. Tench writes:

⁸ Watkin Tench 1778, The Text Publishing Company, Melbourne (2012), p40. Elsewhere, interestingly, Tench did refer to Indigenous Australians as "lords of the soil". (Citation needed.)

⁹ Jared Diamond, *Guns, Germs and Steel*, Vintage (1998), pp53-4.

To cultivation of the ground they are utter strangers, and wholly depend for food on the few fruits they gather, the roots they dig up in the swamps, and the fish they pick up along shore or contrive to strike from their canoes with spears. Fishing, indeed, seems to engross nearly the whole of their time ...¹⁰

If, as my correspondent suggests, terra nullius “referred to whether inhabitants could be considered to have ownership rights over land that they had not ‘improved’ ”, what was the justification for British colonisation of the eastern seaboard of North America when Iroquois corn fields were more productive than European wheat fields? What was the justification for colonisation of New Guinea which was occupied by gardeners? Or much of Africa where staple foods had long been provided by agriculture? Terra nullius clearly would not have applied to most of those red patches on a late nineteenth map of the world.

One could argue that there was a kind of Australian exceptionalism at work. Researchers from Gustavus Adolphus College, for example, maintain that:

... the application of terra nullius to Australia was inconsistent with the practice elsewhere in the British Empire. The British Government attempted as early as the 1830s and 1840s to bring Australian colonial practice into line with international law as it then stood, and with the approach taken elsewhere in the Empire. Its efforts were unsuccessful and Australian policy towards native land rights developed in a markedly different way to that of the rest of the Empire.¹¹

Or one could argue, more plausibly, that whatever the British Government demanded of its Australian colonial proxies, the British Government got. But regardless of this abundantly obvious point, terra nullius does not appear to have been a particularly clever doctrine for legitimising British colonisation, even if it had been invented before 1885 (or more to the point, before the Privy Council ruling of 1889). Nor, I suspect, was it particularly necessary when the doctrine of discovery appears to have been already embedded in the collective psyches of both explorers and their masters for more than three centuries before Cook and the First Fleet.

The doctrine of discovery, in fact, seems to much better explain the kinds of decisions made over those centuries by European explorers and their masters. As for the settlers themselves, while many probably gave voice to a whole range of prejudices, others would not have needed or bothered with any kind of rationale before or after establishing farms or businesses in settled areas, or driving their stock into “new” lands, or simply breathing the fresh Antipodean air. Others, like Watkin Tench and that contemptible currency lad John Batman, recognised prior ownership.

The origins of the doctrine of discovery go back to the year after Columbus sailed to the New World. The 1493 Papal Bull *Inter Caetera*, meaning “among things”— see Appendix 3 — was explicitly used to provide justification for both the Spanish conquest of the Americas and the United States’ western expansion.

The Bull stated that any land not inhabited by Christians was available to be ‘discovered,’ claimed, and exploited by Christian rulers and declared that ‘the Catholic faith and the Christian religion be exalted and be everywhere increased and spread, that the health of souls be cared for and that barbarous nations be overthrown and brought to the faith itself.’¹²

The Church of England’s break from the Catholic Church was not cemented until 1534. After that, I imagine that, while the doctrine of discovery still guided expansion of the British Empire around the world, the British would not have been falling over themselves to publicly invoke the authority of the papacy.

Africans famously said, When the Europeans arrived, they had the Bible and we had the land. Now, we have the Bible and they have the land. But, interestingly, Indigenous peoples usually ended up with a more fundamentalist form of Christianity than has since evolved in the donor countries.

The Aboriginal Legal Service stated that “The Doctrine of Terra Nullius became a morphed and more extreme version of the Doctrine of Discovery”, but a doctrine that had already made Cortes and

¹⁰ Ibid., p53

¹¹ <http://homepages.gac.edu/~lwren/AmericanIdentitiesArt%20folder/AmericanIdentitiesArt/Terra%20Nullius.html>

¹² <https://www.gilderlehrman.org/history-resources/spotlight-primary-source/doctrine-discovery-1493>

Pizzaro feel comfortable about destroying great (if also brutal) civilisations, I suggest, would have already been extreme.¹³

In my view, at least, as far as 19th century British colonialism was concerned, the original, pre-Enlightenment version of the doctrine of discovery that was based on the quest to burn any individuals at the stake and destroy any cultures that failed to embrace the sado-masochistic notion of God torturing his own son had largely morphed into a “civilising” mission to “save” Indigenous peoples from their own “backwardness”.

But is there any evidence in events surrounding Bourke’s proclamation in 1835 that the early colonists were thinking along the lines of exchanging the land for the Bible? Let’s interrogate the context of Bourke’s proclamation. According to Marguerita Stephens:

By the mid 1830s, the colonial government of New South Wales was under enormous pressure to unlock the lush grasslands of the Port Phillip District. In June 1835 John Batman and the Port Phillip Association laid claim to around 240,000 hectares (600,000 acres) of land, as ‘beautiful’ and ‘as rich ... as I ever saw’, with ‘grass of the best description’, wrote a jubilant Batman. At the northern end of Port Phillip Bay, Batman located a party of Wurundjeri (or, more likely, was located by that party), and six of the senior men made their mark on a treaty prepared in advance by Batman: he later argued that they fully understood that they were signing over their lands in exchange for an annual tribute of tools, blankets and rations. Whatever the true meaning of the agreement for the Kulin, it was invalidated in London in January 1836 on the grounds of prior claim to the territory by the British crown. But in their judgment, Justices Burge, Follett and Pemberton invited the Port Phillip Association to avoid being ‘ousted’ from their new estate by making application to government laying out ‘every ... circumstance connected with the acquisition’¹⁴

So Bourke proclaimed that Batman’s agreement had no legal force, and Bourke’s proclamation was in effect ratified by the British legal process. Batman and Co, however, were given a chance to plead their case and secure legal title to the land they had claimed. But what justification for their land claim could the Port Phillip Association come up with that would be acceptable to the knights of the realm in London? Stephens again:

Those circumstances, as publicised by George Mercer, the Association’s advocate in Britain, gave finely tuned prominence to the Association’s ‘philanthropic’ and evangelical motives, and to the ‘understanding’ of agreed terms that Batman had been advised by Sir George Arthur (Lieutenant Governor at Van Diemen’s Land) to secure with the Aborigines of Port Phillip.¹⁸ Mercer was able to report in April 1836 that

‘Buxton [a reformist English member of parliament], unsolicited ... by me, has, on perusing the documents tendered his advocacy in the House, in support of the system we have adopted in reference to the natives, declaring that he will never acknowledge a right to deprive them of the lands, without compensation, protection, food, &c’

Arthur [lieutenant governor of Van Diemen’s Land] (who had long-standing connections with Buxton and with Lord Glenelg and James Stephen at the Colonial Office), Batman, Mercer and the British judges had rightly wagered that Buxton’s concern for the territorial rights of the colonised would be tempered by the offer of compensation as laid out in the treaty, but more so by the Association’s plan to send missionaries to proselytise amongst the Aborigines at Port Phillip. Despite the formal invalidation of the treaty, Batman’s venture at Port Phillip was assured of continuation when, in June 1836, Buxton and the secretaries of Britain’s most prominent mission societies jointly laid out, before the Aborigines Committee, a calculus of imperial humanitarianism in which the transmission of Christianity was measured as both ‘fair and adequate compensation’ for the appropriation of Aboriginal lands, and, happily, ‘as the only compensation we can afford’.¹⁵

The transmission of Christianity was fair and adequate compensation for the appropriation of Aboriginal lands?

What does this sound like?

¹³ <https://www.als.org.au/the-doctrine-of-discovery/>

¹⁴ <http://press-files.anu.edu.au/downloads/press/p308321/pdf/ch06.pdf>. This text is taken from *Aboriginal History, Volume 38*, edited by Shino Konishi, published 2015 by ANU Press, The Australian National University, Canberra, Australia.

¹⁵ *Ibid.*

Does it sound like: We are entitled to take the land because that part of the world was uninhabited, sparsely inhabited or unworked?

Or does it sound like: We are entitled to take the land because we will give Aboriginal people the Bible in return?

The scramble for colonies meant fierce competition between colonialist powers. Britain was at war — mainly with France, Spain and the Americans — for 26 of the 39 years between 1776 and 1815. And much of the fighting was in the colonies (even when war had not been declared). This pattern persisted throughout the nineteenth century and well into the twentieth century.

The doctrine of discovery explains the importance of planting flags and nailing up plates. It explains the importance of cementing claims of ownership with settlements, such as Sorrento, Launceston, Hobart and the Swan River. It explains the anxiety that was provoked by the arrival of French ships here just after the arrival of the First Fleet. It helps explain the financial investment in voyages of discovery (the other reason, of course, being trade, which could be conducted without colonising other places). And it explains that mad scramble for empire. To the extent that international law even existed in the 18th century, it seems to have been preoccupied with protecting the land rights of “sovereign states” (i.e. the colonial powers), land rights which were based on discovery, *not by indigenous peoples*, but by agents of those colonial powers.

In south-eastern Asia and the South Pacific, territory had been annexed by the British, French, Dutch, Portuguese, Spanish and later, the Germans. US whalers were active in the South Pacific. The US had a consulate in Melbourne during the gold rush period. Australian ports were fortified in the second half of the nineteenth century due to fear of the Russians. So rivalry between imperialist powers was intense.¹⁶

But let's now return briefly to my correspondent's claim that what I said about terra nullius contradicts the curriculum. Readers will recall that my correspondent writes:

Under the current curriculum, students learn that Terra Nullius was a legal concept used by the British to negate Batman's treaty with the Aboriginal people of Port Phillip, and it referred to whether inhabitants could be considered to have ownership rights over land that they had not 'improved'.

I have trawled through the relevant ACARA and VCAA curriculum documents, and I can find precious little — either directly or indirectly — about terra nullius. (See Appendices 4–6.) Moreover, it would surprise me if the History curriculum is now so prescriptive that it would definitively state a contended claim as a historical truth without asking students to look at the evidence and make up their own minds.

In sum, in my view, land grabs by European nations around the world are best explained by imperialist rivalry, and were traditionally justified by the doctrine of discovery. What mattered most to the British colonialists was not that Cook discovered Australia, but that he discovered it — NSW, at least — *before Britain's colonial rivals*. Whether Australia was uninhabited, sparsely inhabited or inhabited by farmers was virtually irrelevant to the British. I just do not think that enough evidence has been presented for a sceptical person to accept that the doctrine of terra nullius was at play in any significant way during the first century of colonisation.

What is the absolute best we could say in terms of making sense of terra nullius as it was supposed to be understood in the early days of European settlement? Perhaps this:

Terra nullius was never an established, written doctrine explicitly laid out and followed by “settlers” or enshrined within law. It was a complex mix of philosophical ideas (going back to Hobbes, Locke and others) – loose cultural perceptions and shifting legal practices that were often not explicitly named. This makes it difficult to establish both what it was and how it might have been challenged.¹⁷

In the spirit of generosity, I will allow my correspondent a parting word:

¹⁶ See “An attack on Melbourne: a case study of the defence of Australia's major ports in the early 1890s” by Michael Kitson, *Journal of the Australian War Memorial*, no 35, December 2001.

¹⁷ <https://theconversation.com/discovery-settlement-or-invasion-the-power-of-language-in-australias-historical-narrative-57097>

I appreciate the thought and care you have put into your book, and found the memoir elements to be most interesting, often illuminating and charmingly written. The primary sources are fascinating, rich and potentially very useful, but I am just not sure that they support the central argument you were crafting here. I do wish you every success with the book but I am afraid [my organisation] cannot promote it for use in [our state's] history classrooms.

Humorists say we should ignore everything before the word but; however, being a contrarian, I suggest that we ignore everything here *after* the word “but”.

Finally, in my view, as taxpayer-funded service organisations whose central purpose is to keep History teachers informed about a range of serious perspectives, history associations should not behave like epistemological gatekeepers. They should not refuse to support good history, or refuse to discuss bad history. They should not seek to weaponise silence, or silence with faint praise those who don't conform to the new orthodoxy (as they have clearly done in my case — a claim that I am more that happy to support with evidence).

Critical thinkers judge arguments on their merits, not by markers such as the demographic that the author belongs to, or whether they are an established historian or a part of academia, or parrot the popular view, or pay due homage to the new sacraments.

No-one should automatically assume that — because a writer challenges the claim that terra nullius was used by early explorers and colonists to justify annexation of Aboriginal land — the writer opposes the Mabo ruling, or opposes Aboriginal land rights, or is apologising for colonialism, or disrespects Aboriginal people. History is first and last about truth-telling, proceeding from the evidence, and not ignoring or dismissing inconvenient facts or arguments.

Billy Griffiths wrote:

This vein of new scholarship [that confronts the harrowing histories of the frontier] is the legacy of the pioneering historians of the 1970s and '80s who helped bring Aboriginal history into Australian consciousness.¹⁸

I am one of those pioneering historians.

If *The Black Resistance*¹⁹ had not been researched and written in the 1970s by the revolutionary collective to which I belonged — at a time when we had seen no other history book like it — our society's knowledge of invasion, massacres and resistance across this continent would have been much poorer²⁰. It is worth noting as well that our words were matched by actions. We reached out to the Australian Black Panther Party; we marched in the streets for land rights; and we consistently included Aboriginal perspectives in our broader struggle for social justice ... and we paid the price in beatings, arrests and court convictions²¹. Nevertheless, I am proud of the fact that we made history, and didn't just talk about it.

I therefore commend my book to any researcher or teacher who wants to examine primary-source evidence of what was actually taught about colonial history in classrooms in the late '50s and early '60s. And I welcome any review of my book — good, bad or indifferent — that promotes discussion of issues that I think are fundamental to the way that we understand human interactions in this country, and ideally, demonstrates some kind of intellectual rigour.

last modified: 9 April 2021

¹⁸ Billy Griffiths, “Moment of Truth” in *Quarterly Essay*, Issue 70, 2018, p109.

¹⁹ Robinson, F & York, B (edit), *The Black Resistance*, Widescope Books (1970). See <https://www.wipeout.com.au/articles-images/history/2-uncategorised/174-the-black-resistance-chapter-3-tasmania-1977.html>

²⁰ In turn, the seeds of my thinking then were sown when I was in primary school a decade or so earlier.

²¹ Robinson and Yorke were both jailed in the 1970s for their role in the protest movement.

Appendices

Appendix 1: Bourke's 1835 proclamation in full

Proclamation

By His Excellency Major General Sir Richard Bourke, K.C.B. Commanding His Majesty's Forces, Captain General and Governor in Chief of the Territory of New South Wales and its Dependencies, and Vice Admiral of the same &c. &c. &c.

Whereas, it has been represented to me, that divers of His Majesty's Subjects have taken possession of vacant Lands of the Crown, within the limits of this Colony, under the pretence of a treaty, bargain, or contract, for the purchase thereof, with the Aboriginal Natives; Now therefore, I, the Governor, in virtue and in exercise of the power and authority in me vested, do hereby proclaim and notify to all His Majesty's Subjects, and others whom it may concern, that every such treaty, bargain, and contract with the Aboriginal Natives, as aforesaid, for the possession, title, or claim to any Lands lying and being within the limits of the Government of the Colony of New South Wales, as the same are laid down and defined by His Majesty's Commission; that is to say, extending from the Northern Cape, or extremity of the Coast called Cape York, in the latitude of ten degrees thirty seven minutes South, to the Southern extremity of the said Territory of New South Wales, or Wilson's Promontory, in the latitude of thirty nine degrees twelve minutes South, and embracing all the Country inland to the Westward, as far as the one hundred and twenty ninth degree of east longitude, reckoning from the meridian of Greenwich, including all the Islands adjacent, in the Pacific Ocean within the latitude aforesaid, and including also Norfolk Island, is void and of no effect against the rights of the Crown; and that all Persons who shall be found in possession of any such Lands as aforesaid, without the license or authority of His Majesty's Government, for such purpose, first had and obtained, will be considered as trespassers, and liable to be dealt with in like manner as other intruders upon the vacant Lands of the Crown within the said Colony.

Given under my Hand and Seal, at Government House, Sydney, this twenty sixth Day of August, One thousand eight hundred and thirty five.

(Signed) "Richard Bourke" By His Excellency's Command

(Signed) Alexander McLeay God Save the King!

(https://www.foundingdocs.gov.au/resources/transcripts/nsw7_doc_1835.pdf)

Appendix 2: "In familiar parlance", *South Australian Register* (28 February 1885)

In familiar parlance

Germany has "made a splash" as a colonia-Power *in posse*, which is about all that Prince von Bismarck hoped to effect by taking the initiative in a sort of international contract

intended to regulate the future methods by which civilized nations should annex countries "belonging to nobody," except to their inhabitants—*terra nullius* is the agreeable term by which they are described in the Conference protocols. It may be safely assumed that the Chancellor did not expect to achieve much more than the "splash" in question by his ingenious little enterprises on the African coast and in your own archipelago. No one knows so well as he how averse the Germans are to adventures involving even moderate outlay, or how insurmountable is their reluctance to fall in with any scheme recommended to them by their Government, no matter how tempting may be the prospects it holds out to them.

(<https://trove.nla.gov.au/newspaper/article/44545993>)

Appendix 3: Inter Caetera

Division of the undiscovered world between Spain and Portugal

Pope Alexander VI - 1493

Alexander, bishop, servant of the servants of God, to the illustrious sovereigns, our very dear son in Christ, Ferdinand, king, and our very dear daughter in Christ, Isabella, queen of Castile, Leon, Aragon, Sicily, and Granada, health and apostolic benediction. Among other works well pleasing to the Divine Majesty and cherished of our heart, this assuredly ranks highest, that in our times especially the Catholic faith and the Christian religion be exalted and be everywhere increased and spread, that the health of souls be cared for and that barbarous nations be overthrown and brought to the faith itself. Wherefore inasmuch as by the favor of divine clemency, we, though of insufficient merits, have been called to this Holy See of Peter, recognizing that as true Catholic kings and princes, such as we have known you always to be, and as your illustrious deeds already known to almost the whole world declare, you not only eagerly desire but with every effort, zeal, and diligence, without regard to hardships, expenses, dangers, with the shedding even of your blood, are laboring to that end; recognizing also that you have long since dedicated to this purpose your whole soul and all your endeavors — as witnessed in these times with so much glory to the Divine Name in your recovery of the kingdom of Granada from the yoke of the Saracens — we therefore are rightly led, and hold it as our duty, to grant you even of our own accord and in your favor those things whereby with effort each day more hearty you may be enabled for the honor of God himself and the spread of the Christian rule to carry forward your holy and praiseworthy purpose so pleasing to immortal God.

We have indeed learned that you, who for a long time had intended to seek out and discover certain islands and mainlands remote and unknown and not hitherto discovered by others, to the end that you might bring to the worship of our Redeemer and the profession of the Catholic faith their residents and inhabitants, having been up to the present time greatly engaged in the siege and recovery of the kingdom itself of Granada were unable to accomplish this holy and praiseworthy purpose; but the said kingdom having at length been regained, as was pleasing to the Lord, you, with the wish to fulfill your desire, chose our beloved son, Christopher Columbus, a man assuredly worthy and of the highest recommendations and fitted for so great an undertaking, whom you furnished with ships and men equipped for like designs, not without the greatest hardships, dangers, and expenses, to make diligent quest for these remote and unknown mainlands and islands through the sea, where hitherto no one had sailed; and they at length, with divine aid and with the utmost diligence sailing in the ocean sea, discovered certain very remote islands and even mainlands that hitherto had not been discovered by others; wherein dwell very many peoples living in peace, and, as reported, going unclothed, and not eating flesh. Moreover, as your aforesaid envoys are of opinion, these very peoples living in the said islands and countries believe in one God, the Creator in heaven, and seem sufficiently disposed to embrace the Catholic faith and be trained in good morals.

And it is hoped that, were they instructed, the name of the Savior, our Lord Jesus Christ, would easily be introduced into the said countries and islands. Also, on one of the chief of these aforesaid islands the said Christopher has already caused to be put together and built a fortress fairly equipped, wherein he has stationed as garrison certain Christians, companions of his, who are to make search for other remote and unknown islands and mainlands. In the islands and countries already discovered are found gold, spices, and very many other precious things of divers kinds and qualities.

Wherefore, as becomes Catholic kings and princes, after earnest consideration of all matters, especially of the rise and spread of the Catholic faith, as was the fashion of your ancestors, kings of renowned memory, you have purposed with the favor of divine clemency to bring under your sway the said mainlands and islands with their residents and inhabitants and to bring them

to the Catholic faith. Hence, heartily commending in the Lord this your holy and praiseworthy purpose, and desirous that it be duly accomplished, and that the name of our Savior be carried into those regions, we exhort you very earnestly in the Lord and by your reception of holy baptism, whereby you are bound to our apostolic commands, and by the bowels of the mercy of our Lord Jesus Christ, enjoin strictly, that inasmuch as with eager zeal for the true faith you design to equip and despatch this expedition, you purpose also, as is your duty, to lead the peoples dwelling in those islands and countries to embrace the Christian religion; nor at any time let dangers or hardships deter you therefrom, with the stout hope and trust in your hearts that Almighty God will further your undertakings.

And, in order that you may enter upon so great an undertaking with greater readiness and heartiness endowed with the benefit of our apostolic favor, we, of our own accord, not at your instance nor the request of anyone else in your regard, but of our own sole largess and certain knowledge and out of the fullness of our apostolic power, by the authority of Almighty God conferred upon us in blessed Peter and of the vicarship of Jesus Christ, which we hold on earth, do by tenor of these presents, should any of said islands have been found by your envoys and captains, give, grant, and assign to you and your heirs and successors, kings of Castile and Leon, forever, together with all their dominions, cities, camps, places, and villages, and all rights, jurisdictions, and appurtenances, all islands and mainlands found and to be found, discovered and to be discovered towards the west and south, by drawing and establishing a line from the Arctic pole, namely the north, to the Antarctic pole, namely the south, no matter whether the said mainlands and islands are found and to be found in the direction of India or towards any other quarter, the said line to be distant one hundred leagues towards the west and south from any of the islands commonly known as the Azores and Cape Verde.

With this proviso however that none of the islands and mainlands, found and to be found, discovered and to be discovered, beyond that said line towards the west and south, be in the actual possession of any Christian king or prince up to the birthday of our Lord Jesus Christ just past from which the present year one thousand four hundred and ninety-three begins. And we make, appoint, and depute you and your said heirs and successors lords of them with full and free power, authority, and jurisdiction of every kind; with this proviso however, that by this our gift, grant, and assignment no right acquired by any Christian prince, who may be in actual possession of said islands and mainlands prior to the said birthday of our Lord Jesus Christ, is hereby to be understood to be withdrawn or taken away.

Moreover we command you in virtue of holy obedience that, employing all due diligence in the premises, as you also promise — nor do we doubt your compliance therein in accordance with your loyalty and royal greatness of spirit — you should appoint to the aforesaid mainlands and islands worthy, God-fearing, learned, skilled, and experienced men, in order to instruct the aforesaid inhabitants and residents in the Catholic faith and train them in good morals. Furthermore, under penalty of excommunication *late sententie* to be incurred *ipso facto*, should anyone thus contravene, we strictly forbid all persons of whatsoever rank, even imperial and royal, or of whatsoever estate, degree, order, or condition, to dare, without your special permit or that of your aforesaid heirs and successors, to go for the purpose of trade or any other reason to the islands or mainlands, found and to be found, discovered and to be discovered, towards the west and south, by drawing and establishing a line from the Arctic pole to the Antarctic pole, no matter whether the mainlands and islands, found and to be found, lie in the direction of India or toward any other quarter whatsoever, the said line to be distant one hundred leagues towards the west and south, as is aforesaid, from any of the islands commonly known as the Azores and Cape Verde; apostolic constitutions and ordinances and other decrees whatsoever to the contrary notwithstanding.

We trust in Him from whom empires and governments and all good things proceed, that, should you, with the Lord's guidance, pursue this holy and praiseworthy undertaking, in a short while your hardships and endeavors will attain the most felicitous result, to the happiness and glory of all Christendom. But inasmuch as it would be difficult to have these present letters sent to all places where desirable, we wish, and with similar accord and knowledge do decree, that to copies of them, signed by the hand of a public notary commissioned therefor, and sealed with the seal of any ecclesiastical officer or ecclesiastical court, the same respect is to be shown in court and outside as well as anywhere else as would be given to these presents should they thus be exhibited or shown. Let no one, therefore, infringe, or with rash boldness contravene, this our recommendation, exhortation, requisition, gift, grant, assignment, constitution, deputation, decree, mandate, prohibition, and will. Should anyone presume to attempt this, be it known to him that he will incur the wrath of Almighty God and of the blessed apostles Peter and Paul. Given at Rome, at St. Peter's, in the year of the incarnation of our Lord one thousand four hundred and ninety-three, the fourth of May, and the first year of our pontificate.

Gratis by order of our most holy lord, the pope.

Alexander VI
May 4, 1493

June. For the referendary, For J. Bufolinus, A. de Mucciarellis. A. Santoseverino. L. Podocatharus.

[Typographical errors faithfully copied.]

Appendix 4: ACARA references to terra nullius

Modern History

Unit 2: Movements for Change in the 20th Century

Recognition and rights of indigenous peoples

The basis on which the colonists claimed sovereignty and imposed control, including conquest, treaty and the doctrine of 'terra nullius'; and the consequences for the legal status and land rights of Indigenous peoples (ACHMH071)

(<https://www.australiancurriculum.edu.au/Search/?q=ACHMH071>)

Appendix 5: VCAA (Victorian Curriculum & Assessment Authority) references to terra nullius

Units 1 and 2: Empires

Area of Study 2

Encounters, challenge and change

Outcome 2

On completion of this unit the student should be able to analyse the challenges and changes faced by the empire and evaluate the consequences of its imperial encounters in new territories and colonies, and on Indigenous peoples.

To achieve this outcome the student will draw on key knowledge and key skills outlined in Area of Study 2.

Key knowledge

- the challenges of consolidating and expanding the power of the empire, such as indigenous encounters, revolts, frontier conflict and resistance, external invasion, rivalries with other empires, logistics in maintaining food supplies, diseases and plagues, environmental disasters, and internal rivalries
- the political, legal, social and economic structures and management of new territories, such as colonies, governance, trading hubs, settlements, military and frontier outposts, systems of law and order, and methods of suppressing dissent
- the competing motivations of individuals and groups in establishing and exploiting colonies, such as political leaders, explorers, missionaries and religious groups, traders and merchants

(<https://www.vcaa.vic.edu.au/Documents/vce/history/2022HistorySD.docx>)

Appendix 6: VCAA

History Level Description

From Colony to Nation

In **Levels 5 and 6**, students study colonial Australia in the 1800s and the development of Australia as a nation, particularly after 1900. Students look at the founding of British colonies and the development of a colony. They learn about what life was like for different groups of people in the colonial period. They examine significant events and people, political and economic...

Historical Knowledge

The Australian colonies

The social, economic and political causes and reasons for the establishment of British colonies in Australia after 1800 (VCHHK088)

Elaborations

Investigating the causes and reasons, including economic, political and social, for the establishment of one or more British colonies

(<https://victoriancurriculum.vcaa.vic.edu.au/level6>)