

Terra Alterius: land of another

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Terra Alterius: Land of Another

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M. Art. Administration (Hons)
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Abstract

What would Australia be like if it had been recognised as *terra alterius*, ‘land of another’, by the British, rather than claimed and treated as *terra nullius*, ‘land of no-one’? This question was posed by the exhibition *Terra Alterius: Land of Another*, which comprised works by Gordon Bennett, Barbara Campbell-Allen, Julie Dowling, Shaun Gladwell + Michael Schiavello, Jonathan Jones, Joanne Searle, Esme Timbery, Freddie Timms, Lynette Wallworth, Guan Wei and Lena Yarinkura, created or nominated in response to the theme.

This thesis describes the concept of *terra alterius* and the exhibition *Terra Alterius: Land of Another*. It considers the utility of the concept *terra alterius*, whether the exhibition achieved its ambition to explore the political and social terrain of a reconciled Australia, and, briefly, whether the concept of *terra alterius* might be useful to other ‘*terra nullius*’ countries.

It argues that the curatorial strategies – the ‘What if?’ re-imagination of Australia’s past, multiplicity of vision and active creation, grounding of the exhibition in affect (in response to Aboriginal painting), and working within Indigenous protocols – were effective, and that the exhibition was a useful means of exploring the relationships between Indigenous and non-Indigenous Australians.

Comparisons with the exhibition *Turn the Soil* curated by Kevin Murray and the ‘retrospective utopia’ W.H. Oliver argues has been created for New Zealand by the Waitangi Tribunal provide insight into the nature of the reconciled Australia presented in the exhibition and what might be achieved by a counterfactual exhibition. From these comparisons, it is argued, first, that the exhibition points to a disjuncture between Australia’s ongoing official, psychological and legal *terra nullius* and the approaches and relationships present in Australian society (characterised as a performance of Bloch’s utopian function); and secondly, that a counterfactual exhibition, because it is not bound to the factual, causal or narrative qualities traditionally attributed to history, is able to explore the future in a way that contains rather than denies the past.

Although the concept of *terra alterius* is seen as having played a crucial role in the realisation of the exhibition, it is questioned whether the concept’s utility extends beyond Australia.

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Chapter 1 Introduction

What would Australia be like if it had been recognised as *terra alterius*,¹ ‘land of another’, by the British, rather than claimed and treated as *terra nullius*, ‘land of no-one’? This was the question posed by the exhibition *Terra Alterius: Land of Another*, first held at the Ivan Dougherty Gallery (IDG) in Sydney from 19 August to 25 September 2004, and which toured venues in New South Wales, the Australian Capital Territory and Victoria until March 2006. The exhibition comprised works by twelve artists, Indigenous and non-Indigenous, created or nominated in response to the theme.

Terra Alterius: Land of Another sought to enable viewers to engage with the debates surrounding the rights and relationships of Indigenous and non-Indigenous Australians outside the conventions of society, politics, and law, and the demands or risk of self-interest. It sought to create an environment in which viewers experienced another Australia, one in which Indigenous and non-Indigenous cultures first meet and interact with respect for each other’s existence, difference, law and culture. The exhibition was informed by Australia’s past and the process of reconciliation between Indigenous and non-Indigenous Australians, but it was not about either of these things. Instead, the exhibition sought to explore the political and social terrain of a reconciled Australia by re-imagining Australia’s past in order to ask: “What might a reconciled Australia be like?”.

This thesis describes the concept of *terra alterius* and the exhibition *Terra Alterius: Land of Another*.² It considers whether the exhibition was a useful approach to the debates surrounding the rights and relationships of Indigenous and non-Indigenous Australians and

¹ The phrase *terra alterius* was developed in respect of Australia in 2000 by Catherine Freyne, who sought an opposite to the legal doctrine of *terra nullius* when entitling her thesis on belonging, dispossession and reconciliation in contemporary Australian cultural practice: C. Freyne, *Terra Alterius: Belonging, Dispossession and Reconciliation in Contemporary Australian Cultural Production*, BA (Hons) Thesis, School of History, Faculty of Arts and Social Sciences, UNSW (2000). See further Chapter 3.

² The concept of *terra alterius* and the exhibition *Terra Alterius: Land of Another* were first introduced in the catalogue accompanying the exhibition, also entitled *Terra Alterius: Land of Another*. (M. Farmer, ‘*Terra Alterius: Land of Another*’ in *Terra Alterius: Land of Another* Catalogue (Paddington, NSW: Ivan Dougherty Gallery, 2004).) This thesis draws on, expands and updates the ideas advanced in the exhibition catalogue, often necessarily employing similar terms. This is particularly the case in those chapters describing the exhibition concept (Chapter 3) and the exhibition itself (Chapter 5). In order to avoid confusion between references to the catalogue and references to sources informing the argument, exact restatements are referenced to the catalogue but even very closely paraphrased restatements are not. Material from this thesis has also been accepted for publication as a chapter in an edited volume: M. Farmer, ‘*Terra Alterius: Land of Another*’, in

S. Ryan-Fazilleau (Ed), *New Zealand and Australia: Narrative, History and Representation* (London: Kakapo Press, 2007), forthcoming.

how we might shape our shared future. Further, it considers whether the curatorial strategies employed in realising the exhibition were successful in fact. Lastly, the thesis considers whether the concept of *terra alterius* may be useful to other countries whose colonial history may be described in terms of *terra nullius*.

Chapter 2, 'The catalysts and contexts of *Terra Alterius: Land of Another*', describes the social and political catalysts for the exhibition and the exhibition's political and artistic contexts in three parts. The concept of *terra alterius* at the core of the exhibition and thesis is a fictitious legal doctrine opposite to the legal fiction that Australia was *terra nullius* – literally, 'land of no-one'. The purpose of Part B, '*Terra nullius*: Dispossession', is to develop a sense of the political and philosophical context in which Australia came to be occupied and treated as *terra nullius*, in order to better consider what might be meant by an Australia treated foundationally as *terra alterius*. This part describes the dispossession of Australia's Indigenous peoples, the consequences of this dispossession and the incomplete reconciliation of Australia's Indigenous and non-Indigenous peoples that are the primary context and catalyst for the exhibition *Terra Alterius: Land of Another*. Controversy about the meaning of the term *terra nullius* and use of it in respect of Australia has been a secondary context for the exhibition during the period of its presentation and tour, therefore the discussion in this part extends to May 2006, in order to follow the trajectory of the debate over the term *terra nullius*. Indigenous and non-Indigenous concepts and roles of art, the political uses made of Aboriginal art, and contemporary Australian curatorial practice are discussed in Part C, 'Art in Australia'. The political possibilities of art and exhibitions in general are discussed briefly in Part D, 'The political capacities of art'.

The differences between *terra alterius* and *terra nullius* are described in Chapter 3, 'The idea of *Terra Alterius: Land of Another*', which also considers the implications of the current debate over the meaning of the term *terra nullius* for the concept of *terra alterius* and its utility. This chapter also provides an overview of the exhibition concept, and an account of the genesis of the concept *terra alterius* and the exhibition, *Terra Alterius: Land of Another*.

Chapter 4, 'Towards realisation of *Terra Alterius: Land of Another*', provides detailed discussion of the curatorial rationale, curatorial strategies, ethical issues and management of the exhibition. Chapter 4 also seeks insight into the curatorial rationale and strategies of *Terra Alterius: Land of Another* by comparison with those of three recent exhibitions: *Turn the*

Soil,³ *Talking About Abstraction*⁴ and *Native Title Business: Contemporary Indigenous Art: A National Travelling Exhibition*.⁵ This includes discussion of the two conceits contained in the exhibition premise: first, the impossibility of repeal of Australia's postcolonial history and concomitant restoration of Indigenous cultures to their nature prior to the originary contact of this history; and second, the recasting of the British as something other than they were, to a culture possessing the concept of *terra alterius* and the values it encapsulates.

The results of the rationale and strategies are described in Chapter 5, 'The exhibition *Terra Alterius: Land of Another*'. This chapter discusses the primary and formative venue of the exhibition – that is, the Ivan Dougherty Gallery – the selected artists and the aspects of their practice that suggested inclusion, the resulting artworks and exhibition; and the activities taken to extend the reach of the exhibition – that is, the accompanying public programs, catalogue and tour.

Chapter 6, '*Terra Alterius: Land of Another: The present and future Australia*', considers the utility of the concept *terra alterius*, whether the exhibition is successful in terms of its ambition to explore the political and social terrain of a reconciled Australia, and whether the curatorial strategies were ultimately successful in fact. It argues that the exhibition shows another, reconciled, Australia, and that the curatorial strategies combined to perform Ernst Bloch's utopian function in order to reveal the desired utopia in the 'here and now'. By comparing the exhibition *Terra Alterius: Land of Another* with the exhibition *Turn the Soil*, and the 'retrospective utopia' Oliver argues has been created for New Zealand by the Waitangi Tribunal, insights are developed into the nature of a reconciled Australia, the difference between utopian vision as 'productive premonition' and as 'wish', and what might be achieved by a counterfactual exhibition. It argues that the benefit of a counterfactual exhibition over an alternative history lies in the manner of its link to history – by placing itself firmly outside of the realm of history, it is able to explore the future in a way that contains rather than denies the past. In this way the counterfactual conceits of the exhibition are resolved, and Bloch's discussion of art and utopia is used to provide an

³ *Turn the Soil* curated by Kevin Murray toured Australia 1997 – 1998. For documentation see <<http://kitez.com/soil/>>, accessed 20 January 2007. Also, *Turn the Soil: What if someone else had colonised Australia?* Catalogue (Fitzroy, Vic: Craft Victoria, 1997).

⁴ *Talking About Abstraction* curated by Felicity Fenner, 27 May – 3 July 2004, Ivan Dougherty Gallery, UNSW College of Fine Arts. See *Talking About Abstraction* Catalogue (Paddington, NSW: Ivan Dougherty Gallery, 2004).

⁵ *Native Title Business: Contemporary Indigenous Art: A National Travelling Exhibition* curated by Joan G. Winter toured Australia 2002 – 2006. See J.G. Winter (Ed), *Native Title Business: Contemporary Indigenous Art: A National Travelling Exhibition* Catalogue (Southport, QLD: Kceaira Press, 2002).

explanation of why this might be so. It is this retention of the colonial past, it is argued, that gives the imagined reconciled Australia its sense of real possibility, the sense it generates that a reconciled Australia is achievable in the form and by the means imagined. *Terra Alterius: Land of Another* is then placed as an act of ‘affective utopianism’ within the broader context of a politics expanding to include the affective, and of calls for affective politics to operate as ‘research and development’. While the concept of *terra alterius* is seen as having played a crucial role, it is questioned whether its utility can extend beyond Australia.

Chapter 7, ‘Conclusion’, concludes that the exhibition is a useful approach to the debates surrounding the rights and relationships of Indigenous and non-Indigenous Australians, because of the particular focus it brings to our shared future. It concludes that the intuitively-used strategies of a counterfactual re-imagination of Australia’s past, multiplicity of vision and active creation, and grounding of the exhibition in affect, were successful in fact, and that why this was so is explicable by theory. The thesis further concludes that it is only possible to speculate as to whether the concept of *terra alterius* may be useful to other ‘*terra nullius*’ countries.

Chapter 2 The catalysts and contexts of *Terra Alterius: Land of Another*

A Introduction

The landmass that now contains the polity of Australia has been populated for a period estimated as between 40,000 and 60,000 years, but its existence became known to Europeans only in the seventeenth century,¹ and its form was mapped by them only during the eighteenth and nineteenth centuries.² Ancient and European philosophers had speculated as to the existence of *Terra Australis Incognita* – a great unknown south land – as a counterbalance to the land mass in the North.³ In the fifteenth century, the nations of Europe set out to find the southern land.⁴ By the mid-eighteenth century, there had been multiple European sightings, landings and contacts,⁵ and a case⁶ made for the continuation of “earlier efforts to probe southern latitudes for land”.⁷ It was this speculation and the prospect of scientific and commercial gain that led to the direction by the (British) Board of Admiralty (in conjunction with the Royal Society) that Lieutenant James Cook should further earlier maritime exploration of the southern hemisphere.⁸

In August 1770, after four and a half months charting the Eastern and North-Eastern coasts of Australia, Lieutenant James Cook, who had already “taken possession of several places upon this coast [...] once more hoisted English Coulers and in the Name of His Majesty King George the Third took possession of the whole Eastern Coast from the above Latitude [38° South] down to this place by the name of *New South Wales*, together with all the Bays, Harbours Rivers and Islands situate on the said coast”.⁹ Cook did so without seeking the consent of Indigenous Australians – contrary to his orders that he take

¹ Dating this from the first recorded sighting, made by Willem Jansz in 1606: J. Fornasiero, P. Monteath, and J. West-Sooby, *Encountering Terra Australis: The Australian Voyages of Nicholas Baudin and Matthew Flinders* (Kent Town, South Australia: Wakefield Press, 2004), p. 2.

² *ibid.*, pp. 2-3.

³ H. Wallis, ‘Visions of Terra Australis in the Middle Ages and the Renaissance’, in W. Eisler and B. Smith (Eds), *Terra Australis, the Farthest Shore* Catalogue (Sydney: International Cultural Corporation of Australia, 1988), p. 37.

⁴ Fornasiero et al, *op.cit.*, p. 1.

⁵ *ibid.*, pp. 1-4; C. Dyer, *The French Explorers and the Aboriginal Australians, 1772-1839* (St Lucia, Queensland: University of Queensland Press, 2005), pp. 19-20, 23-24; and G. Blainey, *The Tyranny of Distance: How Distance Shaped Australia's Story*, Revised Edition (Melbourne: Sun Books, 1982), p. 5.

⁶ This was Charles de Brosse's *Histoire des navigations aux terres australes* published in Paris in 1756: N. Thomas, *Discoveries: The Voyages of Captain Cook* (London: Allen Lane, 2003), p. 16.

⁷ *ibid.*, p. 17.

⁸ *ibid.*, p. 17; Fornasiero, *op. cit.*, p. 1.

⁹ Thomas, *op. cit.*, p. 127.

possession of lands “with the Consent of the Natives”¹⁰ – and thereby without recognition of the sovereignty and laws of Australia’s Indigenous populations.

Britain subsequently colonised Australia – that is, Britain invaded and occupied her. Britain could do so in respect of the Indigenous population because she had superior military capabilities. She could do so in respect of her own politics and law through a European mindset that perceived the land as free for the taking,¹¹ because although it was inhabited, she regarded its inhabitants as “backwards”,¹² in particular, because they did not employ agriculture¹³ – a mindset that became embodied in the legal doctrine *terra nullius*.¹⁴ From the European perspective, human agency was defined by the use of natural resources for human purposes, and the cultivation of land gave rise to ownership of it.¹⁵ Title to land was connected to use and usages of land, because the role of land law (including “the principles of sovereignty, exclusive possession and alienability”¹⁶) was (and still is) to protect and foster economic interests.¹⁷

In respect of other potential colonisers, Britain appears to have prevailed not by stronger claim to discovery, but by the fact of her settlement combined with, on the part of other nations, a lack of will or capacity to unseat her. In 1770, Cook suspected that the Dutch had claim to the Western part of the continent.¹⁸ In 1772, possession of a section of what

¹⁰ *ibid.*

¹¹ In using these words, I am echoing Andrew Fitzmaurice’s discussion *terra nullius*’s origins in what he calls the doctrine of the first taker: A. Fitzmaurice, ‘On the Origins of *Terra Nullius*’, lecture delivered 8 May 2006 at the University of Sydney as part of the Research Institute for Humanities and the Social Sciences’ 2006 Key Concepts Public Lecture Series, available as a podcast from The University of Sydney website, <http://www.usyd.edu.au/research/news/2006/may/08_terra.shtml>, accessed 21 July 2006.

¹² *Mabo v Queensland (No 2)* [1992] HCA 23, at [34] per Brennan J.

¹³ Fitzmaurice, ‘On the Origins...’, unpaginated. Nicole Graham, *Landscape: Paradigm and Place in Australian Property Law*, unpublished PhD thesis, University of Sydney (2003), p. 100 and again at 102.

¹⁴ In describing *terra nullius* as a mindset rather than a doctrine I am influenced by Frank Brennan SJ AO’s use of these words in Frank Brennan, ‘The Fourteenth Ninian Stephen Lecture 2006: Confessions of an Erstwhile Land Rights Advocate (University of Newcastle, 9 May 2006)’,

<<http://www.eurekastreet.com.au/Uploads/File/605/brennan0605.doc>>, pp. 13, 15 and 17, accessed 21 June 2006, and the following statement: “*Terra nullius* was not so much official British policy in Australia as a mindset. It operated as a background assumption, which allowed successive Governors and colonists alike to assert legal authority over everyone, including Aboriginal people, and to take land without reference to these pre-existing systems that had governed societies on the Australian continent for thousands of years. That mindset and the legal fiction of an empty continent was the bedrock upon which the Australian colonies and later a federated nation was built.”: S. Brennan, ‘Native Title and the Treaty Debate: What’s the Connection?’, The Treaty Project Issues Paper No. 3 (Sydney: The Gilbert + Tobin Centre of Public Law, University of New South Wales, 2004), p. 2.

¹⁵ Fitzmaurice, ‘On the Origins...’, unpaginated; Graham, *op. cit.*, pp. 117-121.

¹⁶ Graham, *op. cit.*, p. 98.

¹⁷ Graham, *op. cit.*, pp. 98, 118.

¹⁸ Thomas, *op. cit.*, p. 127.

is now Western Australia was claimed for King Louis XV.¹⁹ It is not clear that the French and Dutch ceded these interests so much as the British operated to settle in those areas that should most likely have been claimed, and therefore to deprive them of them, unless they should attempt to take them by force. For example, the French voyage of discovery captained by Nicholas Baudin led both to the publication of maps of ‘Terre Napoléon’²⁰ and precipitated British settlement of Tasmania in 1803.²¹

The corollary of this acquisition was dispossession of Australia’s Indigenous populations, who suffered discrimination and deprivation of land, culture, family and liberty – the consequences of which continue today as a legacy of disadvantage, with attendant health and social problems. This dispossession and its consequences, and the incomplete reconciliation of Australia’s Indigenous and non-Indigenous peoples, are the primary context and catalyst for the exhibition *Terra Alterius: Land of Another*. It has been usual, since the High Court of Australia’s decision in *Mabo v Queensland (No 2)* (hereafter *Mabo*) in 1992,²² to describe this dispossession, its consequences and the necessity for reconciliation in terms of *terra nullius*, the term the Court used to describe Britain’s acquisition of sovereignty over Australia.

By 2002, when the exhibition *Terra Alterius: Land of Another* had been conceived, and planning for its realisation was starting in earnest, the term *terra nullius* had acquired a popular usage in addition to its legal meaning. In popular usage, the term *terra nullius* is a shorthand that broadly conveys the “[l]ack of recognition of prior ways of life” and the theft of land;²³ however it also gives rise to the prevalent misunderstanding that the British regarded the land as uninhabited.²⁴ The exhibition *Terra Alterius: Land of Another* was conceived on the basis of the populist meaning²⁵ and derives its evocative and conceptual power from the strengths of that meaning. But the history that the term *terra nullius* has

¹⁹ Fornasiero, *op. cit.*, p. 6.

²⁰ Fornasiero, *ibid.*, p. 164.

²¹ *ibid.*, pp. 221–222.

²² *Mabo v Queensland (No 2)* [1992] HCA 23.

²³ C. Gosden, *Archaeology and Colonialism: Cultural Contact from 5000 BC to the Present* (Cambridge: Cambridge University Press, 2004), pp. 26 (Table 3.1 A typology of forms of colonisation) and 127.

²⁴ Understandings of *terra nullius* of this sort are embedded in much cultural practice, for example, in the following statement: “2002 is the 10th anniversary of the High Court’s *Mabo* Decision, which dispelled forever the belief that Australia was unoccupied territory before the arrival of the whiteman. There is cause to celebrate.”: Winter, *op. cit.*, p. 9.

²⁵ While aware of the legal doctrine as formulated in *Mabo*, I understood it in such a way as to think that either that the British had, at best, misapplied the doctrine of *terra nullius* to Australia (thinking it was uninhabited, or not understanding that the inhabitants possessed law, land, and society) or that, at worst, they had knowingly misapplied it (knowing it was inhabited, knowing that the people possessed their land).

been used to encapsulate is complex. In 2007, the term *terra nullius* frames a theatre for Australia's History Wars. It has become clear that there are differences between the term's legal meaning and origins, on the one hand, and the popular understanding and political uses made of it, on the other. More nuanced accounts of the term and the justifications for colonisation are becoming available. And in this theatre, past confidence in the meaning of the term *terra nullius* has retreated,²⁶ just as a past reality comes to the fore: the fact that the land policy now known as *terra nullius* has been controversial for 500 years.²⁷ This trajectory of confidence in, confusion about and emerging revisionary accounts of the meaning of *terra nullius* is a second context of the exhibition, coinciding approximately with the exhibition's planning and first presentations, the middle period of the exhibition's tour, and the end of the exhibition tour in March 2006. Because discussions of Aboriginal dispossession have so often been framed in terms of *terra nullius*, and this term is crucial to the exhibition, the discussion of Aboriginal dispossession in this chapter commences with an account of the term and follows the trajectory of the debate over its use until May 2006.²⁸ This discussion, in Part B '*Terra nullius*: Dispossession', draws on historical and legal sources. It is not, however, a history or a legal account of this dispossession, of the legal status of Australia, or of the term *terra nullius*. Most definitely, this discussion is not what is needed – an account of the acquisition/dispossession of Australia that addresses perception, fact, justification, policy and law. Rather, this discussion is a consideration of what might be understood, broadly, as an Australia treated as *terra nullius*, in order that we might consider the imagination of an Australia treated as *terra alterius*.

Art has been an important force in recording and shaping rights and relationships between Indigenous and non-Indigenous people on Australian soil. The different conceptions and uses of art made by the cultures are a useful illustration of broad differences between them, and "the influence of Aboriginal art as a vehicle for cross-cultural understanding and the gaining of legal and political rights cannot be overstated."²⁹ Now, Aboriginal art, especially Aboriginal painting, is an artistic phenomenon; and despite the politics of including it

²⁶ Circa 1992 – 2004. Although Henry Reynolds popularised the term *terra nullius* in his 1987 book *The Law of the Land*, (H. Reynolds, *The Law of the Land*, 1st edn, (Ringwood, Victoria: Penguin, 1987)), the *Mabo* decision in 1992 brought the term widespread usage and interpretation.

²⁷ Fitzmaurice, 'On the Origins...', unpaginated.

²⁸ When Andrew Fitzmaurice delivered a public lecture on *terra nullius* that made the links between *res nullius* and *terra nullius* clear and explicit for a lay audience and in such a way as to address issues raised by Michael Connor – such as the first use of the term – and the meanings and usage of the terms *terra nullius* and *territorium nullius*.

²⁹ Farmer, '*Terra Alterius*: Land of Another', unpaginated.

within the Western frame – in particular, concerns about appropriation³⁰ – it is “the ‘mainstream’ and the benchmark of Australian contemporary art”.³¹ One explanation for this, “in addition to the extraordinary abstract qualities and beauty of much Aboriginal painting, might be its affects: its capacity to generate feelings of interest, excitement, and sublime awe that stimulate thought; ‘meanings ... seeded in the body’”.³² This way of thinking about Aboriginal painting led to the core curatorial strategy (discussed further in Chapter 4, ‘Towards Realisation of *Terra Alterius: Land of Another*’): of grounding the exhibition in affect. This way of thinking about Aboriginal art and its impact on the exhibition was briefly described in the exhibition catalogue. Part C of this chapter, ‘Art in Australia’, describes the artistic context of the exhibition and explores the affective qualities of Aboriginal art, how these might operate to communicate trans-culturally for political success, and what these considerations might offer to discussions of appropriation.

In Australia, the use by Aboriginal people of art for political purposes (described below in Part C of this chapter) parallels the frequent use, in the Western art tradition, of art as a tool for activism. Part D of this chapter, ‘The political capacities of art’, looks at the capacity of art to contribute to political debate.

B *Terra nullius*: Dispossession

1 The legal fiction of *terra nullius*

In the 1992 *Mabo* case, the High Court of Australia described international law in 1770 as including the doctrine of *terra nullius*, which allowed annexation of new lands if they were desert or uninhabited.³³ Such land was regarded as acquired by settlement (occupation) rather than by conquest or cession (agreement or treaty), which were means of acquiring inhabited territory.³⁴ Over time, this doctrine was enlarged to apply to lands whose inhabitants were considered “backwards”, that is, perceived as not having a sovereign or laws or not being “organised in a society that was united permanently for political

³⁰ Concerns about appropriative uses of Aboriginal art are discussed in the exhibition catalogue.

³¹ Farmer, ‘*Terra Alterius: Land of Another*’, unpaginated, quoting Vivienne Johnson: V. Johnson, ‘Foreword’ in *Talking About Abstraction* Catalogue, unpaginated.

³² Farmer, ‘*Terra Alterius: Land of Another*’, unpaginated, quoting S. Best, ‘What is Affect? Considering the Affective Dimension of Contemporary Installation Art’, *ANZJA* vol 2, no 2, 2001: vol 3, no 1, 2002, p. 219.

³³ *Mabo v Queensland (No 2)* [1992] HCA 23 at [33] per Brennan J.

³⁴ *ibid.*

action”,³⁵ and it was in this form that it was said to apply to Australia.³⁶ What has been at stake in the legal labelling of Australia as *terra nullius* and describing the acquisition of land as settlement has been the nature of law in Australia. For in conquered or ceded lands, the laws of inhabitants continued until changed by the new sovereign (“the continuity principle”), whereas in *terra nullius* lands, law necessarily came with the settlers.³⁷

Strictly speaking, to say that the British acquired Australia as *terra nullius* in a way that suggests that the British declared it *terra nullius*, either at the time Lieutenant James Cook claimed New South Wales for the British crown in 1770 or when it was settled in 1788, is incorrect and anachronistic, a point that has been made popular knowledge by historian Michael Connor.³⁸ For one thing, the continent of Australia was acquired piece by piece, with the whole coming into British possession only in 1829.³⁹ For another, although the concepts embodied in the phrase *terra nullius* (as used by the High Court of Australia in *Mabo*) were in use in British⁴⁰ and international law in the eighteenth century,⁴¹ the term itself was not employed until the late nineteenth century.⁴² More than this, the formulation of the doctrine of *terra nullius*, as expressed by the High Court of Australia in *Mabo* in 1992, would seem to be different from how it was formulated in the period 1770–1788, in that a

³⁵ *ibid.*, citing M. Lindley, *The Acquisition and Government of Backward Territory in International Law* (1926), Chs III and IV.

³⁶ *ibid.* at [33 – 36]. The doctrine of *terra nullius* continues in international law and in the common law of individual countries (see for example, the question of whether British law applied to the Pitcairn islands in *Queen v 7 Named Accused* [2004] PNSC, Trials No 1-55/2003 (19 April 2004) and the appeal *Queen v 7 Named Accused* [2004] PNCA 1; CA 1-7 2004 (5 August 2004)) and is the basis of Australian sovereignty: R.H. Bartlett, *Native Title in Australia*, 2nd edn, (Australia: LexisNexis Butterworths, 2004), pp. 22-24. Though note arguments that, “The possibility of basing the acquisition of Australian territory on the conquest/cession principles was never seriously considered by the courts.”: S. Hepburn, ‘Disinterested Truth: Legitimation of the Doctrine of Tenure Post-Mabo’ [2005] MULR 1, p. 6.

³⁷ Hepburn, *op. cit.*, p. 5.

³⁸ M. Connor, ‘Error Nullius’, *The Bulletin*, August 20, 2003, <<http://bulletin.ninemsn.com.au/bulletin/EdDesk.nsf/0/2821C32417FAB16CA256D6E00203509!opendo.cument>>, accessed 21 August 2003; M. Connor, ‘Error Nullius Revisited’, *The Samuel Griffith Society* Vol 16, Ch 4, (2004), <<http://www.samuelgriffith.org.au/papers/html/volume16/v16chap4.html>>, accessed 9 September 2005; M. Connor, *The Invention of Terra Nullius: Historical and Legal Fictions on the Foundation of Australia* (Potts Point: Macleay Press, 2005). Though note Andrew Fitzmaurice’s disputation that “it was not Connor who first put on the record the fact that *terra nullius* was not used to justify Aboriginal dispossession. That fact had been on public record for ten years since the legal scholar David Ritter had published an article on *terra nullius*’ myth in the Sydney Law Review in 1996.”: Fitzmaurice, ‘On the Origins ...’, unpaginated.

³⁹ “On 2 May 1829 at the mouth of the Swan River, the Captain [Charles Howe Freemantle] in the name of His Britannic Majesty took possession of the whole of New Holland not included in the territory of New South Wales: one third of the continent, one million square miles of land and 4300 miles of coastline [...] In international law there was not so much as an inch of Australia or Van Diemen’s Land left for the French, Spaniards, Dutch, Russians, Americans, or the aborigines of New Holland.”: C.M.H. Clarke, *A History of Australia: Volume III The Beginning of an Australian Civilization 1824-1851* (Melbourne: Melbourne University Press, 1973), p. 20-21.

⁴⁰ Hepburn, *op. cit.*, p. 5-6.

⁴¹ Fitzmaurice, ‘On the origins ...’, unpaginated.

⁴² *ibid.*

key aspect of the doctrine – the enlargement of the doctrine to apply to land inhabited by ‘backwards’ peoples – would appear to have been formulated during the nineteenth century and at least in part in 1889 in response to Australia.⁴³ (In effect, the legal status of British sovereignty over Australia and Australian law were clarified just in time for Federation.) Historian Andrew Fitzmaurice, who is writing a history of the term *terra nullius*,⁴⁴ describes it as “a species of natural law argument [...] produced by a long tradition of rationalising colonisation”.⁴⁵ Likewise legal academic Samantha Hepburn, who writes that “By describing Australia as ‘practically uninhabited’, the courts developed a self-serving myth.”⁴⁶ ‘Juridical history’ or ‘common-law time’ is different from historical time, and anachronism is not the problem to the legal profession that it is to academic historians;⁴⁷ nonetheless, there is a move by some legal commentators to describe Britain’s acquisition of Australia as a result of a ‘mindset’ of *terra nullius*,⁴⁸ as well as legal analysis and criticism of the term’s development and use.⁴⁹

2 *Terra nullius* in Australia

That Australia, in 1770, was a land without people or laws was false in fact,⁵⁰ and that it was inhabited was known in Europe⁵¹ and to Cook, prior to his sighting the east coast of Australia, as he charted it, and when he claimed it for the British crown. The diaries kept by Cook and his companions make it plain that the British mariners were aware of and sought

⁴³ *Mabo v Queensland (No 2)* [1992] HCA 23 at [36], fn 47. Brennan J gives a number of authorities for the enlarged doctrine of *terra nullius* ranging from 1836 – 1889, including *Cooper v Stuart* (1889) 14 App Cas 286. Larissa Behrendt states that it was *Cooper v Stuart* that “held that in colonies that were practically unoccupied, without inhabitants and without settled law, Indigenous people’s rights were not recognised”: L. Behrendt, ‘Pointed View: The ongoing war on *terra nullius*’, *National Indigenous Times*, Issue 100, 9 March 2006, <<http://www.nit.com.au/opinion/story.aspx?id=6694>>, accessed 27 August 2006.

⁴⁴ The University of Sydney, ‘A History of Terra Nullius’, page on The University of Sydney website, <http://www.arts.usyd.edu.au/departs/history/research/projects/fitzmaurice_terra.shtml>, accessed 27 August 2006.

⁴⁵ Fitzmaurice, ‘On the Origins ...’, unpaginated.

⁴⁶ Hepburn, *op. cit.*, p. 13.

⁴⁷ W.H. Oliver, ‘The Future Behind Us: The Waitangi Tribunal’s Retrospective Utopia’ in A. Sharp and P. McHugh (Eds), *Histories, Power and Loss: Uses of the Past – A New Zealand Commentary* (Wellington: Bridget Williams Books, 2001), pp. 22-23.

⁴⁸ See, for example, Sean Brennan, ‘Native Title...’, p. 2, and Frank Brennan, *op. cit.*, pp 13, 15 and 17.

⁴⁹ For example, Hepburn, *op. cit.*, p. 15, who states “there is no legal rationale for the acquisition of Australian territory [...] to the exclusion of the rights and interests of indigenous occupants”.

⁵⁰ In 1788, an estimated 500,000 to one million people were “spread evenly across Australia’s 7,682,300 square kilometres”: D.J. Mulvaney, *Encounters in Place: Outsiders and Aboriginal Australians, 1606-1985* (St Lucia, QLD: University of Queensland Press, 1989), p. xv. These people, now known as Aboriginal and Torres Strait Islanders, spoke two hundred languages and were “affiliated loosely into several hundred groupings”: *ibid.*

⁵¹ “During the 17th century and into the 18th, sailors for the Dutch East India Company made a series of landings on the North, West and South East coasts of New Holland.”: Fornasiero, *op. cit.*, p. 1-2. A number of these “saw ‘natives’[...] or [...] signs of their presence”: *ibid.*

contact with Australia's Indigenous inhabitants.⁵² They also show that the Aboriginal people they encountered were aware of the Europeans' presence, though for the most part they studiously ignored them, adopting a policy of minimal engagement.⁵³ Nicholas Thomas has written of this encounter in *Discoveries: The Voyages of Captain Cook*, and his comments are instructive.

It is clear what the Aboriginal attitude was: they wanted absolutely nothing to do with these intruders and would have none of their gifts. They did not want to make war upon them, but they did want them out of their lives. As Cook acknowledged, 'we could know but very little of their customs as we never were able to form any connections with them'. What was said of Eora was purely observational...⁵⁴

From this limited interaction and observation, Cook formed a view contrary to that which Dampier had formed in 1688: that these people were "the miserablest People in the World".⁵⁵ In Cook's view:

the Natives of New-Holland [...] may appear to some to be the most wretched people upon Earth, but in reality they are far more happy than we Europeans; being wholly unacquainted not only with the superfluous but the necessary Conveniencies so much sought after in Europe, they are happy in not knowing the use of them. They live in a Tranquillity which is not disturb'd by the Inequality of Condition: The Earth and sea of their own accord furnishes them with all things necessary for life [...] they live in a warm and fine Climate and enjoy a very wholesome Air [...] they seem'd to set no value on any thing we gave them, nor would they ever part with any thing of their own for any one article we could offer them; this in my opinion argues that they think themselves provided with all the necessarys of Life and that they have no superfluities.⁵⁶

Cook was not able to enter into terms of exchange or trade, but it cannot be concluded that this was why Cook did not follow his instructions that possession was to be taken with their consent. However, it is possible to draw an inference from the fact that Cook claimed both New South Wales and New Zealand in the face of clear evidence that they were inhabited – acts which Thomas has described as "impulsive imperialism"⁵⁷ – that Cook was concerned to establish title to the discovered lands more with respect to other European nations than in respect of their inhabitants.⁵⁸

⁵² Thomas, *op. cit.*, pp. 111-131.

⁵³ *ibid.*, p. 125: As a result, those on the *Endeavour* made only "the most superficial of observations of both Eora and Guugu Yimidhirr culture."

⁵⁴ Thomas, *op. cit.*, p. 113.

⁵⁵ Dyer, *op. cit.*, p. 20.

⁵⁶ As quoted in Thomas, *op. cit.*, p. 128.

⁵⁷ *ibid.*, p. 128.

⁵⁸ This inference might be supported by Cook's wording (as quoted by Thomas, *ibid.*, p. 127) and by the importance of discovery to land acquisition in the Americas, where legal humanists in the 1570s and 1580s developed narratives of the Welsh discovery of the Americas in 1170 to repudiate Spanish title to the New World based on Columbus's discovery, (A. Fitzmaurice, *Humanism and America: An Intellectual History of English Colonisation, 1500-1625* (Cambridge: Cambridge University Press, 2003), pp. 150-157.) and where, later, "the discovery doctrine" would be formulated in such a way as to give a discovering power title "subject only

Leaving aside Cook's actions and motivations, it remains hard to reconcile the clear imperial statements in presumption of prior ownership in Cook's instructions⁵⁹ with the imperial policies that effected the dispossession that followed. Commenting on Cook's instructions from the Navy and the Royal Society, Stuart Banner has observed (using the term *terra nullius* anachronistically and to mean "unowned land" and to convey a lack of acknowledgement of Indigenous property rights):⁶⁰

The existence of *terra nullius* in Australia is [...] something of a puzzle. British land policy in Australia was different from land policy in otherwise similar colonies before and after.⁶¹

Whether to treat North America as *terra nullius* had been a topic of lively debate in the seventeenth century, but by Cook's lifetime the debate had long been over. [...] Members of the Royal Society and the government anticipated that if there really was an inhabited continent in the south Pacific, and if it turned out to be suitable for colonizing, Britain would buy it from the natives, just like it was buying North America. *Terra nullius* was not a standard feature of colonial land policy.⁶²

Banner identifies five factors that might explain why Australia was occupied as *terra nullius*, not purchased. First, Cook and Banks reported that "this immense tract of land, considerably larger than all of Europe" was almost uninhabited, and that its inhabitants lived in small groups along the coast.⁶³ Secondly, while Europe was agreed that uninhabited land could be occupied, there was debate about whether sparsely inhabited land could be. "By the time the British reached Australia",⁶⁴ there was philosophical justification for such

to the Indian rights of occupancy, which title the discoverers possessed the exclusive right of acquiring" in the 1823 case *Johnson v McIntosh*, as quoted in Bartlett, *op. cit.*, pp. 3-4.).

⁵⁹ As quoted in Thomas, *op. cit.*, p. 127. This presumption of ownership is also evident in other contemporaneous statements, such as that of Blackstone (the key commentator on English law at the time, and whose *Commentaries* set out the means of acquiring "desart [sic] and uncultivated land" later to be understood as *terra nullius* and were quoted in *Mabo*):

But how far the seising on countries already peopled, and driving out or massacring the innocent and defenceless natives, merely because they differed from their invaders in language, in religion, in customs, in government, or in colour; how far such a conduct was consonant to nature, to reason, or to Christianity, deserved well to be considered by those, who have rendered their names immortal by thus civilizing mankind.

Blackstone, *Commentaries on the Laws of England*, (1765-69), (Online version based on the first edition printed at the Clarendon Press (Oxford, England), together with the most material corrections and additions in the second edition.), <<http://www.lonang.com/exlibris/blackstone/>>, accessed 21 June 2006.

⁶⁰ S. Banner, 'Why *Terra Nullius*? Anthropology and Property Law in Early Australia', *Law and History Review* Vol 23, Issue 1, Spring 2005, 95-131, p. 95.

⁶¹ *ibid.*, p. 96. Banner argues that the considerations and actions of the British government when choosing a location for the transportation of convicts in the 1780s, "demonstrates a working assumption of the people responsible for managing Britain's colonies: if a new colony was to be established in an inhabited area, the land would be purchased from the inhabitants.": *ibid.*, p. 98.

⁶² Banner, *op. cit.*, pp. 97-98.

⁶³ *ibid.*, p. 99.

⁶⁴ *ibid.*, p. 100.

occupation, on the basis that, “[t]here was not enough space in the world for a small society to claim too large an area [...] Such a society would ‘usurp more extensive territories than, with a reasonable share of labour, they would have occasion for, and have, therefore, no reason to complain, if other nations, more industrious and too closely confined, come to take possession of a part of those lands.’”⁶⁵ Thirdly, “The Aborigines [...] were also less technologically advanced than other indigenous people the British had encountered. [...] And most important of all, Cook explained, ‘the Natives know nothing of Cultivation.’”⁶⁶ Banner identifies this as “crucial”⁶⁷ because British conceptions of property rights were founded on agriculture and “[i]n the late eighteenth century, many believed that a society without agriculture was therefore a society without property rights in land.”⁶⁸ Banner reports that the view was formed that, “‘The native of New Holland [...] is found in the genuine state of nature’ [...] in which a]ll human societies had begun [...] but [...] had progressed [...] and one of the ways in which they had progressed was by assigning property rights in land. If the Aborigines were still in the state of nature, then by definition they did not own their land. The land was *terra nullius*.”⁶⁹ Fourthly, the policy of buying land in North America had been established in part because the “American Indians were [...] formidable military opponents, whose land could have been conquered only at an enormous cost in money and in British lives. This calculation played a part in the British decision to purchase land rather than seizing it [...] In Australia, the same calculation suggested the opposite policy. The Aborigines were not thought capable of fighting back.”⁷⁰ Fifthly, “[u]nlike other peoples the British had encountered, the Aborigines seemed to show no interest in British manufactures. [...] Banks concluded that there would be no way to purchase land from them, because ‘there was nothing we could offer that they would take’ in return.”⁷¹ In sum, “Such was the picture Britons had of Australia at the end of Cook’s voyages. It was enormous and populated by only a handful of hunter-gatherers, people so primitive that they did not farm or show any interest in trade, people who could offer no meaningful military resistance. These were attractive characteristics for a potential colony [...] Unlike most parts of the world, Britons could believe, Australia really was *terra*

⁶⁵ *ibid.*, quoting Vattel.

⁶⁶ *ibid.*, p. 101.

⁶⁷ *ibid.*

⁶⁸ *ibid.*, p. 102.

⁶⁹ *ibid.*, p. 110, quoting James Grant.

⁷⁰ *ibid.*, pp. 102-103.

⁷¹ *ibid.*, p. 103.

nullius’.⁷² And so, Arthur Phillip was sent to establish the convict settlement at Port Jackson, and told to take the land by force.⁷³

But from the time of the Europeans’s arrival at Port Jackson, there has been tension in maintaining this justification. Inga Clendinnen has brought to life documentation of the first years of the colony with a particular focus on the relationship between the British settlers and the peoples she calls the Australians, in her book *Dancing with Strangers*.⁷⁴ It is a description that shows the extent to which the early colony was preoccupied by the inhabitants of the country they sought to occupy. It quickly became clear that Australia’s inhabitants were more numerous than had been supposed and that the Aborigines had property.⁷⁵

Within a few months of landing, the naval captain John Hunter recognized that ‘they have one fixed residence, and the tribe takes its name from the place of their general residence.’ [...] It was not long before other British writers pointed out the same thing—that tribes were nomadic, but each within its own boundaries.⁷⁶

The means of land acquisition was questioned – by the Governors of the colony,⁷⁷ and by observers such as Nicholas Baudin.⁷⁸

Banner has observed that “*Terra nullius* was put into practice for many years before it received formal expression”.⁷⁹ And here he refers to “legal opinions” of 1819 and 1822, that do not use the term *terra nullius* nor directly discuss Aboriginal property rights.⁸⁰ However, in each case, Australia is described as having been acquired not by conquest or cession but by occupation of desert and uninhabited land. In each case the means of acquisition of land and sovereignty goes to the exercise of colonial power – whether the Governor of New South Wales had the right to tax residents or proclaim law – and not at all to the question of Aboriginal rights.⁸¹ These opinions were given alongside colonial experiences suggesting that “*terra nullius* rested, in part, on a shaky empirical foundation”,⁸²

⁷² *ibid.*, p. 104.

⁷³ *ibid.*

⁷⁴ I. Clendinnen, *Dancing with Strangers*, (Melbourne: Text Publishing, 2003).

⁷⁵ Banner, *op. cit.*, p. 113.

⁷⁶ *ibid.* p. 114.

⁷⁷ *ibid.*, pp. 116-117.

⁷⁸ *ibid.*, p. 116.

⁷⁹ *ibid.*, p. 111.

⁸⁰ *ibid.*, p. 112.

⁸¹ *ibid.*, pp. 112-113.

⁸² *ibid.*, p. 115.

and leading to, from the 1820s, “an apparently widespread belief, in both Britain and Australia, that *terra nullius* was an injustice towards the Aborigines”.⁸³

During the 1820s and 1830s there were a number of criminal trials in which the defence questioned the court’s jurisdiction to try the defendant,⁸⁴ or the applicability of the law to an Aboriginal defendant,⁸⁵ arguing that “the British occupation of Australia was contrary to natural law”.⁸⁶ The term *terra nullius* was not used, but put in contemporary terms, the defence lawyers were arguing that *terra nullius* did not in fact apply to Australia, for not only was Australia inhabited, but its inhabitants exercised their proprietary rights to hunt and fish.⁸⁷

This brings us to Banner’s “second puzzle”:⁸⁸

The 1830s and 1840s saw the rise of an active British humanitarian movement seeking to improve the conditions of indigenous people throughout the empire. The movement achieved many successes, such as the abolition of slavery in the colonies. In Britain and Australia there were vocal, powerful people, both inside and outside the government, who urged that *terra nullius* had been a terrible injustice to the Aborigines. Yet at the end of this period *terra nullius* was as firmly a part of the law as ever. Decades of agitation—not just by fringe groups but also by well-placed insiders—had not changed a thing. Why not?⁸⁹

Why not indeed? In 1823, the United States Supreme Court “explored the dilemma of the conflicting rights of settlers and indigenous people and adopted the compromise known as native title at common law”,⁹⁰ by which decision “the common law first gave effect to the rights of the indigenous inhabitants of [a settled territory]”.⁹¹ The same year saw development of the British settlement principle in the context of Calcutta. Hepburn describes this as follows: “Master Stephen concluded that the application of British law in Calcutta could be justified by utilising the settlement rule and treating the land as *effectively* uninhabited. Once settlement was justified, the continuity principle could then be applied to validate the perpetuation of any pre-existing indigenous legal system. This ‘complex’ interpretation was effectively a combined application of the settlement and the continuity principles.”⁹²

⁸³ *ibid.*, p. 117.

⁸⁴ *ibid.*, p. 119, referring to *R v Lowe* (1827).

⁸⁵ *ibid.*, pp. 119-120, referring to *R v Lego’me* (1935).

⁸⁶ *ibid.*, p. 119.

⁸⁷ *ibid.*, pp. 119-120.

⁸⁸ *ibid.*, p. 96.

⁸⁹ *ibid.*

⁹⁰ Bartlett, *op. cit.*, p. 4.

⁹¹ *ibid.*, p. 3.

⁹² Hepburn, *op. cit.*, p. 8.

In respect of Australia, Banner describes the 1835 instructions of the Colonial Office to the South Australian Colonisation Commission that would appear to be a “complete revolution in the colonisation of Australia”.⁹³

[The Commission] could not sell unexplored land to settlers, because the new colony ‘might embrace in its range numerous Tribes of People, whose Proprietary Title to the Soil, we have not the slightest ground for disputing. Before His Majesty can be advised to transfer to His Subjects, the property in any part of the Land of Australia,’ the Colonial Office warned, ‘He must have at least, some reasonable assurance that He is not about to sanction any act of injustice towards the Aboriginal Natives.’ [...] For the first time, the imperial government recognized the Aborigines as owners of their land.⁹⁴

Yet he observes, a year later, in the case of *R v Murrell*,⁹⁵ arguments against British acquisition “elicited an extended judicial defence of [what is now termed] *terra nullius*, resting on the standard justification that the Aborigines had not attained a sufficient level of civilization and social organization to possess any property rights the earliest British settlers were bound to respect.”⁹⁶ The status of the Aboriginal peoples, the nature of land policy and the nature of law in the Australian colonies could be seen as rather ad hoc.

Banner advances five reasons for the continuation of the *terra nullius* land policy. Firstly, “Some of the doctrine’s staying power can be attributed to the simple fact that there was another side to the debate. Every bit of land not in the possession of Aborigines was one more bit available for settlement. The standard arguments in favor of *terra nullius* thus still had their appeal.”⁹⁷ This was particularly the case in respect of the argument that the Aborigines, by virtue of the fact that they did not cultivate the land, were not proprietors of the land.⁹⁸ Secondly, “Even if *terra nullius* had been unjust, others argued, there was no point worrying about it because the Aborigines were dying out.”⁹⁹ Thirdly, “the spread of an advanced, Christian civilization over the face of the earth was an end that might justify some otherwise distasteful means.”¹⁰⁰ Fourthly, “Even the critics of *terra nullius* tended not to argue in favor of recognizing Aboriginal property rights. They proposed two remedies

⁹³ Banner, *op. cit.*, pp. 120-121.

⁹⁴ *ibid.*

⁹⁵ *R v. (Jack Congo) Murrell* (1836) 1 Legge 72.

⁹⁶ Banner, *op. cit.*, p. 120.

⁹⁷ *ibid.*, p. 124.

⁹⁸ *ibid.*, pp. 124-125. See also Gascoigne, who reports that it was “taken for granted that unimproved land was *terra nullius* – land of no-one – until, as Locke put it, someone ‘removes [it] out of the State that Nature hath provided ... [and] hath mixed his *Labour* with, and joined to it something that is his own, and thereby makes it his *Property*’. ... Indeed these very words of Locke were quoted in the *Sydney Morning Herald* in 1839 in defence of the European conquest of the land.”: Gascoigne, *op. cit.*, p. 8.

⁹⁹ Banner, *op. cit.*, p. 125.

¹⁰⁰ *ibid.*

for the injustice of *terra nullius*: compensating the Aborigines, and setting aside parcels of unallocated land as permanent Aboriginal reserves. But the one thing they generally did not advocate was treating the Aborigines as the true owners of their land.”¹⁰¹ According to Banner, this was because of the fifth and ultimate reason, that:

every landowner in Australia had a vested interest in *terra nullius*. To overturn the doctrine would be to upset every white person’s title to his or her land. The result would be chaos—no one would be sure of who owned what. [...] The administrative problems involved in abandoning *terra nullius* were not insuperable as a logical matter, but each of the conceivable devices for solving those problems was politically infeasible.¹⁰²

Banner argues, using the example of political uproar attendant on an attempt to reverse land policy in the New England colonies in the 1680s, that: “Any colonial land policy, whether *terra nullius* or its opposite, produced a powerful political force to keep that policy in place. [...] Once *terra nullius* had been implemented, it could not be stopped, even when British opinion about the Aborigines began to change.”¹⁰³

Gascoigne’s discussion of the enlightenment and the colonisation of Australia is consistent with the development and influence of enlightenment thinking mentioned by Banner above. Gascoigne describes how the “idea of improvement” became “a belief in possibilities of progress into the fabric of everyday life”,¹⁰⁴ and how this idea extended to the improvement of human nature took deeper and deeper hold as convicts made good.¹⁰⁵ Gascoigne says, “the ethic of improvement – which had been so closely linked with agricultural growth through enclosure and the substitution of individual ownership in place of the common fields – heightened that sense of individualism which stood in such conspicuous contrast to the communal identity of Aboriginal culture. [...] As social theorists sketched their ever-more sophisticated historically-based models of human development, the Australian Aborigine tended to be relegated to an increasingly lowly position. As conflict between European and Aborigine increased, such theorising could be invoked to justify dispossession and white supremacy.”¹⁰⁶

¹⁰¹ *ibid.*, p. 126.

¹⁰² *ibid.*, pp. 129-130. Banner’s argument finds support in Bartlett’s legal history of native title. “The government chose to disregard Aboriginal claims because to do otherwise might ‘subvert the foundation on which all Proprietary rights in New South Wales at present rest.’”: Bartlett, *op. cit.*, pp. 2-3, citing HRA (1923) Series 1, Vol 18, p. 379, Lord Glenelg, Secretary for the State for the Colonies to Governor Burke.

¹⁰³ Banner, *ibid.*, p. 131.

¹⁰⁴ John Gascoigne, with the assistance of Patricia Curthoys, *The Enlightenment and the Origins of European Australia* (Port Melbourne, Vic: Cambridge University Press, 2002), p. 10. Gascoigne describes how the idea of improvement of the land was also used against squatters, with the intention of undermining their “hold over so much territory”: p. 152.

¹⁰⁵ *ibid.*, p. 11.

¹⁰⁶ *ibid.*, pp. 12-13.

Bartlett describes the legal consequences: “In time a perception grew that the denial of native title and the dispossession of Aboriginal people afforded no wrong in law. Support was drawn from cases in which Crown rights to land and resources had been upheld, albeit in entirely different contexts.”¹⁰⁷ One such case might be the 1889 case of *Cooper v Stuart*.¹⁰⁸ This is the case that is cited as authority for the proposition that “the common law came to enlarge the concept of ‘settled’ territories [from ‘desert and uncultivated’ lands] to include those ‘practically unoccupied, without settled inhabitants or settled law’”.¹⁰⁹ “In the absence of what the common law courts then perceived to be an ‘established system of law’ the territory was considered subject to ‘settlement’ and the introduction and application of the common law. Australia was characterised as such a territory.”¹¹⁰ Thus it was not until 1889 that British acquisition of sovereignty in Australia was characterised as being acquired by settlement (effectively, to have the character of *terra nullius*). Fascinatingly, the decision maker in that case, Lord Watson, had “one month previously [...] delivered the judgment [...] in which the concept of native title in Canada had been affirmed.”¹¹¹

The 1890s saw a “decade of public debate”¹¹² towards the Federation of Australia in 1901. However, “Aboriginal and Torres Strait Islanders peoples were not involved in any of the conventions and consultations, and were largely ignored.”¹¹³ The Constitution was framed to:

1. specifically deny the new Commonwealth Parliament the power to make laws for Aboriginal people; and
 2. exclude the necessity to count them in the census.
- These exclusions reflected the exclusion of Aboriginal and Torres Strait Islander people from Australian society generally, and from the rights, responsibilities and benefits which other Australian citizens enjoyed.¹¹⁴

3 Impact of colonisation on Australia’s indigenous peoples

The impact of the British presence in Port Jackson was immediate and negative for the peoples in the area, and the impact was quickly felt elsewhere. Rather than give little justice

¹⁰⁷ Bartlett, *op. cit.*, pp. 2-3.

¹⁰⁸ *Cooper v Stuart* (1889) 14 App Cas 286.

¹⁰⁹ Bartlett, *op. cit.*, p. 1.

¹¹⁰ *ibid.*, pp. 1-2.

¹¹¹ *ibid.*, p. 24, fn. 14.

¹¹² Council for Aboriginal Reconciliation, *Final Report*, ‘Chapter 1 A Brief Look at History’, <<http://austlii.edu.au/au/other/IndigLRes/car/2000/16/text01.htm>>, accessed 3 July 2005.

¹¹³ *ibid.*

¹¹⁴ *ibid.*

to the history of dispossession that has been powerfully described elsewhere – see for example, the *Bringing them Home* report and the *Final Report of the Royal Commission on Aboriginal Deaths in Custody*¹¹⁵ – it is sought here to indicate the nature and scale of the impact. Aborigines and Torres Strait Islanders were dispossessed from their land and cultures, treated as non-citizens and sub-citizens, forcibly removed from their traditional homelands, denied the right to vote, subjected to discriminatory employment practices, curtailed in their movements, subjected to laws that placed severe limitations on their capacities to control their own affairs, and forcibly deprived of their children. The cumulative impact of these laws and policies has led to a legacy of disproportionate poverty, lesser access to education and employment, ill-health, incarceration, substance abuse, and familial and sexual violence. The following statistics (“a snap-shot from the 1990s”¹¹⁶) are telling.

- The life expectancy of Aboriginal people is 20-21 years less than the general population.
- Aborigines and Torres Strait Islanders are more than four times as likely to die as non-Aboriginal people if less than 30, and seven times more likely to die (if over 30).
- Indigenous childhood mortality is still more than three to five times higher than that for other Australian children.
- Infectious diseases are 12 times higher than the Australian average.
- Diabetes affects 30 per cent of people in the Aboriginal and Torres Strait Islander communities.
- Hospital admissions for Aboriginal men are 71 per cent higher and for Aboriginal women are 57 per cent higher than for non-Aboriginal men and women.
- 13.6 per cent of Indigenous people have tertiary degrees, compared with 34.4 per cent of all Australians.
- The unemployment rate is 22.7 per cent for Indigenous people, compared with 9.2 per cent for the general population.
- 30.8 per cent of Indigenous households owned or were purchasing their lands, compared with 70 per cent of all Australians.
- The mean individual Indigenous income is 65 per cent of that of the general population.
- Indigenous people are 17.3 times more likely to be arrested; 14.7 times more likely to be imprisoned; and 16.5 times more likely to die in custody than non-Indigenous Australians.¹¹⁷

¹¹⁵ National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Australia), *Bringing them home: a guide to the findings and recommendations of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, (Sydney: Human Rights and Equal Opportunity Commission, 1997); Royal Commission into Aboriginal Deaths in Custody (Australia), *Final Report of the Royal Commission on Aboriginal Deaths in Custody*, (Canberra: Australian Government Publishing Service: 1991).

¹¹⁶ L. Behrendt, *Achieving Social Justice: Indigenous Rights and Australia's Future*, (Annandale, NSW: The Federation Press, 2003), p. 8.

¹¹⁷ *ibid.*, citing the Aboriginal and Torres Strait Islander Commission, the Australian Bureau of Statistics and the Federal Race Discrimination Commissioner.

4 Political activism, rights

Aboriginal people responded to and resisted the British occupation and, as seen above, there have always been those within non-Indigenous society that have contested the mindset and application of *terra nullius*, on moral and factual grounds. Nicholas Baudin's letter to Governor King provides evidence of these things, important for the fact that it is such an early account, and from one observing both the coloniser and the colonised.

If you will reflect upon the conduct of the natives since the beginning of your establishment upon their territory, you will perceive that their aversion for you, and also for your customs, has been occasioned by the idea which they have formed of those who wished to live amongst them. Notwithstanding your precautions and the punishments undergone by those among your people who have ill-treated them, they have been enabled to see through your projects for the future; but being too feeble to resist you, the fear of your arms has made them emigrate, so that the hope of seeing them mix with you is lost, and you will presently remain the peaceful possessors of their heritage, as the small number of those surrounding you will not long exist.¹¹⁸

The nature of Aboriginal resistance and its extent is currently the subject of fierce debate in Australia's History Wars; but "to consider the violence with which colonialism enforces its mission is to recognise the signs of resistance in uncivil demands".¹¹⁹ Further, there has been longstanding activism by Australia's Indigenous peoples for this injustice to be rectified, of which the art practice of Indigenous Australians has been a significant tool (see below).

A "10-year campaign by Aboriginal and Torres Strait Islanders and their supporters"¹²⁰ preceded the 1967 referendum to change the Australian Constitution so that the Commonwealth Parliament would have power to make laws in respect of Aboriginal and Torres Strait Islander peoples, to give them the vote, and to ensure that they would be counted in the census. It was the legal change wrought by this referendum that allowed for the first case asserting "indigenous rights to traditional lands at common law".¹²¹ Bartlett says:

The explanation for the absence of any prior litigation may be found in the absolute and exclusive jurisdiction vested in the states over indigenous people and their lands. Unlike in the United States and Canada, and contrary to Imperial suggestion, jurisdiction vested in

¹¹⁸ As quoted in Dyer, *op. cit.*, p. 200.

¹¹⁹ Jenny Sharpe, 'Figures of Colonial Resistance' in B. Ashcroft, G. Griffiths, and H. Tiffin (Eds), *The Post-Colonial Studies Reader*, (London & New York: Routledge, 1995), p. 102.

¹²⁰ Council for Aboriginal Reconciliation, *Final Report*, 'Chapter 2', <<http://www.austlii.edu.au/au/other/IndigLRes/car/2000/16/text02.htm>>, accessed 3 July 2005.

¹²¹ Bartlett, *op. cit.*, p. 9.

the representatives of the settlers whose interests were most antipathetic to those of the indigenous people. The states took the land whenever it was thought to be required. There was no legal protection of traditional lands from seizure by the states.¹²²

The first case was *Milirrpum v Nabalco Pty Ltd* (1971).¹²³ In the case, Blackburn J recognised that, as opposed to Australia being inhabited by a ‘backwards’ people: “The evidence shows a subtle and elaborate system highly adapted to the country in which the people led their lives, which provided a stable order of society and was remarkably free from the vagaries of personal whim or influence.”¹²⁴ Blackburn J gave what, from a lawyer, is high praise, “If ever a system could be considered ‘a government of laws, and not of men’, it is that shown in the evidence before me.”¹²⁵ Nonetheless, in a fiercely criticised decision, Blackburn J held that “the doctrine of communal native title does not form and never has formed, part of the law of any part of Australia”.¹²⁶

In 1975 the Federal Government used its new powers to provide legislative protection in the form of the *Racial Discrimination Act* 1975 (Cth),¹²⁷ which was later to form the basis of the case in *Mabo* in 1992. Bartlett explains, “A second decision upon the existence of native title at common law was not forthcoming in Australia for over twenty years. A partial explanation for the lack of legal action is found in the provision of land rights by legislation in some jurisdictions”.¹²⁸ “A further explanation for the lack of legal action to assert the existence of native title is the late recognition of the significance for traditional land owners of the protection conferred by the *Racial Discrimination Act* 1975 (Cth).”¹²⁹ It was this act that formed the basis of the *Mabo* case. *Mabo (No 1)*¹³⁰ was of “profound significance”¹³¹ because it decided “that *if* the common law recognised [a traditional interest in land of Aboriginal and Torres Strait Islanders] it was protected against legislative impairment or extinguishment by the requirement of the *Racial Discrimination Act* 1975 (Cth) of equality before the law. Traditional interests in land were entitled to the same degree of protection as the interests of others in the community. And it must be said that since every other part

122

ibid.

123

Milirrpum v Nabalco Pty Ltd (1971) 17 FLR 141 (SC(NT)).

124

Milirrpum v Nabalco Pty. Ltd. (1971) 17 FLR 141, per Blackburn J at p. 267.

125

ibid.

126

Bartlett, *op. cit.*, p. 12. For detailed discussion and criticism of Blackburn’s reasoning in this case see pp. 9-13.

127

ibid., p. 9.

128

ibid., p. 13.

129

ibid., p. 15.

130

Mabo v Queensland (1988) 166 CLR 186

131

Bartlett, *op. cit.*, p. 20.

of the common law world had long before recognised native title at common law, it seemed inevitable that so too would the High Court of Australia.”¹³²

Around this time, the words *terra nullius* started being used in public debate of these issues, in part due to Henry Reynolds’s use of the term in his book, *The Law of the Land*, published in 1987.¹³³

5 A Formal Reconciliation Process

It was in this climate that the Council for Aboriginal Reconciliation was established as a statutory authority by the *Council for Aboriginal Reconciliation Act* (Cth) 1991, on 2 September 1991. It was established as part of a formal reconciliation process and after “extensive public consultation and cross-party discussion”.¹³⁴ The Council was to work towards effecting a reconciliation “between Aboriginal and Torres Strait Islanders and other Australians” by the year 2001, the centenary of Federation.¹³⁵

In its first term, the Council identified eight key issues as essential to the process of reconciliation:

- a greater understanding of the importance of **land and sea** in Aboriginal and Torres Strait Islander societies;
- **better relationships** between Aboriginal and Torres Strait Islander peoples and the wider community;
- recognition that Aboriginal and Torres Strait Islander **cultures and heritages** are a valued part of the Australian heritage;
- a sense for all Australians of a shared ownership of our **history**;
- a greater awareness of the causes of **disadvantage** that prevent Aboriginal and Torres Strait Islanders from achieving fair and proper standards in health, housing, employment and education;
- a greater community response to addressing the underlying causes of the unacceptably high **levels of custody** for Aboriginal and Torres Strait Islander peoples;
- greater opportunity for Aboriginal and Torres Strait Islander peoples to **control their destinies**;
- agreement on whether the process of reconciliation would be advanced by a **document or documents** of reconciliation.¹³⁶

¹³² *ibid.*, pp. 20-21.

¹³³ Reynolds, *op. cit.*

¹³⁴ Council for Aboriginal Reconciliation, ‘Chapter 2’.

¹³⁵ *ibid.*

¹³⁶ *ibid.*

6 From *Mabo* and native title ...

In 1992, in *Mabo*, the High Court of Australia decided, by a majority of 6 (1 dissenting) that:

- there was a concept of native title at common law;
- the source of native title was the traditional connection to or occupation of the land;
- the nature and content of native title was determined by the character of the connection or occupation under traditional laws or customs;
- and native title could be extinguished by the valid exercise of governmental powers provided a clear and plain intention to do so was manifest.¹³⁷

Amongst the “immediate implications” of *Mabo* was “the validation of the dispossession of Aboriginal people ‘parcel by parcel’ from 1788 to 31 October 1975 without consent or compensation”.¹³⁸

The native title recognised by the High Court in *Mabo* was based on the native title recognised at common law developed in the United States, Canada and New Zealand. According to Bartlett, “It was in the United States that the common law first gave effect to the rights of the indigenous inhabitants of settled territories”¹³⁹ and he quotes from the 1823 case, *Johnson v McIntosh*:

The absolute ultimate title has been considered as acquired by discover, subject only to the Indian rights of occupancy, which title the discoverers possessed the exclusive right of acquiring.

Bartlett continues:

The court did not suggest that such a diminished recognition of indigenous rights was just. Rather, it opined that it was the only possible accommodation of the interests of the settlers and the indigenous people. Marshall CJ explained the need to recognise the rights of the settlers:

However extravagant the pretension of converting the discovery of an inhabited country into conquest may appear, if the principle has been asserted in the first instance, and afterwards sustained; if a country has been acquired and held under it; if the property of the great mass of the community originates in it, becomes the law of the land, and cannot be questioned.¹⁴⁰

So it can be seen that the recognition of native title has been, from its inception, concerned as much with the settlers as with justice for those otherwise dispossessed. Also to be seen is the uneasy placement of historical fact within a body of law.

¹³⁷ Bartlett, *op. cit.*, p. 22.

¹³⁸ *ibid.*, p. 30.

¹³⁹ *ibid.*, p. 3.

¹⁴⁰ *ibid.*, pp. 3-4.

7 ... to starAboriginality v 'psychological *terra nullius*'

Mabo “was hailed by the media as the rejection of the concept of *terra nullius*”.¹⁴¹ This was not in fact the case, with the court not rejecting “the concept of *terra nullius* in international law as applicable to Australia”¹⁴² and concluding “that Australia, irrespective of the original presence of the Aboriginal people, was a territory acquired by settlement at common law”.¹⁴³ Nonetheless, the High Court’s statements, rejecting “the racist concept of *terra nullius*”¹⁴⁴ and recognising “‘the falseness’ of the fiction that Aboriginal people were ‘without laws, without a sovereign and primitive in’ their social organization”,¹⁴⁵ were profoundly influential on Australian society. At the time of the *Mabo* decision, the then Prime Minister, Paul Keating, in his historic Redfern address, said of the decision, “we can make it [...] the basis of a new relationship between indigenous and non-indigenous Australians”.¹⁴⁶ And for a period of time thereafter, including the years of the Council for Aboriginal Reconciliation, there was much to suggest the beginnings of a new relationship – the sort of relationship encapsulated in Ian North’s description of the “cultural condition [...] of starAboriginality”.¹⁴⁷ North argues that its “principal indicator is also its precondition: the opening of non-Indigenous minds to admit the weight and power of Aboriginal culture, presence and being”.¹⁴⁸ Though it is important to note Freyne’s caution that without acknowledgement of and engagement with Aboriginal dispossession, such engagement risks a return to what Bernard Smith, in 1980, called ‘The Years of the Walrus’.¹⁴⁹

In 2007, it is clear that there has been a considered and thorough legislative abrogation of native title. Asserting native title is “costly and time-consuming”;¹⁵⁰ carries a heavy burden of proof that is particularly difficult to meet in the South where the displacement and

¹⁴¹ *ibid.*, p. 23.

¹⁴² *ibid.*, p. 23.

¹⁴³ *ibid.*, p. 23.

¹⁴⁴ A. Howe, ‘A Poststructuralist Consideration of Property as Thin Air - *Mabo*, a Case Study’, *E Law – Murdoch University Electronic Journal of Law* Volume 2, Number 1 (April 1995), <<http://www.murdoch.edu.au/elaw/issues/v2n1/howe21.html>>, accessed 21 June 2006.

¹⁴⁵ Howe, *ibid.*, citing Bartlett in ‘*Mabo*: Another Triumph for the Common Law’, *Essays on the Mabo Decision* (Sydney: Law Book Co., 1993), p ix.

¹⁴⁶ As quoted in Bartlett, *op. cit.*, p. 33, citing (1993) 61 *Aboriginal Law Bulletin* 5.

¹⁴⁷ I. North, ‘StarAboriginality: Hawke Institute Working Paper series, No. 20’, (Magill, South Australia: Hawke Institute, University of South Australia, 2002), pp. 4-6.

¹⁴⁸ *ibid.*

¹⁴⁹ Freyne, *op. cit.*, p. 44.

¹⁵⁰ Bartlett, *op. cit.*, p. 106, citing *Western Australia v Ward* (2002) 191 ALR 1 per McHugh J at 561.

dispossession was most complete;¹⁵¹ and where native title is held, the rights of native title holders to negotiate as to future uses of the land has been diminished, with certain sorts of land uses overriding native title.¹⁵²

The tide turned in 1996, which brought the High Court of Australia decision in *Wik Peoples v Queensland* (1996),¹⁵³ which “appeared to require that in order to find extinguishment of native title there must be ‘clear and plain’ legislative authority to extinguish”,¹⁵⁴ and a change of government. The extent to which the political climate had changed is reflected in the strategic plan of the Council for Aboriginal Reconciliation for the Council’s third term, from 1998—2000. The plan stated that the first goal was to establish a national document of reconciliation and acknowledgment of Australia’s Indigenous peoples in the Constitution.¹⁵⁵ The Council’s two following goals seem to be predicated on the almost certainty that this would not be achieved in the manner the Council thought necessary, and in knowledge that its funding would not be continued beyond that time. The second goal was to gain partnerships in reconciliation to achieve social and economic equality for Aboriginal and Torres Strait Islander people. And the third sought to encourage and support the people’s movement for reconciliation to “ensure that the work of reconciliation continues beyond the life of the Council”.¹⁵⁶ Indeed by the end of its life, the Council had established an independent foundation, Reconciliation Australia, to continue the tasks from 1 January 2001.

Richard Bartlett has written a concise and authoritative account of the political and legal responses to *Mabo*, and the development of the common law,¹⁵⁷ in his book *Native Title in Australia*.¹⁵⁸ It is a discussion Bartlett shapes by the notion of equality, in this, his second sentence: “The degree of recognition of rights to traditional lands and waters indicates the extent to which a settler society is prepared to confer that most fundamental of human rights, equality before the law, upon indigenous people.”¹⁵⁹ When considering the nature of native title in Australia in 2004, he concludes:

¹⁵¹ *ibid.*, p. 73.

¹⁵² *ibid.*, p. 410.

¹⁵³ *Wik Peoples v Queensland* (1996) 187 CLR 1.

¹⁵⁴ Bartlett, *op. cit.*, p. 95.

¹⁵⁵ Council for Aboriginal Reconciliation, ‘Chapter 2 ...’.

¹⁵⁶ *ibid.*

¹⁵⁷ In cases such as *Wik Peoples v Queensland* (1996) 187 CLR 1, *Fejo v Northern Territory* (1998) 195 CLR 96, *Yorta Yorta Aboriginal Community* (2002) 194 ALR 538 and *Western Australia v Ward* (2002) 191 ALR 1.

¹⁵⁸ Bartlett, *op. cit.*, pp. 45-91.

¹⁵⁹ Bartlett, *ibid.*, p. 1.

The divergence as to the proof, content and extinguishment of native title from the principles of ‘full respect’ and equality is very substantial. It is also remarkable, in as much as it almost severs the development of the concept adrift from its fundamental underpinnings.¹⁶⁰

The situation is such that in 2002, ten years after the *Mabo* decision, Larissa Behrendt, Professor of Law and Indigenous Studies, University of Technology Sydney, wrote:

For Indigenous peoples, the legacy of *terra nullius* may have been overturned by the *Mabo* case but another ideological enemy remains: [...] Australia has a dominant group who embraces a psychological *terra nullius* ...¹⁶¹

Professor Behrendt continued:

Perhaps the greatest message that can be learnt from the *Mabo* case is that episodic court victories are not a sustainable sole strategy for recognition and protection of Indigenous rights. As was pointed out in both the National Report of the Royal Commission into Aboriginal Deaths in Custody and the *Bringing them Home* Report, the necessary response to remedy the legacy of colonisation and to achieve the aspirations of the Indigenous communities is necessarily an holistic one. It will require a legal system that recognises Indigenous rights, a legislature that seeks to strengthen and protect those rights (not truncate and erode them), a bureaucracy that can develop responsive and effective policies to deal with Indigenous issues **and a public that has overcome its psychological *terra nullius*** [emphasis added].¹⁶²

Behrendt’s argument for rights is backed up by the failure of the Howard government’s strategy of ‘practical reconciliation’ to address Indigenous disadvantage in health, housing and education – as proven by the ANU’s Centre for Aboriginal Economic Policy Research.¹⁶³ Sean Brennan cites a Senate Committee as saying: “[I]t is because the Government has closed its eyes to the wider reconciliation agenda. It insisted the Commonwealth must attend to the social, cultural and human rights issues which Indigenous people repeatedly say are important to them. Returning jurisdiction to their

¹⁶⁰ Bartlett, *ibid.*, p. 96.

¹⁶¹ L. Behrendt, ‘Mabo: Ten Years On’, Occasional Paper, delivered on 6 June 2002, as part of ‘The Legacy of Mabo: A Ten Year Assessment’, a public forum to mark the tenth anniversary of the *Mabo v Queensland (No 2) Case* hosted by the Centre for International and Public Law, Faculty of Law, Australian National University, <<http://law.anu.edu.au/cipl/Publications/OccasionalPapers/BehrendtJune02Mabo.pdf>>, accessed 11 February 2007, p. 5.

¹⁶² *ibid.*, p. 6.

¹⁶³ J.C. Altman and B.H. Hunter, ‘Monitoring ‘practical’ reconciliation: Evidence from the reconciliation decade, 1991-2001 (No 254/2003)’ (Canberra: ANU, Centre for Aboriginal Economic Policy Research, 2003), p. 16.

communities, constitutional change, a legal framework for resolving unfinished business by negotiation – all need urgent attention.”¹⁶⁴ Brennan argues:

The Council for Aboriginal Reconciliation understood all this. It spent ten years talking with people about what Australia needs to do. Its final report emphasised that reconciliation means addressing both practical measures to tackle disadvantage as well as legal steps to recognise Indigenous rights. The Council was right for two reasons. First, the so-called ‘practical reconciliation’ and rights agendas are not mutually exclusive. [...] Second, practical measures and the rights agenda are inextricably linked [...] [S]hifting power from governments to Indigenous communities is a necessary condition for sustained development. The influential Harvard Project on American Indian Economic Development puts it this way:

Without jurisdiction indigenous Nations are subject to other people’s agendas. You can’t ask people to be accountable if you don’t give them decision-making power...¹⁶⁵

8 *Terra nullius* revisited: Legal, popular, invented and remix versions

In 2007, there is controversy about the meaning of the term *terra nullius* and use of it in respect of Australia.¹⁶⁶ In 2003, historian Michael Connor drew attention to the absence of the term in Australia’s colonial record.¹⁶⁷ He argues from this that the term has been invented; that historian Henry Reynolds’s use of the term in respect of Australia in *The Law of the Land*, published in 1987, has been uncritically accepted, including by the High Court of Australia, and that the result is that there has been an “error nullius”.¹⁶⁸ Connor further calls for disuse of the term in respect of Australia.¹⁶⁹ Bain Attwood has called the term *terra nullius* “a lie”,¹⁷⁰ and written of Reynolds’s use of the term as providing “the nation with a newly redemptive, liberal myth narrative”,¹⁷¹ one, he argues, that was put into service by the High Court of Australia, and then by the Keating government to sell native title.¹⁷² In

¹⁶⁴ Sean Brennan, ‘Perspective 20 November 2003 – Sean Brennan’, <<http://www.abc.net.au/rn/talks/perspective/stories/s993393.htm>>, accessed 2 November 2004.

¹⁶⁵ *ibid.*

¹⁶⁶ The development of this debate has coincided with the tour of *Terra Alterius: Land of Another*. The first sally was Connor’s 2003 article (Connor, ‘Error Nullius’) but initial response to Connor’s article was slow. For a description of the debate and linkage of it to the contemporary political climate, see Fitzmaurice, ‘On the Origins...’, unpaginated.

¹⁶⁷ Connor, ‘Error Nullius’.

¹⁶⁸ Connor, ‘Error Nullius’, ‘Error Nullius Revisited’, *The Invention of Terra Nullius*.

¹⁶⁹ “Terra nullius serves a politics of confrontation; reconciliation needs to be freed with goodwill and a vision of the future rather than imprisoned by a shadow from the 1970s.”: Connor, ‘Error Nullius’.

¹⁷⁰ Michael Duffy in conversation with Michael Connor, ‘Wedge Watch – Terra Nullius Contested’, Radio National Counterpoint 12/07/2004, <<http://www.abc.net.au/rn/talks/counterpoint/stories/s1153484.htm>>, accessed 9 September 2005.

¹⁷¹ B. Attwood, ‘The Law of the Land or the Law of the Land?: History, Law and Narrative in a Settler Society’, *History Compass* 2 (2004) AU 082, 1–30.

¹⁷² *ibid.*, p. 17–18.

2004, effectively defending Reynolds from the charge of fabricating *terra nullius*, Dr Andrew Fitzmaurice described *terra nullius* as a synecdoche,¹⁷³ explaining that:

Terra nullius is derived from *res nullius* [thing belonging to no-one]. *Res nullius* is a term that has not been at all obscure, and has actually been a very central term in the law of nations [...] for 500 years. *Terra nullius* ... is something the international lawyers invented in the twentieth century to explain the doctrine of *res nullius* as it applied to land.¹⁷⁴

By then it was becoming clear that there were differences between the legal definition and usage of the term, and the more literal way it had been popularly understood, and with serious consequences. Fitzmaurice's view was that Henry Reynolds's usage of *terra nullius* gave the impression of "something more tangible than it really was," saying, "[H]e also tends to skew the definition of *terra nullius* to unpeopled, and I really think the correct definition would be uncultivated."¹⁷⁵ Fitzmaurice continued:

[T]he conflation of [...] meanings has meant that ever since Australian historiography and a good deal of Australian legal discourse, particularly outside the courts, has been a dialogue of the deaf.¹⁷⁶

Fitzmaurice's account was useful and consistent with Bartlett's account of the law (published in 2004, and written in such a way as to address the concerns raised by Connor)¹⁷⁷ and other accounts of the legal profession.¹⁷⁸

In early 2005, Michael Connor's book, *The Invention of Terra Nullius: Historical and Legal Fictions on the Foundation of Australia*, was published by Macleay Press, of which Keith Windschuttle, author of *The Fabrication of Aboriginal History*, is publisher. In this book,

¹⁷³ Michael Duffy in conversation with Henry Reynolds, Christopher Pearson and Andrew Fitzmaurice, 'Terra Nullius – The History Wars', Radio National – Counterpoint 16/08/2004, <<http://www.abc.net.au/rn/talks/counterpoint/stories/s1172945.htm>>, accessed 9 August 2005.

¹⁷⁴ *ibid.*

¹⁷⁵ *ibid.*

¹⁷⁶ *ibid.* An additional consequence of an understanding of the term *terra nullius* as meaning 'land of no-one' is the damage or hurt that arises for some Indigenous people from it seeming that one's people were not recognised as *even existing*, that has been documented and explained by Suneeti Singh: *Writing Against History: The Dilemma of the Contemporary Aborigine Novelist*, PhD, to be defended in 2007. Behrendt explains the continuing symbolic importance of *Mabo* as official recognition of the existence of Australia's Indigenous peoples: Behrendt, 'Pointed View'.

¹⁷⁷ See Bartlett's discussion of the impact of Henry Reynold's *Law of the Land* on the High Court of Australia, Bartlett, *op. cit.*, p. 23. The term *res nullius* still has currency, evidenced by the fact that "In the Moon Agreement the moon deliberately wasn't identified as *res nullius* but as *res communis*, a *res-commercium* or the common heritage of mankind.": 'Air and Space Law', Carnegie Foundation, <<http://www.ppl.nl/100years/topics/airandspacelaw/>>, accessed 9 August 2005. See also Fitzmaurice, 'On the Origins...', unpaginated.

¹⁷⁸ "In a literal sense, *terra nullius* means that the land is physically vacant and uninhabited; in a legal sense, *terra nullius* implies a vacant status — land which is either physically or legally *regarded* as vacant. The legal concept of *terra nullius* is derived from the early Roman principle known as *occupatio*, which conferred automatic title upon the discoverer of property which was *res nullius*— that is, property which belonged to nobody.": Hepburn, *op. cit.*, p. 12.

Connor highlights what is, for those accustomed to thinking of Aboriginal dispossession in terms of the application of legal doctrine of *terra nullius*, the incredible absence of these words during the colonial documents and the surprisingly late, occasional and apparently inconsistent usages of the terms *terra nullius* and *territorium nullius*, and argues that: “The *Mabo* judgement [and therefore native title] was set on a false foundation, that Australian sovereignty and our legal system, when dealing with land, depended on a doctrine of *terra nullius*”.¹⁷⁹ Connor says he is concerned for peace and harmony in Australia and argues that *terra nullius* is infected with hatred: “*Terra Nullius* turned our present into a *nullius*. Get rid of it and the past is a new land.”¹⁸⁰

Connor’s key point, that “the actual words *terra nullius* are absent from Australia’s colonial record”¹⁸¹ has met with varied receptions. For some, it has been the revelation of an “historical and political fraud”,¹⁸² the term “an exemplar for the political right of how bad history has been used in the past thirty years to propel the political cause for Aboriginal rights.”¹⁸³ Andrew Fitzmaurice describes the response to the book as “extraordinary”,¹⁸⁴ but argues that:

There is good reason to be sceptical regarding Connor’s book as the simple cause of this controversy. [...] [T]he fact that *terra nullius* was not used to justify Aboriginal dispossession [...] had been on the public record for ten years since the legal scholar David Ritter had published an article on *terra nullius*’ myth in the Sydney Law Review in 1996. Ritter’s article was widely cited and his point was acknowledged, but it failed to generate great excitement. [...] What changed? What changed was not our knowledge of the truth regarding *terra nullius*, but the political environment. [...] But for these political developments, the observation that *terra nullius* was a myth would have been treated as a not-uncommon example of historical anachronism.¹⁸⁵

Connor’s legal arguments have been largely refuted. For Sir Anthony Mason, Chief Justice of the High Court of Australia when *Mabo* was decided, Connor’s argument that *terra nullius* is anachronistic as “a quibbling point”.¹⁸⁶ He rejects too the argument that Reynold’s work *The Law of the Land* was an undue influence on the High Court.¹⁸⁷ Frank Brennan SJ AO

¹⁷⁹ Connor, *The Invention of Terra Nullius*, p. 188.

¹⁸⁰ *ibid.*, p. 330.

¹⁸¹ Fitzmaurice, ‘On the Origins ...’, unpaginated.

¹⁸² *ibid.*

¹⁸³ *ibid.*

¹⁸⁴ *ibid.*

¹⁸⁵ *ibid.*

¹⁸⁶ D. Hope, ‘Smokescreen nullius’, *The Australian*, 25 February 2006, <<http://www.eniar.org/news/terrannullius.html>>, accessed 21 June 2006.

¹⁸⁷ *ibid.*

has discussed Connor's arguments in respect of the *Mabo* decision, and refutes Connor's argument that the recognition of Native Title in the *Mabo* judgement was flawed;¹⁸⁸ rather:

All seven judges were agreed that they could not question the assertion of British sovereignty. They also agreed that Aborigines and Torres Strait Islanders could have had rights to land prior to the assertion of sovereignty. Six of the judges thought that any such rights could survive the assertion of sovereignty by the Crown. It did not matter how you classified the Crown's mode of acquisition of the new territories. Whether the Crown asserted sovereignty by settlement [*terra nullius*], conquest or cession, native title rights could survive until the Crown extinguished them, either by granting land to a third party, or by dedicating the land to some public use, inconsistent with continued use and occupation by the traditional owners.¹⁸⁹

For Behrendt, this discussion is an argument "about white identity"¹⁹⁰ that does nothing to diminish the significance of *Mabo*, which remains both symbolic and legal.¹⁹¹

Connor's arguments that *terra nullius* is an invented term and that it ought to be disused in respect of Australia are countered persuasively by Andrew Fitzmaurice.

[T]he justice of dispossession has become one of the most important political questions of the post-colonial world. We cannot pursue reconciliation without addressing the justice of colonisation and we cannot address that question of justice without asking the historical question of whether and how colonisation was justified. [...] European colonisers used numerous excuses for their actions, including the bringing of Christianity and the right of conquest but none of these rationalisations proved to be as salient or as powerful as the natural law tradition and its associated assumptions. And it is from the natural law tradition that the idea of *terra nullius* was created.¹⁹²

Fitzmaurice explains that, "The doctrine of *terra nullius* when it was first developed later in the nineteenth century was based on the natural law and Roman law idea of property belonging to the first taker or to the first exploiter."¹⁹³ He has traced the idea of property belonging to the first taker from its natural and Roman law origins, to its development by the Spanish theologian Francisco de Vitoria at the time of the Spanish conquest of the Americas, to its presence in discussions of Australia, and further still, to its codification in the late-nineteenth century as *terra nullius* and *territorium nullius* as European powers sought to claim lands in Africa and the polar region, and to the use of *terra nullius* in respect of Outer Space during the Cold War.¹⁹⁴

¹⁸⁸ Frank Brennan, *op. cit.*, pp. 6-13.

¹⁸⁹ *ibid.*, p. 3.

¹⁹⁰ Behrendt, 'Pointed view'.

¹⁹¹ *ibid.*

¹⁹² Fitzmaurice, 'On the Origins ...', unpaginated.

¹⁹³ *ibid.*

¹⁹⁴ *ibid.*

The first use of the words *terra nullius* has not been conclusively established.¹⁹⁵ Fitzmaurice suggests this might have been in 1872 over the unoccupied region of Spitsbergen,¹⁹⁶ but his view is that “ultimately, the first use of the term *terra nullius* is primarily important [... for how it] leads us to understanding what nineteenth and early-twentieth century International lawyers understood by the term of *terra nullius*”.¹⁹⁷ This, according to Fitzmaurice, is an absence of property and, therefore, also an absence of sovereignty.¹⁹⁸

The term *territorium nullius* was developed in the context of European expansion into Africa, whose peoples were recognised “even in terms of European perceptions [... as being] engaged in the exploitation of nature and had therefore to some degree established effective occupation”¹⁹⁹ and was codified (with *terra nullius*) in International law between 1886 and 1888.²⁰⁰

Whereas *terra nullius* described an absence of property in land and by logical extension an absence of sovereignty, *territorium nullius* acknowledged the existence of property rights but described an absence only of sovereignty. [...] Both *territorium nullius* and *terra nullius* were being employed in international law through to the 1960s and 70s. But over the course of the twentieth century the careful taxonomy of the nineteenth century international lawyers lost much of its precision and these terms became confused and to some degree interchangeable. Both have been used in relation to Australia.²⁰¹

Fascinatingly, Fitzmaurice explains that when the notion of property belonging to the first taker was first applied to European expansion – in the sixteenth century by the Spanish theologian Francisco de Vitoria in respect of the Spanish conquest of the Americas – it was used to **defend** the rights of the Indigenous people against their colonisers.²⁰²

When a people, Vitoria argued, observed the laws of nature and exploit their potential to create property, families, cities, social and political organisations, in the process establishing their humanity, they have created just societies and cannot be justly deposed, regardless of whether or not they are godly or heathen. [...] He questions whether the Spaniards who ‘were the first to discover and occupy these countries must by right possess them just as if they had discovered a hitherto uninhabited desert.’²⁰³

It was not for some time before it was used **against** Indigenous peoples.²⁰⁴

195 *ibid.*

196 *ibid.*

197 *ibid.*

198 *ibid.*

199 *ibid.*

200 *ibid.*

201 *ibid.*

202 *ibid.*

203 *ibid.*

204 *ibid.*

In the seventeenth century, the English, also seeking to rationalise their colonisation in America, turned to Vitoria and the natural law tradition. The English, however, made a crucial modification to his argument. They inverted it. Or, you might say, say they inverted the empirical description. The English appreciated the potential in natural law for describing a people as NOT having exploited nature and NOT having established their humanity. [...] This argument reached its most important celebrated formulation in John Locke's essay on property in his two treatises on government.²⁰⁵

Thus, according to Fitzmaurice, *terra nullius* and *territorium nullius* were “ideas used to justify the colonial appropriation of land”²⁰⁶ and “also used negatively to say that land was not *terra nullius* or, for example, not *territorium nullius*. They were employed by critics of colonisation to argue that Indigenous peoples had exploited nature and had effectively occupied land such that they could not be dispossessed.”²⁰⁷ This leads to Fitzmaurice's ultimate conclusion:

If we appreciate that there was a Western political tradition that defended the rights of colonised peoples and moreover saw the freedom of those peoples as inherently linked to the freedom of the coloniser it becomes possible to think about reconciling Aboriginal rights and Western Democracy. It is certainly in this context that *Mabo* judgement must be understood. The judgement sits in a 500 year tradition of the **negative** use of natural law arguments to defend indigenous rights. [...] *Mabo* is not good history but is clearly continuous with the Western judicial tradition which attempted to rescue liberty or in this case liberal democracy from the threat posed by the dispossession of colonised peoples.²⁰⁸

To return to the meaning of *terra nullius* as a context for the exhibition, these were: first, circa 1992—2004, a perception of *terra nullius* as a clearly stated legal doctrine that was applied to Australia with the effect of obtaining sovereignty and dispossessing Australia's Indigenous peoples, coupled with a climate in which it was felt that Australia was at the cusp of achieving reconciliation; second, circa 2004—early 2006, controversy as to the meaning and use of the term, with the possibility that *terra nullius* was historical fraud, coupled with a climate of increasing political reluctance towards reconciliation; and third, from May 2006 and Andrew Fitzmaurice's lecture,²⁰⁹ renewed clarity that the ideas encompassed in the doctrine of *terra nullius* were in fact relevant to Australia at the time of

²⁰⁵ *ibid.* Fitzmaurice has made this argument previously in Fitzmaurice, *Humanism and America*, p. 145.

²⁰⁶ Fitzmaurice, ‘On the Origins...’, unpaginated.

²⁰⁷ *ibid.*

²⁰⁸ *ibid.*

²⁰⁹ Accounts of *res nullius* have been available in historical texts that consider Australia's colonisation or Imperial policy in respect of Australia within a global context – see, for example, Gascoigne, *op. cit.*. What makes Fitzmaurice's lecture so important is that he clearly relates these accounts to *terra nullius*, addressing Michael Connor's concerns about usage of the term in respect of Australia, and re-placing the term in its historical context.

colonisation. The constant in all these contexts is the ongoing dispossession of Indigenous Australians.

To return to Connor's work and its consequences, what seems important is the point that *terra nullius* is widely misunderstood. Moreover, the controversy it has generated reveals what is at stake in the making of and communication of history, and the making of and communication of law. The controversy of *terra nullius* might owe its oxygen to a change of political environment, but some of the fuel comes from differences between the disciplines of law and history, and the lack of public explanation of these.²¹⁰ What has been revealed is a public that is in large parts interested in justice and in understanding Australia's history and law, and a polity in which Aboriginal dispossession is fought against and justified anew in each generation. The evidence refutes Connor's view of *terra nullius* as a fraud and suggests that the value in Connor's work will prove to be more in his questions than in his findings. Nonetheless, I do support Connor's call for an understanding of Australia's history that is true to its gradualism, to small and personal events as well as to larger perspectives. Such histories would bring dispossession, injustice and racial discrimination back from the state, from distant actors in history, to something that conveys present and personal responsibility to Australians living today. Histories of this type would not just allow for us to move away from entrenched positions of good and bad, actor and victim, but they would refuse contemporary Australians the option of saying, "I wasn't there, it wasn't my fault". Such histories would foster understanding that history is shaped gradually, personally, by the actions and responses of many; they would foster understanding of the relevance of gradual, personal responsibility and action in the present.

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²¹⁰

Note however that it is possible to find an account on the Internet, in the form of legal academic Rosemary Hunter's explanation that, "The notion that the common law can be 'updated' [...] is, however, problematic in traditional legal theory. That theory holds that judges do not 'make' new law but rather 'find' or 'declare' the law that has existed all along." R. Hunter, 'Aboriginal Histories, Australian Histories, and the Law',

<[http://www.lib.latrobe.edu.au/AHR/archive/Issue-April-](http://www.lib.latrobe.edu.au/AHR/archive/Issue-April-1996/RosHunter.html)

[1996/RosHunter.html](http://www.lib.latrobe.edu.au/AHR/archive/Issue-April-1996/RosHunter.html)>, accessed 11 February 2007. According to Hunter, the judges comprising the HCA in *Mabo* addressed this problem differently: "Whereas Justice Brennan saw the need to update the common law as of 1992, [Justices Deane and Gaudron] rewrote the law retrospectively, claiming that the common law always recognised native title.": *ibid*.

1 Different concepts and roles of art

The art made on Australian soil provides a great resource for those wishing to understand the nature of dispossession in Australia. Encounter with the Indigenous populations was of great concern²¹¹ to the newcomers, and the imagery created to be sent back to and distributed in Europe reflects that.²¹² Encounter with the newcomers was also of great concern to the Indigenous populations, and Indigenous Australians have used art to communicate to the newcomers Indigenous ways of being and relationship to land, experience of encounter, and political and social concerns.²¹³

Traditionally, Aboriginal artistic practice is vital to the very existence of Aboriginal society, for it is ideology, law, religion and education in one.²¹⁴ It “is a means by which the present is connected with the past and human beings with the supernatural world”.²¹⁵ The Dreaming or Dreamtime, also “expresses individual and group identity, and the relationships between people and the land.”²¹⁶

Australia received its Western art tradition in the same way as it received its law, from British settlement. Art in the Western tradition might be described as the expression and prism of thought and experience, and art galleries are often understood as sites of reflection and encounter. With the exception of a few, art is not regarded as part of the essential business of living. Contemporary Aboriginal artists work across a broad spectrum from those who create work from largely traditional sources and means to those who work primarily or exclusively within the Western frame.

It has taken time for the discipline of Australian art history and theory to appreciate Aboriginal art within Western art practice and for its own sake, just as it took time for the discipline of Australian law to appreciate Aboriginal conceptions of land and to recognise native title within the common law. This parallel is intriguing, as the influence of Aboriginal

²¹¹ See, generally, Thomas, *op. cit.* and Clendinnen, *op. cit.*

²¹² See, generally, B. Smith, *Imagining the Pacific: In the Wake of the Cook Voyages* (Melbourne: Miegunyah Press Series, Melbourne University Press, 1992); S. Hunt & P. Carter, *Terre Napoleon: Australia Through French Eyes 1800-1804*, (Sydney: Historic Houses Trust of New South Wales in association with Hordern House, 1999).

²¹³ For example, the Yirrkala bark petitions, which “sought the Commonwealth Parliament’s recognition of [the] rights [of the Yolgnu people of Yirrkala] to their traditional lands on the Gove Peninsula in Arnhem Land: ‘Yirrkala bark petitions 1963 (Cth)’,” <http://www.foundingdocs.gov.au/item.asp?dID=104>, accessed 4 February 2007.

²¹⁴ W. Caruana, *Aboriginal Art*, (London: Thames and Hudson, 1993), pp. 7-11.

²¹⁵ *ibid.*, p. 10.

²¹⁶ *ibid.*

art as a vehicle for cross-cultural understanding and the gaining of legal rights cannot be overstated.

In a key act in 1963, described by McLean as the “symbolic birth” of the modern Aboriginal art movement,²¹⁷ elders from Yirrkala presented a bark painting to the House of Representatives to protest the making of their land available to a mining company (the circumstances which led to *Milirrpum v. Nabalco*).²¹⁸ Galarrwuy Yunupingu, one of the Yirrkala elders,²¹⁹ described their purpose as follows.

Very few white people have even tried to learn our language, and English is incapable of describing our relationship to the land of our ancestors. We decided then to try to do it in a way we hoped non-Aboriginal people would understand; through pictures. If they wouldn't listen to our words, they may try and understand our paintings.²²⁰

“This strategy has been overwhelmingly successful. In trying to understand Aboriginal painting, non-Indigenous Australia has come to understand something of Aboriginal culture, and in particular, something of the relationship between land, law and people.”²²¹ Paintings have famously been used as evidence in courts for Native Title claims,²²² and the Australian legal system's recognition of Aboriginal paintings as sacred, and extending copyright to provide protection to Aboriginal paintings can be seen as part of the momentum towards recognition of native title. North states that art is at the core of the condition of ‘starAboriginality’.²²³

“Aboriginal art has been successful beyond its much hoped for political and legal ambitions.”²²⁴ When introducing *Talking About Abstraction*, Professor Vivian Johnson wrote:

The curatorial premise suggests that it is no longer a question of analysing Indigenous art's relationship to the mainstream, but the other way around. I will go further, and say what Indigenous voices have been saying for some time now: Indigenous art is the mainstream of Australian contemporary art. Not only in the eyes of overseas audiences for whom

²¹⁷ McLean, *op. cit.*, p. 104.

²¹⁸ *ibid.*, p. 98-99.

²¹⁹ *ibid.*

²²⁰ *ibid.*, p. 104, quoting Yunupingu from B. Lüthi and G. Lee (Eds), *Arafjara: Art of the First Australians* (Düsseldorf: Kunstsammlung Nordrhein-Westfalen, 1993), pp. 64-66.

²²¹ Farmer, ‘*Terra Alterius*: Land of Another’, unpaginated.

²²² K. Anker, ‘The truth in painting: cultural artefacts as proof of native title’, *Law Text Culture*, Vol 9, 2005, pp. 91-124.

²²³ North, *op. cit.*, p. 6.

²²⁴ Farmer, ‘*Terra Alterius*: Land of Another’, unpaginated.

Indigenous artists have the only distinctly Australian voices, but for the Australian art world itself.²²⁵

Even so, curators “nonetheless frequently articulate their intentions because, as Felicity Fenner has put it, ‘[l]ocating Aboriginal painting within the western art arena remains fraught and politically sensitive.’”²²⁶ Curators are concerned, when working cross-culturally, to acknowledge cultural perspective in order to avoid an air of neutrality (knowing this to be impossible), or worse, appropriation.²²⁷

2 The affective qualities of Aboriginal art

What explains this political and artistic success? Felicity Fenner (quoting WJT Mitchell) writes, “Though artists, critics and collectors are generally drawn to Aboriginal art through an existing love of western abstraction, ‘the strangeness of buying other people’s religious images and putting them onto the wall’ demands consideration.”²²⁸ This discussion continues the argument made in the exhibition catalogue that:

In addition to the extraordinary abstract qualities and beauty of much Aboriginal painting, one explanation is the ‘meaning ... seeded in the body’, the ‘sublime awe’ with which we respond to many paintings that drew and continues to draw non-Indigenous people to Aboriginal art. This phenomenon is called affect, and it may account for the ability of Aboriginal art to exist within two frames – Indigenous and Western – to the satisfaction of each, and for its extraordinary success with non-Indigenous audiences, especially those seeking to understand the land of Australia and some sense of belonging to it.²²⁹

Further, it may be that the affective operations of Aboriginal art enable non-Indigenous people to experience the Australian landscape as Aboriginal people see it. Jennifer Biddle has argued this in respect of (Anmatyerr/Alyawarr) Kathleen Petyarre’s work,²³⁰ and this is discussed further below. Or, it may be that the affective operations of Aboriginal art enable the non-Indigenous to experience this to some extent, or to perceive that Aboriginal people see it, perceive it, experience it, differently.

²²⁵ Johnson, *op. cit.*, unpaginated.

²²⁶ Farmer, ‘*Terra Alterius*: Land of Another’, quoting Fenner in *Talking About Abstraction* Catalogue, unpaginated.

²²⁷ S. Butler, ‘Multiple Views: Pluralism as Curatorial Bias’, *ANZJA*, vol 4, no 1, 2003, p. 12.

²²⁸ Fenner, *op. cit.*, unpaginated.

²²⁹ Farmer, ‘*Terra Alterius*: Land of Another’, unpaginated.

²³⁰ Jennifer Biddle, ‘Country, Skin, Canvas: The Incorporal Art of Kathleen Petyarre’, *ANZJA*, vol 4, no 1, 2003, 61-76.

But if Aboriginal art performs affective operations, what are these and how do they work? Does Aboriginal art produced by reference to traditional beliefs and practices (and here I paraphrase a question posed by Jill Bennett)²³¹ possess specific affective capacities that enable it to exploit forms of embodied perception in order to promote forms of critical inquiry? Can these affective operations explain Aboriginal art's (and here I mean particularly Aboriginal painting produced by reference to traditional beliefs and practices) political and artistic success? Does it explain its extraordinary power to communicate with non-Indigenous Australians? If it is possible that it does, what are the implications of this? Particularly, does it suggest a way of thinking about Aboriginal art that resolves current quandaries about dealing with Aboriginal art without being appropriative?

All of these questions are complicated by the fact that, as Nigel Thrift puts it, "there is no stable definition of affect."²³² Thrift discusses four interconnected approaches in which "affect is understood as a form of thinking".²³³

[E]ach of which depends on a sense of push in the world but the sense of push is subtly different in each case. In the case of embodied knowledge, that push is provided by the expressive armoury of the human body. In the case of affect theory it is provided by biologically differentiated positive and negative affects rather than the drives of Freudian theory. In the world of Spinoza and Deleuze, affect is the capacity of interaction that is akin to a natural force of emergence. In the neo-Darwinian universe, affect is a deep-seated physiological change written involuntarily on the face.²³⁴

Following the example of Thrift in his argument for the development of affective politics and discussion of what these might be, I elect neither a particular school nor a precise mechanism (that might operate differently for positive and negative affects).²³⁵

3 Affective operations and non-appropriative response

In *Empathic Vision: Affect, Trauma and Contemporary Art*, Jill Bennett seeks to "identify what it is that art itself does that gives rise to a way of thinking and feeling about [trauma]",²³⁶ and elucidates a theory of the "affective operations of art",²³⁷ that she does not limit to, but

²³¹ Jill Bennett, *Empathic Vision: Affect, Trauma, and Contemporary Art*, (Stanford, California: Stanford University Press, 2005), p. 10.

²³² Nigel Thrift, 'Intensities of Feeling: Towards a Spatial Politics of Affect', *Geografiska Annaler*, 86 B (2004) 1, p. 57.

²³³ *ibid.*, p. 58.

²³⁴ *ibid.*, p. 62.

²³⁵ *ibid.*, p. 62.

²³⁶ Jill Bennett, *op. cit.*, p. 2.

²³⁷ *ibid.*, p. 3.

only discusses in respect of, negative affects. Bennett is concerned with how contemporary art might engage trauma in a way that respects and contributes to its politics, in a way that is not appropriative.²³⁸ She speculates that if it is “possible to conceive of the art of trauma and conflict as something other than the deposit of primary experience (which remains ‘owned’ and unsharable even once it is communicated)”,²³⁹ appropriation might be avoided, and posits that this can be so if “affective responses engendered by artworks are not born of emotional identification or sympathy [(“crude empathy”)²⁴⁰ but rather] emerge from a direct engagement with sensation as it is registered in the work”.²⁴¹ Such works are to be understood as *transactive* rather than *communicative*, in that they may touch us, but they do not “necessarily communicate the ‘secret’ of personal experience”.²⁴² Such an affective transaction does not in and of itself convey the “meaning” of trauma,²⁴³ but promotes forms of critical enquiry. “This conjunction of affect and critical awareness may be understood to constitute the basis of an empathy grounded not in affinity (*feeling for* another insofar as we can imagine *being* that other) but on a *feeling for* another that entails an encounter with something irreducible and different, often inaccessible.”²⁴⁴ Accordingly, she refutes “the argument that art transmits content or meaning intersubjectively, and the associated notion that the substantive condition of trauma might be retransmitted via representation”,²⁴⁵ which leaves her the task of determining “the specific nature of both the aesthetic experience of affect and the manner in which art is able to open up trauma to an audience.”²⁴⁶ This line of enquiry is useful for considering the question of how a tradition-based Aboriginal artwork might operate trans-culturally.

While Bennett explores the affective mechanism at book length, she is, in essence, of the Spinoza/Deleuzian school: “And here, I return to Deleuze’s notion of the *encountered sign* that propels us into a form of intellectual inquiry through its assault on our senses, emotions, and bodies. The link between sensation and knowledge is, on this account bridged by a kind of compulsion engendered by the sign.”²⁴⁷

²³⁸ *ibid.*, p. 6.

²³⁹ *ibid.*

²⁴⁰ *ibid.*, p. 10.

²⁴¹ *ibid.*, p. 7.

²⁴² *ibid.*

²⁴³ *ibid.*, pp. 6-7.

²⁴⁴ *ibid.*, p. 10.

²⁴⁵ *ibid.*, p. 10.

²⁴⁶ *ibid.*, pp. 10-11.

²⁴⁷ *ibid.*, p. 64.

Within the particular subject of trauma, Bennett theorises this dynamic in terms of memory: a first sort of ordinary or common memory, and a second “sense memory”, which “registers the physical imprint of the event”.²⁴⁸ Writes Bennett, “As the source of a poetics or an art, then, sense memory operates through the body to produce a kind of ‘seeing truth’, rather than ‘thinking truth’, registering the pain of memory as it is directly experienced, and communicating a level of bodily affect.”²⁴⁹

To reflect on sense memory is not to move into the domain of representation (analogous to ‘ordinary memory’) but to move into contact with it. To create a work that activates sensation is a matter of envisaging sensation both from the inside and the outside [...] – of *calculating the effect* of putting two sides into contact. Thus it can be argued that art registers not the symptom but an interaction within memory.²⁵⁰

Here it is important to note that Bennett is talking of memory in the Deleuzian sense, that of “the ‘world brain,’ as ‘a membrane which puts an outside and an inside into contact’”.²⁵¹

As a result:

As spectators of the imagery of traumatic memory, we might, at certain points, regard our affective encounter from an ‘outside’ in terms of a contact with a concealed ‘inside’. But the model of viewing implied here is not one that maintains a radical separation between an interior subject and its exterior; it evokes instead a form of memory image, echoing Deleuze’s conception of a memory for more than one subject, constituted through an engagement with differential positions, colliding in the present. The memory image in this scheme does not express inner trauma in such a way as to make it available to another to take on; rather it finds a way to activate and realize connections.²⁵²

The utility of Bennett’s thinking here is as a means of confirmation of the terms of enquiry. It is not possible to simply say this mechanism is the same in operation – that would require a carefully made case at a length that is beyond the scope of this thesis²⁵³ – however, it is possible to observe resonances that suggest that similar forces are in operation: that on the face of it, it would be possible to mount an argument based on the ideas of contact and encounter, and the lived experience of this, that are at the core of Spinoza’s idea of affect as explained and expanded by Deleuze. That where Bennett has argued the specific case in the subject of trauma through the device of memory, that there

²⁴⁸ *ibid.*, p. 25.

²⁴⁹ *ibid.*, p. 26.

²⁵⁰ *ibid.*, p. 44.

²⁵¹ *ibid.*, p. 44. Here Bennett is quoting Deleuze directly, citing G. Deleuze, *Cinema Two: The Time Image*. 1985. Translated by H. Tomlinson and R. Galeta. (Minneapolis: University of Minnesota Press, 1991), p. 207.

²⁵² *ibid.*, p. 45.

²⁵³ Bennett says of “[t]he art of sense memory”, that: “Its production [...] becomes a contingent and culturally situated practice – linked to social histories – that requires framing against a backdrop of cultural knowledge.”: *ibid.*, p. 26.

is the argument to be made in respect of Indigenous art through the more general condition of being.

The first of these resonances goes to the experience of bodily affect, and Bennett's eloquent evaluation of surface skin sensation and of squirming: "Although the squirm is a recoil, a moment of regrouping the self, it is also the condition of continued participation, the sensation that works with and against the deeper-level response, which on its own is unbearable."²⁵⁴ Is the shiver in face of beauty, power, knowledge, sublime awe, an image perceived as sacred, not the same?

A second resonance comes when Bennett is discussing Deleuze and his statement that "what is being painted on the canvas is the body, not insofar as it is represented as an object, but insofar as it is experienced as sustaining *this* sensation."²⁵⁵ To this she writes: "But this may be of the essence insofar as sense memory is about tapping a certain kind of process; a process experienced not as a remembering of the past but as a continuous negotiation of a present with indeterminable links to the past. The poetics of sense memory involve not so much *speaking of* but *speaking out of* a particular memory or experience – in other words, speaking from the body *sustaining sensation*."²⁵⁶

This idea of 'speaking out of a particular [...] experience' resonates powerfully with Jennifer Biddle's description of (Anmatyerr/Alyawarr) Kathleen Petyarre's works.

[There is] a performative insistence of what is at stake in terms of reproducing a world which looks like, feels like, this, as only we Anmatyerr/Alyawarr can tell it. As if to say, in its enunciatory effect, you Whitefella can have this affect but not the knowledge; that there is a difference between 'affect' and 'knowledge'; that whatever the Dreaming may or not be, it can be 'felt', experienced, more than 'known' (at least by outsiders); that sentiment, that sentence, that this carnal experience is the more conveyable, perhaps the more crucial, terms of trade ultimately, than that of knowledge.

This preference for 'affect' cannot be arbitrary in a context where Aboriginal demands for recognition have consistently fallen on deaf ears; in a context where, as von Sturmer has put it, it is specifically Aboriginal 'forms of being' which are disallowed. Not only is there an insistence in Petyarre's work on the right to this cultural way of 'being' but an insistence that the viewer equally experience the world in these terms.²⁵⁷

²⁵⁴ *ibid.*, p. 43.

²⁵⁵ *ibid.*, p. 37. Bennett's footnote reads as follows: "Quoted in Daniel W. Smith, 'Deleuze's Theory of Sensation: Overcoming the Kantian Duality,' in *Deleuze: A Critical Reader*, ed. Paul Patton (Oxford: Blackwell, 1996), p. 45. See now Gilles Deleuze, *Francis Bacon: The Logic of Sensation*, trans. Daniel W. Smith (Minneapolis: University of Minnesota Press, 2003).": *ibid.*, p. 162.

²⁵⁶ *ibid.*, p. 38.

²⁵⁷ Biddle, *op. cit.*, p. 71.

Biddle would appear to conceive of affective operations as something akin to the ‘deposit of primary experience’ that Bennett is at pains to avoid.²⁵⁸ And for Biddle, the question of appropriation, in this instance at least, is circumvented, because the experience is made possible by the invitation of the artist.

Is not the texture that Petyarre offers a profound generosity – a hospitality even [...] A denial of differentiation of body from canvas, country from Ancestral body, viewing subject from painting subject, *Kardiya* from *Yapa*, Whitefella from Black?

The invitation, the imperative to experience – to witness – to inhabit – to become in relation to this fleshly animation? Is there not an enormity in this gift?²⁵⁹

Nonetheless, it seems to me that what Biddle is describing in Petyarre’s work is the sensation that Bennett describes as “an encounter with something irreducible and different, often inaccessible”:²⁶⁰ and that her words show how it is this sensation, this affective operation, which accounts for the political success of Aboriginal art.

Ultimately, the thing that Bennett is concerned to achieve – a theory of affect that explains why feelings felt in response to an artwork are not the appropriation of the artist’s or subject’s experience into one’s own – is exactly what is at stake in works relating to identity or Indigeneity. If Bennett’s argument that trauma cannot be transmitted or shared through art is persuasive, then by analogy, identity cannot be transmitted or shared through art. Accepting that a group identity, such as a national identity, can be ‘transmitted’ in the sense of being fostered or inculcated by artistic means, it is nonetheless possible that identity can be transmitted or shared through art only in the sense that viewing that art allows another to come to know about it – to experience it in the sense of encountering it. This would be the sort of experience, for example, of Aboriginal art along the following lines: *I can apprehend that you have a very different way of looking at the world, because for all that my body perceives something of your world through your work, I comprehend, not its meaning, but the limits of my understanding.*

²⁵⁸ “The effect is to merge subject with matter – not only Ancestral body with country, not only Ancestor ‘skin’ with ‘surface’ of canvas, but the body, the skin, of the viewing subject.”: *ibid.*, p. 71.

²⁵⁹ Biddle, *op. cit.*, p. 72. Rather, Biddle continues to argue that Petyarre’s refusal “to position her painting as subservient to narrative, as a mere illustration of the Dreaming, Petyarre is [...] refusing to position Anmatyerr/Alyawarr as subservient to English,” and that “[t]his is a deterritorialisation not just then of country or place but profoundly, a reterritorialisation of the mouth.”: *ibid.*, pp. 72-73.

²⁶⁰ Bennett, *op. cit.*, p. 10.

If all of this is persuasive, it would be possible to explain the power of Aboriginal art on non-Indigenous people as operating by way of embodied perception, an affective transaction that does not in and of itself convey the ‘meaning’ of the trauma of Aboriginal dispossession, nor the condition of being Aboriginal, but promotes forms of critical enquiry. The implication is that non-Indigenous people may engage affectively with Indigenous works without being appropriative because the non-Indigenous person is not able to access the personal experience, the non-culturally communicative aspect of the work. It remains inaccessible. Moreover, if the artist is able to communicate something of their experience, a sensation of their experience, and this operates to bodily affect us in a way as to provoke us to thought, then the viewer actually has little capacity to resist the bodily affect, though perhaps a little more to resist the critical thought. And this raises the question: for what reason would we deny or lament this?

Here it is necessary to return to the art historical practice of considering what art represents and what it means. For even if it is possible to argue that the affective operations of Aboriginal painting allow for a response that is not appropriative and on this basis generate an argument resolving the persistent boundaries of Aboriginal and other art, such an argument does not address the problems resultant from what art means and represents in Indigenous and non-Indigenous Australian cultures. There is also the question of what meaning is conveyed or represented, in the sense of the nature of the critical thought the artworks stimulate by being affective. Here the curator retains responsibility for negotiating the affective qualities of a work within particular social and political contexts. In Australia, the curator might negotiate potentially appropriative uses of Indigenous art by following Indigenous Protocols (discussed in Chapter 4 ‘Towards Realisation of *Terra Alterius: Land of Another*’).

D The political capacities of art

Political artworks and exhibitions are broadly understood as a means to develop awareness of an issue, particularly by bringing an issue ‘home’, usually by a powerful image of its impact, and particularly its impact on people or the environment. Edelman, however, makes a broader claim, saying that “art is central to politics, just as it is central to social relationships and beliefs about nature [...] Because they create something different from

conventional perceptions, works of art are the medium through which new meanings emerge.”²⁶¹

Recent theories of how such new meanings might emerge emphasise the physicality of seeing. Ernst Van Alphen ties this capacity to intervene in public debate, art’s “intellectual and performative power [...] to reinterpret, indeed to rewrite, powerful historical habits” to its relationship to the body.²⁶²

[V]isual art, precisely because it is experienced differently from intellectual debate, is eminently suited to affect the way we think. Thought, here, can no longer be severed from the body and the imagination that binds thought to body. Thus art influences thought on an embodied level, and it makes the influence visible, so that thought of any kind can no longer appear ‘natural.’ Rewriting historically naturalized habits is, then, an intervention in the strongest possible sense.²⁶³

Similarly, Jill Bennett writes that “the registration of affect is [...] a manner of doing politics”.²⁶⁴

This mode of politics [...] operates through affective connection—although it is not simply concerned with the interpersonal. Principally, it understands or ‘enacts’ the political as a sphere of interconnection, in which subjectivities are forged and sustained, but within which new links might be traced between subjects and places with only limited experience in common.²⁶⁵

Bennett proposes “that the preponderance of work conducting its politics through an imagery of affectively charged space signals, in itself, what amounts to a theoretical strategy in practice: a counter to the turn to the real.”²⁶⁶

The matching theoretical strategy is provided by Nigel Thrift, who has called for the practice of “affective politics”,²⁶⁷ that comprises, in part, looking to “work that wants to give up the ancient settlement between knowledge and passions (and nature and culture, and people and things, and truth and force) in favour of considering what ties things together as an explicit politics”,²⁶⁸ and provides a broader context for it. Thrift describes the contemporary enlargement of the envelope of the political to include affective

²⁶¹ M. Edelman, *From Art to Politics: How Artistic Creations Shape Political Conceptions* (Chicago and London: The University of Chicago Press, 1995), pp. 6-8.

²⁶² E. Van Alphen, *Art in Mind: How Contemporary Images Shape Thought* (Chicago: University of Chicago Press, 2005), p. xix.

²⁶³ *ibid.*

²⁶⁴ Bennett, *op. cit.*, p. 152.

²⁶⁵ *ibid.*, p. 21.

²⁶⁶ *ibid.*, p. 153.

²⁶⁷ Thrift, *op. cit.*, p. 72.

²⁶⁸ *ibid.*, pp. 72-73.

operations and then argues that this requires a progressive political agenda creating a politics of affect.²⁶⁹ For Thrift, affective politics is not to be done instead of but as well as the older forms of politics. Affective politics is the “‘research and development’ that will allow us to expand the envelope of the political and so both restore the spaces of moral and political reflection that ‘man’ has collapsed and bring new forms of politics into being.”²⁷⁰ What Thrift is describing or calling into being here is something other than an approach that privileges reason over emotion, modern over pre-modern, a factual domain of politics and law over an imaginative domain of art; nor is it an approach that mixes these without discernment. It is a way of operating that values, comprehends and draws on each aspect and formulates them in diverse relationships and for productive purposes. A world characterised by such an approach might be seen as one reconciling its constituent pasts of enlightenment, expansion, post-modernity and decolonisation, as developed by encounters between its constituent peoples and world views. The exhibition *Terra Alterius: Land of Another* was conceived to operate as just such research and development and in and for such a world.

²⁶⁹ “[A]ll kinds of corporate and state institutions are trying to formulate bodies of knowledge [...] of complex states of affective becoming, ‘regimes of feeling’ which are bound to become constitutive of new political practices. It therefore becomes incumbent on those forces which regard these developments as rather worrying – and indeed as likely to lead to a new kind of velvet dictatorship – to produce their own analyses and political agendas.”: *ibid.*, p. 66.

²⁷⁰ *ibid.*, p. 73.

Chapter 3 The idea of *Terra Alterius: Land of Another*

A Introduction

The phrase *terra alterius* was coined in respect of Australia in 2000 by Catherine Freyne, who sought an opposite to the legal doctrine of *terra nullius* when entitling her thesis on belonging, dispossession and reconciliation in contemporary Australian cultural practice.¹ The exhibition *Terra Alterius: Land of Another* developed the concept from this starting point by putting forward a fictitious legal doctrine of *terra alterius* and imagining the society that might have arisen from interactions between Britain and Australia's Indigenous peoples in which Britain was guided by that doctrine and the values it encapsulated. The discussion that follows is divided into three parts: Part B, 'The concept of *terra alterius*'; Part C, 'The exhibition concept'; and Part D, 'Genesis of the concept and the exhibition'.

B The concept of *terra alterius*

1 The fictitious legal doctrine of *terra alterius*

The phrase *terra alterius* can be translated from Latin as 'land of another' or 'land of the other'.² The first of these definitions was chosen for the exhibition, in opposition to the power relationships and cultural interactions of colonisation that are frequently described as the binary of colonising Self and colonised (Indigenous) Other.³

Europeans justified their use of military force on the peoples they were colonising as a natural consequence of what they saw as their own moral and cultural superiority. They believed that by introducing Christianity they were saving souls, and thought that the benefits of Christianity and European civilisation outweighed dispossession. They also thought that they had a "right to bring lands into production if they were left uncultivated by the indigenous inhabitants".⁴ But, post-colonial theory observes, the Europeans were also "[t]roubled by the nagging contradiction between the theoretical justification of exploitation and the barbarity of its actual practice".⁵ To counter this, they "obsessively portray[ed] the supposed inferiority and barbarity of the racial Other", creating a self-sustaining cycle.⁶

¹ Freyne, *op. cit.*

² Freyne, *op. cit.*, p. ii.

³ A.R. JanMohamed, *The Economy of Manichean Allegory*, extracted in Ashcroft et al, *op. cit.*, p. 22.

⁴ *Mabo v Queensland (No 2)* [1992] HCA 23 at [34-36] per Brennan J.

⁵ JanMohamed, *op. cit.*, p. 23.

⁶ *ibid.*

The exhibition *Terra Alterius: Land of Another* imagined a different process – one recognising and respectful of Indigenous sovereignty, law and culture, which might have avoided, negotiated or otherwise worked through ‘otherness’. The doctrine of *terra alterius* was therefore conceived as entailing a process of and capacity for “meeting another person or people in a manner that allows for an exchange of equivalent values, allowing for the achievement of mutual understanding, and the possibility of a thorough or radical exchange.”⁷ The formulation of *terra alterius* in this way is deeply indebted to the following definition of reconciliation:

The root meaning of the word is an exchange of equivalent values, and then, through the exchange of sympathy and mutual understanding, the notion of a thorough or radical exchange. Thus reconciliation has the significance of a new stage in personal relationships in which previous hostility of mind or estrangement has been put away by some decisive act.⁸

This is more than recognition of law, sovereignty and culture. New Zealand’s history shows that recognition of each of these things is important, but is not sufficient to achieve what is envisaged by the concept *terra alterius*.

2 *Terra nullius* and *terra alterius* compared

Art history and contemporary curatorial practice show us the difference between *terra alterius* and *terra nullius*. “The colonial gaze that failed to recognise Indigenous law when it did not resound with European concepts of law is the same gaze that has struggled to understand Indigenous art because it did not fit within Western frames of art. [...] Over the last three decades, Indigenous art has been argued into and out of Western frames of art. It is now regularly presented within them and beside them, and more and more on approximately its own terms.”⁹

The key then is viewing another culture as having an intrinsic value equal to your own, a willingness to learn about it, and a capacity to accept that understanding this other culture may mean you or your own culture changes in response to this understanding.¹⁰ In this way, the concept of *terra alterius* has much in common with Bernard Smith’s concept of

⁷ Farmer, ‘*Terra Alterius: Land of Another*’, unpaginated.

⁸ A. Richardson, (Ed), *A Theological Word Book of the Bible* (London: SCM Press, 1957).

⁹ Farmer, ‘*Terra Alterius: Land of Another*’, unpaginated.

¹⁰ Farmer, ‘*Terra Alterius: Land of Another*’, unpaginated.

“cultural convergence”.¹¹ Smith used this term to describe “a relationship [between Indigenous and non-Indigenous Australians] in which identities are maintained and even developed but relationships become more complex and fruitful, and beneficial to the Australian community as a whole”.¹² It also seems to have much in common with the idea of “heteropathic identification” – “A form of encounter predicated on an openness to a mode of existence or experience beyond what is known by the self”¹³ – a term I have come across since formulating *terra alterius* in this way.

The difference between Australia’s history and the concept of *terra alterius* is that “any change that results from encounter is not imposed but mutual and agreed, or voluntary. To the degree that change is inexorable, it is also equivalent and responsive.”¹⁴

3 Ramifications of the *terra nullius* history war for *terra alterius*

What does the *terra nullius* history war (see Chapter 2) mean for the concept of *terra alterius*, and the exhibition *Terra Alterius: Land of Another*? If, in Australia, use of the term *terra nullius* is discontinued, the (herein argued) utility of the concept *terra alterius* and the exhibition for Australia probably would not endure. More probable is that use of the term will be clarified. Consequently, it is argued that the concept of *terra alterius* survives attacks on the term *terra nullius*, first, because the term *terra nullius* will itself survive them, and secondly, because although the concept *terra alterius* derives evocative power from juxtaposition with the term *terra nullius*, the concept *terra alterius* is something more than a straight opposite to *terra nullius*.

The term *terra nullius* is likely to survive calls for its disuse in respect of Australia because most of the reasoning behind calls for its disuse is flawed. First, *terra nullius* is neither an invention nor a lie, but a legal term with an established, relevant and continuing meaning, that is accepted to be the basis of Australian sovereignty and law.¹⁵ It is true that the term is anachronistic but this is easily corrected by description of *terra nullius* as a ‘mindset’, and

¹¹ B. Smith, *The Spectre of Trugannini (1980 Boyer Lectures)* (Sydney: Australian Broadcasting Corporation, 1980), p. 50. For further discussion of this concept in respect of *Terra Alterius: Land of Another*, see Farmer, ‘*Terra Alterius: Land of Another*’, unpaginated.

¹² Smith, *ibid.*

¹³ Kaja Silverman (after Max Scheler), as quoted in Jill Bennett, *op. cit.*, p. 9.

¹⁴ Farmer, ‘*Terra Alterius: Land of Another*’, unpaginated.

¹⁵ Bartlett, *op. cit.*, pp. 22-24. Bartlett’s account of the law in this second edition is written in such a way as to address the concerns raised in Connor’s 2003 article. See also the comments of Sir Anthony Mason and Frank Brennan SJ AO quoted in Chapter 2.

there is a general move, at least in legal circles, to do so.¹⁶ Secondly, the term has an international usage, which is to describe a typology of colonisation characterised by a “[l]ack of recognition of prior ways of life of people encountered [that] leads to excuse for mass appropriation of land, destruction of social relations and death through war and disease.”¹⁷ In this way, the term has been applied in respect of the Mongols, the Spaniards in Mexico and Peru, as well as in the creation of settler societies in North America, Russia, Australia and New Zealand.¹⁸ Thirdly, in respect of Australian historical usage, while it is anachronistic, it is seen by many to serve as an effective description of the dispossession of Australia’s Indigenous peoples. This defence is advanced by Henry Reynolds.¹⁹ Fourthly, and this is the defence advanced by Andrew Fitzmaurice that subsumes the first and rejects the third: that the term *terra nullius* is correctly understood as a product of the colonial experience, in that it is an evolution of the natural law doctrine that property belongs to the first taker to the idea that property belongs to the first exploiter that evolved in response to the need to justify colonisation; and that once we understand that, it is impossible to banish it or, alternatively, to use it as a mere descriptor of Aboriginal dispossession.²⁰

The concept of *terra alterius* remains relevant as an opposite to *terra nullius* in the first three understandings of the term outlined above. The fourth understanding of *terra nullius*, that advanced by Fitzmaurice, is potentially more damaging to the concept of *terra alterius* because it encompasses a more nuanced account of imperial action and justification. If the concept of *terra nullius* is correctly understood as a product of the colonial experience, then arguably the mindset of the colonisers was responsive to the people they encountered. The potential fatality to the concept of *terra alterius* being that this responsiveness nonetheless led to the dispossession and inequality precipitating the exhibition. In addition, Fitzmaurice argues that the concept of first exploiter (now embodied in the term *terra nullius*) was used both positively and negatively, both to justify Indigenous dispossession and to argue against it.²¹ The potential fatality here is that the fictitious legal doctrine of *terra alterius* is not an opposite to *terra nullius*, but a descriptor of one of its applications. The concept of *terra alterius* usefully survives these considerations for two reasons. First, where *terra nullius* has been a way of thinking about land, the heart of the idea of *terra alterius* has always been

¹⁶ See for example, Sean Brennan, *op. cit.*, p. 2, and Frank Brennan, *op. cit.*, pp 13, 15 and 17.

¹⁷ Gosden, *op. cit.*, p. 27 and Chapters 3 and 6 generally.

¹⁸ *ibid.*

¹⁹ H. Reynolds, ‘In denial over dispossession’, *The Australian*, 10 May 2006, <<http://www.eniar.org/news/reynolds1.html>>, accessed 27 August 2006.

²⁰ Fitzmaurice, ‘On the Origins ...’, unpaginated.

²¹ *ibid.*

an approach that learned and changed in response to encounter, rather than adjudged the newly experienced culture in terms of the prior known. Secondly, Fitzmaurice's argument and the tenor of the current debate show that justifications for colonisation are made and remade, generation after generation: *terra alterius* suggests another approach.

C The exhibition concept

The exhibition *Terra Alterius: Land of Another* asked viewers to imagine an Australia that was recognised as *terra alterius*, 'land of another', rather than treated as *terra nullius*, 'land of no-one'.

The objective of the exhibition was to create, within the exhibition space, another Australia, in order to provide a means for exploring the political and cultural terrain of a reconciled Australia. At the heart of the exhibition was the question, "What might a reconciled Australia be like?". For while "the legacy of *terra nullius* was overturned by the High Court of Australia in *Mabo* in 1992"²² when the Court recognised the existence of native title, and moves have been made towards reconciliation, this has not been achieved: *terra nullius* remains at the heart of Australia's legal system, native title has been legislatively constrained, and "psychological *terra nullius*" persists.²³

The exhibition *Terra Alterius: Land of Another* was conceived as a place for considering the debates surrounding Indigenous and non-Indigenous rights and relationships outside of everyday life; outside the conventions of Australian society, politics and law; apart from the fear arising from the demands of risk or self-interest. *Terra Alterius* might be experienced, and this experience might operate just as the commonplace experience of going somewhere new and returning to the familiar, in that on returning it would be no longer possible to take everyday things for granted. The exhibition was an experiment in creating a moment of absolute risk, one in which everything taken for granted is briefly removed, in order to create space to imagine something else entirely.²⁴

Twelve Australian artists, Indigenous and non-Indigenous, were invited to participate in the exhibition, by creating or nominating works about any aspect of the history, culture, land, civilisation, aspirations and future of *Terra Alterius*, from a personal or public perspective. These artists, Gordon Bennett, Barbara Campbell-Allen, Julie Dowling, Shaun Gladwell +

²² Behrendt, 'Mabo: Ten Years On', p. 5.

²³ *ibid.*

²⁴ This is discussed further in Chapter 4.

Michael Schiavello, Jonathan Jones, Joanne Searle, Esme Timbery, Freddie Timms, Lynette Wallworth, Guan Wei and Lena Yarinkura, were invited so that the exhibition itself would embody Smith's concept of 'cultural convergence'; so that the exhibition would celebrate the presence of Indigenous and non-Indigenous traditions in Australia.

The multiplicity of vision and active creation of *Terra Alterius* by the twelve artists was a crucial aspect of the exhibition. *Terra Alterius* was conceived as a continuation of a long human tradition of imagining yet to be discovered or barely explored lands, along with imaginary beings and utopian political systems. It was conceived as what Frantz Fanon described as "passionate research [...] directed by the secret hope of discovering [...] some very beautiful and splendid era whose existence rehabilitates us both in regard to ourselves and in regard to others".²⁵ Fanon was talking of research by colonised peoples, but in the exhibition this research was undertaken also by Australian artists of non-Indigenous heritages.

The curatorial rationale is further described in Chapter 4, 'Towards realisation of *Terra Alterius: Land of Another*'. The exhibition, including participating artists and the resultant artworks, is described in Chapter 5, 'The exhibition *Terra Alterius: Land of Another*'.

D Genesis of the concept and exhibition

The concept of *terra alterius* and the exhibition *Terra Alterius: Land of Another* had their genesis in a series of events unfolding over a period of ten years. In the mid-1990s, I applied for a graduate position and was required as part of this application to write a brief essay on the topic, "What event in history would you change and why?" I answered that I would change the colonisation of Australia so that there was a treaty, reasoning that there would have been markedly different consequences for Australia, especially in terms of Indigenous health. In 2000, I attended a course on Aboriginal History and Culture offered by the Eastern Suburbs Evening College. One lecture, 'History and Cultural Awareness', was given by Betty Little and I asked her, "What would a reconciled Australia be like?" I was profoundly shocked by her answer, which was, "People would respect me. They wouldn't look down on me." I was shocked by the pain embodied in that response and because I had expected a list of things that would be different – for example, that every

²⁵ F. Fanon, 'On National Culture' in *The Wretched of the Earth* (London: Penguin, 1965 (1990 reprint)), p. 169.

public function would commence with a welcome to land or an acknowledgment of the traditional owners. I had expected a list of legal, political and social changes.²⁶ Catherine Freyne was also at that lecture and we often talked about these issues. At the time, Freyne was writing her thesis on non-Indigenous belonging, Indigenous dispossession and reconciliation in two high-profile Australian contemporary cultural productions, finding “that the decolonising potential of Malouf’s [1998] Boyer Lectures [*A Spirit of Play: The Making of Australian Consciousness*] and Company B [Belvoir]’s *Cloudstreet* is confounded by their national frame of reference, a facile treatment of Aboriginal dispossession, and the absence of Aboriginal people in their paradigms for reconciliation”.²⁷ When naming her thesis, Freyne remembered that she had seen a map of Australia setting out the location of Indigenous nations and language groups, entitled *Terra Spiritus*. Not particularly impressed with that title, Freyne asked the late Dr Michael Freyne, then Honorary Visiting Fellow in the Department of French, School of Modern Language Studies at UNSW, what might be the opposite of *terra nullius*. Dr Freyne suggested *terra alterius*.²⁸ In support of this usage, Freyne included definitions of *nullius* and *alterius* from Lewis & Short’s *A Latin Dictionary* at the start of her thesis.²⁹ These were:

| | |
|-----------------|--------------------------------------|
| <i>Nullius</i> | of nobody; belonging to nobody |
| <i>Alterius</i> | of another; belonging to another |
| | of the other; belonging to the other |

A few months later, I was asked to develop an exhibition concept. These seeds came together, and the exhibition *Terra Alterius: Land of Another* was conceived.

²⁶ Others have made these, see, for example, Behrendt, ‘Mabo: Ten Years On’, p. 6, and Behrendt, *Achieving Social Justice*, Chapters 4 - 7.

²⁷ Freyne, *op. cit.*, p. iv.

²⁸ Contemporaneous conversation with Catherine Freyne.

²⁹ Freyne, *op. cit.*, p. ii.

Chapter 4 Towards realisation of *Terra Alterius: Land of Another*

A Introduction

The broad rationale behind the exhibition *Terra Alterius: Land of Another* was that in circumstances where political and legal contributions to the debates surrounding the rights and relationships of Indigenous and non-Indigenous Australians appeared to have reached a stalemate, other contributions might usefully be made. It was speculated that political and legal stagnation in respect of these issues resulted more from a combination of psychological *terra nullius*, fear, and lack of vision, rather than an outright lack of knowledge or denial of Indigenous dispossession and disadvantage. It was further speculated that these causes, largely being based in emotion and experience, might be countered by imagination, emotion and experience in addition to logic. And that this might occur more successfully in a space in which viewers might feel themselves able to be imaginative rather than required to be practical, and free to consider ideas without risking their own self-interest. This thinking gave rise to a three-pronged curatorial rationale, which is described in Part B, 'Curatorial rationale'. Part C, 'Curatorial strategies', describes the multiple strategies employed to give effect to this rationale. Part D, 'Exhibition management', discusses issues such as planning, commissioning of artists and fund-raising.

Insight into the *Terra Alterius: Land of Another* curatorial rationale is found by comparing it with the rationales of three recent exhibitions, *Native Title Business: Contemporary Indigenous Art: A National Travelling Exhibition* (hereafter, *Native Title Business*); *Turn the Soil*; and *Talking About Abstraction*, in Part E, 'Reflections on the curatorial rationale'. In this part, the exhibition is differentiated from prior cultural projects enquiring into the rights and relationships between Australia's Indigenous and non-Indigenous peoples, such as *Native Title Business*, in that it explicitly seeks to stimulate consideration of how we might shape our shared future; and from those re-imagining Australia's past, such as the exhibition *Turn the Soil*, by its specific concern with re-imagining the relationships between Australia's Indigenous and non-Indigenous peoples and its purpose of stimulating consideration of how we might shape our shared future. The comparison with *Talking About Abstraction* provides insight into the context and consequences of the way in which *Terra Alterius: Land of Another* posits the intersection of the Indigenous and non-Indigenous works at a cultural rather than formal level.

B Curatorial rationale

The curatorial rationale comprised three elements:

- that the exhibition create an environment in which viewers experience another Australia, one in which Indigenous and non-Indigenous cultures first meet and interact with respect for each other's existence, difference, law and culture;
- that the exhibition continues a long human tradition of imagination and exploration, particularly of yet to be discovered or barely explored lands and of utopian political systems; and,
- that the exhibition be under-pinned by the sort of multiplicity of vision and active creation that would be necessary for the ideals of *Terra Alterius* to be realised in Australian communities.

Each of these three prongs bears further examination.

1 That the exhibition create, within the exhibition space, another Australia

But since the colonialist wants to maintain his privileges by preserving the status quo, his representation of the world contains neither a sense of historic becoming,¹ **nor a concrete vision of a future different from the present**, nor a teleology other than the infinitely postponed process of 'civilising'. In short, it does not contain any syncretic cultural possibility, which alone would open up the historic once more... [emphasis added]²

The creation of the opportunity to experience another Australia, *Terra Alterius*, was the crucial means by which the exhibition sought to counter political and legal stagnation in respect of reconciliation issues. It was thought that this stagnation resulted from a combination of psychological *terra nullius*, fear, and lack of vision, and the experience of *Terra Alterius* was intended to counter each of these factors. Where there was fear about the direction in which reconciliation might lead, the experience of *Terra Alterius* might diminish it. Where there was psychological *terra nullius*, this might be disrupted, because the experience of viewing the exhibition and leaving it would mimic the common experience of experiencing something new with the result that it is no longer possible to take everyday things for granted. Where there was a lack of vision of the future, the experience might stimulate thought about what a reconciled Australia might be like.

¹ Though it could be argued that in Australia, this exists to some extent, focussed on the ANZAC tradition and Gallipoli.

² JanMohamed, *op. cit.*, p. 22.

The exhibition sought to perform this function by disrupting everyday experience in order to create a moment of ‘absolute risk’, in the sense discussed by Ian North.

In the mysterious moment of Derrida’s absolute risk, before or beyond received laws and the scheduled formulations of morality, one faces something like the unitary experience of beauty, sharply apprehended, beyond or before the law-like formulations of aesthetics, and of the uncanny oddity of life itself, a slippage beyond the quotidian. All three situations can yield a humbling sense of regard for others, thereby inducing a sense of fairness, of justice.³

2 That the exhibition continue the tradition of imagination and exploration

The artists were invited to imagine this other world in a long human tradition of speculation, in which artists, writers and philosopher-scientists imagine yet to be discovered or barely explored lands, utopian societies, and more recently, alternate histories.

The exhibition continued the very tradition in which the imagination of *Terra Incognita Australis* and other lands inspired exploration and was in turn inspired by the findings of explorers. These imaginings and findings secured funding and support from those in pursuit of commercial opportunity, scientific discovery, political opportunity, and glory. Graphic representations of lands, peoples, flora and fauna previously unknown to Europe – real and imaginary⁴ – generated enormous excitement.⁵ In this way, argues Nicholas Thomas, Charles de Brosses’s *Histoire des navigations aux terres australes* (Paris 1756) was seminal to Cook’s instructions to search for *Terra Incognita Australis*. “For de Brosses’s book was not just a history of what had been done. It was an argument for what ought to be done.”⁶ This was to continue “earlier efforts to probe the southern latitudes for land.”⁷

The tradition of utopian thought and exploration dates from the publication of Thomas More’s *Utopia* in 1516. More created the word utopia,⁸ which “means *no* or *not place*”⁹ and is “a pun on *eutopia* or ‘good place’”.¹⁰ It connotes an “imaginary realm where universal

³ North, *op. cit.*, p. 10.

⁴ See for example, the mermaid (*Monstre semblable à une Sirene ...*) depicted in Louis Renard, *Escrivesses at Crabes de Diverses Couleurs et Figures Extrordinaires, que l'on Trouve Autour des Isles Moluques, et sur les Côtes des Terres Australes*, 2nd ed., Amsterdam, 1754, figure 240, reproduced in Eisler et al, *op. cit.*, p. 103.

⁵ William Eisler, ‘Terra Australis: Art and Exploration 1500 – 1768’ in Eisler et al, *op. cit.*, p. 15.

⁶ Thomas, *op. cit.*, p. 16.

⁷ *ibid.*, p. 17.

⁸ R. Pordzik, *The Quest for Postcolonial Utopia: A Comparative Introduction to the Utopian Novel in the New English Literatures* (New York: Peter Lang Publishing, 2001), p. 55.

⁹ *ibid.*

¹⁰ *ibid.*

happiness has been secured through ideal rule”.¹¹ Gervereau writes that “Utopia has first and foremost been textual. It is told, not seen; it is ‘Nowhere’, [...] The book, by virtue of its basal function of interpreting signs and transposing them into an imaginary construct, can be deemed the ultimate utopian instrument.”¹² “And yet,” Gervereau writes, “from very early on, utopian works have been complemented by illustrations, and societies (like Steiner’s Anthroposophists later) have insisted on developing visible material universes that would correspond to their ways of looking at the world and organising life.”¹³ Eaton describes the genre as consisting of two elements, “critique of the status quo [...] coupled with the projection of an alternate model arrangement not only of society but of space, [achieved/achievable] without divine assistance”.¹⁴ Utopian vision has fallen out of favour, due to “its bloody failures in the field”,¹⁵ the consequence of “the sad truth that diversity, pluralism and tolerance, the essence of democracy, are frequently sacrificed in utopian societies, an almost inevitable result of the painful, eternal conflict between the collective and the individual, between equality and fraternity on the one hand, liberty on the other”.¹⁶ Dystopian and heterotopian visions are more common, though the boundaries are not necessarily “clear-cut”.¹⁷ Ernst Bloch distinguishes utopia from the “utopian function”, “where hope, in particular, the true effect of expectation in the dream forward, not only occurs as an emotion that merely exists in itself, but is *conscious and known*.”¹⁸ Such a “productive premonition” is not mere wishful thinking, nor is its “imaginative gaze [...] loaded with hope” to be corrected by “bourgeois ‘realism’”, “but solely by what is real in the anticipation itself. [...] It grasps the objectively real potentiality toward which the tendency strives.”¹⁹ Utopian thought continues to be significant in science fiction film and literature and, significantly, in respect of the concerns of *Terra Alterius: Land of Another*, in the magic realist writing in postcolonial societies.²⁰

¹¹ L. Gervereau, ‘Symbolic Collapse: Utopia Challenged by its Representations’, in R. Schaer, G. Claeys and L.T. Sargent, *Utopia: The Search for the Ideal Society in the Western World* (New York, N.Y.: New York Public Library; Oxford: Oxford University Press, 2000), p. 357.

¹² *ibid.*

¹³ *ibid.*

¹⁴ Ruth Eaton, *Ideal Cities: Utopianism and the (Un)Built Environment*, (Thames and Hudson, London & New York, 2002), p. 66.

¹⁵ Gervereau, *op. cit.*, p. 361.

¹⁶ Eaton, *op. cit.*, p. 17.

¹⁷ Pordzik, *op. cit.*, p. 4.

¹⁸ E. Bloch, *The Utopian Function of Art and Literature: Selected Essays* (translated by Jack Zipes and Frank Mecklenburg) (Cambridge, Massachusetts; London, England: The MIT Press, 1988), p. 105.

¹⁹ Bloch, *op. cit.*, p. 106.

²⁰ See Pordzik, *op. cit.*, generally.

Terra Alterius: Land of Another clearly had a utopian impulse, in “what is commonly understood as being utopian – the dream, the imaginary construct, the surrealist non sequitur”.²¹ However the way that the concept was put in an open-ended form to the artists²² has much in common with Pordzik’s definition of a heterotopia, in that despite extrapolating “from an imperfect present-day society (the *nowhere* of utopian discourse) into the future (the *nowhere*) of utopian discourse), it [did] not necessarily conceive of this future in terms of a place of unity, harmony and permanence.”²³ It is Pordzik who argued that the boundaries between utopia, dystopia and heterotopia are no longer clear cut,²⁴ and it is with Pordzik’s resulting definition of a utopian (literary) work that the premise of *Terra Alterius: Land of Another* finds much in common: in that it has sought to introduce a “novum” or “strange newness”, involving “radical changes in the structure of the represented world that are effective insofar as they enable the reader [or in the case of *Terra Alterius: Land of Another*, the viewer] to relocate familiar structures of the material world he [sic] inhabits in a fictional environment that is – however remote and outlandish – ‘validated by cognitive logic’”.²⁵

The fact that the novum of *Terra Alterius: Land of Another* is a re-imagining of history means that the phenomenon of ‘What if?’ scenarios is also relevant. These are known as speculative fiction or alternative history, or, if written by historians, as virtual or counterfactual histories. Such histories may seek to stimulate reflection on contemporary society by throwing it into relief against an alternative history from a particular point of departure. Alternative histories have been posed for Australia since at least 1944, when a volume including discoveries of Australia by China and Tasman was published.²⁶ A collection of counterfactual histories specifically focussing on Australia, *What If? Australian*

²¹ Gervereau, *op. cit.*, p. 360.

²² The artists were asked to create work based on any aspect of an Australia recognised as *terra alterius*.

²³ Pordzik, *op. cit.*, p. 4.

²⁴ *ibid.*

²⁵ *ibid.*, p. 12, quoting Darko Suvin.

²⁶ S. Scalmer, ‘Introduction’, in S. McIntyre and S. Scalmer (Eds), *What If? Australian History as it Might Have Been*, (Carlton, VIC: Melbourne University Publishing, 2006), p. 2. Alternative histories are a publishing phenomenon, especially on the internet. The extensive offerings include the work of David Atwell, who imagines an alternative history of Australia based on the forcing of a Treaty or Makattata between the British Empire and the Aboriginal Peoples of Australia by the Wiradjuri in 1827: <<http://www.geocities.com/davidmarkatwell/makarrata.html>>. ‘Koori Britain’, which tells of “The coming of the Aboriginal Empire of Australia to the Island of Britain in 1788”, <www.changingthetimes.co.uk/samples/prechrist/koori_britain.htm>. See, more generally, <www.othertimelines.com>; <www.wikipedia.org>. All accessed 10 June 2005.

History as it Might Have Been, edited by Stuart McIntyre and Sean Scalmer, was published in 2006.²⁷

Notably, the three major social and constitutional issues facing Australia between 1995 and 2004 were given ‘What if?’ treatment by exhibitions: multiculturalism and a republic by the exhibition *Turn the Soil* and the rights and relationships between Australia’s Indigenous and non-Indigenous peoples – reconciliation – by *Terra Alterius: Land of Another*. (The synergies and divergences between these exhibitions are discussed further below.) Each sought to depart from history in order to create another Australia or other Australias; however, neither provided anything so neat or narrative as an alternative history. Nor did the exhibitions meet the standards and purposes of counterfactual histories:²⁸ in each case the curator asked multiple creators to be intensely speculative, explicitly freeing them from the constraints a historian might voluntarily assume for the benefit of historical understanding. The term ‘counterfactual exhibitions’ is appropriate because the premises are counter to historical fact.

The argument that a counterfactual history has been given political and legal force in New Zealand by the Waitangi Tribunal provides insight into the idea of an avoided or ‘good colonisation’ contained within the premise of *Terra Alterius: Land of Another*. In his article, ‘The Future Before Us: The Waitangi Tribunal’s Retrospective Utopia’,²⁹ W.H. Oliver “explores, and criticises, the ‘presentism’ of the Waitangi Tribunal’s histories: their tendency to find the Crown guilty of not providing for Maori after 1840 what it would have been difficult or even impossible to conceive of at the time, and flatly impossible to deliver.”³⁰ Oliver describes passages of the Tribunal’s reports as setting out:

[...] in broad principle the essential character of the policies that should have resulted from what the Tribunal calls ‘consensual annexation’. The government should have ensured that sufficient land was left in Maori hands, that the Maori understood what was meant by the sale of lands [...] that all its own actions were subject to independent audit, and that Maori custom in matters of ownership, doing business, law, administration and political authority were preserved. These are considered to be the commitments made by the Crown in the Treaty; the failure to meet them is held to constitute a series of breaches of the Treaty.

The program is admirable, but it is not and has never been compatible with colonisation. [...] It is [...] unlikely that the new colony could have been characterised by interventionist policies, governmental planning and direction, a pervasive and efficient

²⁷

ibid.

²⁸ Scalmer, *op. cit.*, pp. 6-8.

²⁹ Oliver, *op. cit.*, pp. 9-29.

³⁰ A. Sharp and P.G. McHugh, ‘Introduction’, in Sharp et al, *op. cit.*, p. 5.

bureaucracy, supra-governmental audit and review, and a dominant ideology of biculturalism, all designed to support an autonomous Maori society, polity and economy.³¹

Oliver's argument is useful here for elaboration of both the potential nature of an ideal colonisation and its impossibility.

3 That the exhibition result from a multiplicity of vision and active creation

The creation of new works and nomination of works to the theme was seen as a vital part of the exhibition. The multiplicity of vision and active creation of *Terra Alterius* in the exhibition process was seen as demonstrating in microcosm the process that would need to occur for social change on a large scale, for the ideals of *terra alterius* to be realised in Australian communities.

In the end, it is this multiplicity of vision and active creation that allows not only the impulse of the exhibition, but also its imagery to be categorised as utopian. Gervereau, argues for a redefinition of utopia as synonymous with hope. In his view:

If we abide by this new definition, then the true representation of utopia would follow from the total absence of the image (to avoid fixity), or in a multiplicity of views that would announce the return of Chronos, hence metamorphosis. This 'lever' would release analogy and transfiguration, and a double symbolic failure, with its implicit bloodied and desperate avatars, would be averted. Both the resistance *to* the real and the resistance *of* the real would be resurrected. It would reinstate narrative and free it to reassess the journey, to entertain second thoughts, and to move towards becoming. Then the fleeting aspects of collective desire, of curious pleasures, and of stimulating illusions would appear. Each step would lead from the apparent image to the encountered imaginary.³²

C Curatorial strategies

Multiple strategies were developed and implemented in support of this rationale. These were:

- to invite Indigenous and non-Indigenous artists to participate in the exhibition;
- to work within Indigenous protocols and with an Indigenous Reference Group;
- to ground the exhibition in affect; and,
- as a result of consultation with the Indigenous reference group, to invite Indigenous artists whose work incorporates overt social or political comment.

It was sought, by these strategies, to embody the values of *terra alterius* in the curatorial practice.

³¹ Oliver, *op. cit.*, p. 17.

³² Gervereau, *op. cit.*, p. 7.

1 Inviting Indigenous and non-Indigenous artists

The subject matter of the exhibition demanded Indigenous and non-Indigenous perspectives, and the final selection of artists sought to embody the presence and intersection of Indigenous and non-Indigenous traditions in Australia. Invitations to particular artists were extended because they had explored Australia's land and history in their work, because their work has significant resonance of spirit and place, and is positively 'affective' – that is, its "meaning is seeded in the body and [...] is not reducible to a narrowly conceived linguistic account"³³ and creates "engagement, interest, enjoyment or sublime awe".³⁴ (For further discussion of the artists, see Chapter 5.)

2 Working within Indigenous protocols and with an Indigenous Reference Group

The subject matter and the ambitions of the exhibition made it essential that a non-Indigenous curator, such as myself, work within the protocols for working with the Australian Indigenous visual arts and craft sector. Accordingly, I developed a set of protocols for the exhibition based on the National Association for the Visual Arts Ltd (NAVA) publication *Valuing Art, Respecting Culture: Protocols for Working with the Australian Indigenous Visual Arts and Craft Sector*,³⁵ and a publication of the Aboriginal and Torres Strait Islander Arts Board of the Australia Council entitled *Visual Cultures: Protocols for Producing Indigenous Australian Visual Arts and Craft*.³⁶

Visual Cultures describes protocols as "appropriate ways of using Indigenous cultural material, and interacting with Indigenous artists and Indigenous communities."³⁷ It says that, "While it is not possible to prescribe universal rules for transacting with Indigenous peoples and their communities, there are some fundamental principles within which to conduct respectful work. [...] The protocols are, by definition, ways of actioning these principles."³⁸ The principles that form "a framework for respecting Indigenous heritage" are: respect; Indigenous control; communication, consultation and consent; interpretation, integrity and authenticity; secrecy and confidentiality; attribution; proper returns; and, continuing cultures.³⁹ My approach of developing an exhibition-specific set of protocols

³³ Best, *op. cit.*, p. 219.

³⁴ *ibid.*, p. 221.

³⁵ D. Mellor & T. Janke, *Valuing Art, Respecting Culture: Protocols for Working with the Australian Indigenous Visual Arts and Craft Sector*, (Potts Point, NSW: NAVA, 2001).

³⁶ T. Janke, *Visual Cultures: Protocols for Producing Indigenous Australian Visual Arts and Craft*, (Strawberry Hills, NSW: Aboriginal and Torres Strait Islander Arts Board, Australia Council, 2002).

³⁷ *ibid.*, p. 2.

³⁸ *ibid.*, p. 3.

³⁹ *ibid.*, p. 8.

was consistent with the advice that: “The protocols in this guide are flexible. You can use them to develop protocols for your visual arts project, program or practice, and language group, region, clan or community.”⁴⁰

The protocols for *Terra Alterius: Land of Another* were developed around seven heads, each being a specific curatorial stage or activity. Under each heading – preparation, consultation, interpretation, commissioning/exhibiting work, exhibition, attribution and website – was listed the action or consultation that should be completed in respect of that stage or activity. So for example:

Preparation

- Request consent to hold exhibition from original owners of land (the Eora people)
- Seek support for the exhibition from the local Indigenous artistic community (Boomalli)
- Seek advice on the preferred manner of acknowledgement
- Acknowledge Indigenous cultural owners at the site of each exhibition and event launches
- Obtain prior and informed consent of traditional owners to reproduce or publish expression of culture; make available online; display expressions of culture; use the expression of culture.⁴¹

Consultation

- Establish a reference group to augment the experience of a non-Indigenous curator
- In order to display art appropriately, consult with artist, local community and reference group⁴²

My concern to work with an Indigenous Reference Group was informed by advice in *Valuing Art, Respecting Culture* that, “When curating exhibitions of work by Indigenous artists it is important to involve an Indigenous curator, consultant or reference group. Most large public galleries and museums employ Indigenous curators. When this is not possible, extensive consultation usually takes place, to augment the experience of non-Indigenous curators. In many cases, the artists themselves provide the advice and consultation necessary. [...] As part of the process of self-determination however, and the right to interpret their own culture, as well as to ensure that inclusions are appropriate, the involvement of Indigenous people in the process is essential.”⁴³ The publication gives similar advice in respect of writing about Indigenous art:

Access to Indigenous art means talking about it, writing about it, and displaying it. Assistance with making exhibitions of Indigenous art accessible to an audience should be

⁴⁰ *ibid.*, p. 31.

⁴¹ In this case, the Indigenous Reference Committee advised that this is the individual artist’s responsibility.

⁴² *Terra Alterius: Land of Another* protocols, unpaginated.

⁴³ NAVA, *op. cit.*, p. 58.

sought from Indigenous artists, curators, or educators. It is important that communication about exhibitions of Indigenous works is informed by direct contact and discussion with the Indigenous artists involved, or by other Indigenous Peoples who can bring appropriate cultural awareness and knowledge to the process.⁴⁴

It is courteous to include essays by Indigenous curators in catalogues accompanying exhibitions, or to consult with them on appropriate ways to refer to Indigenous culture and work. [...] Consultation is important because of the prevalence in the past of Indigenous cultures being observed and interpreted by those outside it. It is no longer acceptable, without the input of Indigenous people, for decisions to be made about Indigenous culture and its representation.⁴⁵

Invited artists Julie Dowling, a Yamatji / Noongar woman living in Perth, and Jonathan Jones, a Wiradjuri / Kamilaroi man living in Sydney, agreed to be part of the Indigenous Reference Group. Associate Professor Sue Green, a Wiradjuri woman living in Sydney and with a formal role within the University of New South Wales as Director of Nura Gili Indigenous Programs, agreed to participate, especially with respect to our local community. Formal meetings were held at IDG, in teleconference with Julie Dowling, and attended by representatives of the IDG – Nick Waterlow, Rilka Oakley and Annabel Pegus – in addition to myself. The Indigenous Reference Group provided advice on my draft list of protocols, on proposed artists and artworks, on a draft questionnaire/checklist for the artists about their work in order to better inform display and interpretation, and advice on communicating with Indigenous communities during the development of the exhibition and for the duration of the exhibition tour.

The reference group advised that the method of requesting consent to hold the exhibition would be to approach Allen Madden, Cultural Education Officer, Metropolitan Aboriginal Land Council, for permission on behalf of the Eora people, and support for the exhibition should be obtained from the Boomalli Aboriginal Artists Co-operative.

In taking advice from the Indigenous Reference Group, I formed the view that if one of the members held an opinion that would proscribe a particular act, then it would be appropriate for me to refrain from that action. So for example, when one member of the Indigenous Reference Group held the view that mining companies would not be a suitable source of sponsorship, I abided by that opinion. Similarly, when one member of the Indigenous Reference Group considered that it would be inappropriate to include a particular artwork unless strict guidelines were observed – enclosure of the work and

⁴⁴ *ibid.*

⁴⁵ *ibid.*, p. 59.

signage to viewers warning that it might cause offence because it was based on a restricted ceremony – it was decided not to include those works. I decided against inclusion of this work even though two members of the Indigenous Reference Group considered that the artist had already made a decision about whether the material was suitable for unrestricted viewing. This approach was taken in order to be consistent with a basic principle informing the exhibition – recognition of the diversity of Australia’s Indigenous peoples – and the attempt to embody the values of *terra alterius* in the curatorial practice.

The support of the Indigenous Reference Group was invaluable, and each member was extraordinarily generous with their time. The meetings resulted in significant amendment of the protocols, and the opinions of the Indigenous Reference Group significantly influenced the selection of the artists, particularly as a result of the formulation of the requirement that the Indigenous artists to be invited should be selected from those whose prior work incorporated overt social or political comment.

3 Inviting Indigenous artists whose work incorporates overt social or political comment

The western context of the exhibition was felt most keenly in the inviting of artists to respond to a theme, a practice not unusual within Western practice, but one, like the gallery space itself, irrelevant to the traditional practices that inform much contemporary Indigenous art making. In response to this issue, a criterion was formulated with the assistance of the Indigenous Reference Group that the Indigenous artists have incorporated in their past work overt social or political comment, either by their choice of content or process, or the uses made of them.

This rubric takes into account the “cultural contexts” of the Indigenous works in the exhibition that “are an essential factor in any potential affinities”,⁴⁶ and ensures “a common or shared language of communication”.⁴⁷ The common or shared language, in this case, is contemporary Australian art, as enlarged by Indigenous Australian art – as discussed in Chapter 2.

In respect of the non-Indigenous artists, there was a less formally articulated criterion that their past work should convey an understanding of their world or community as being

⁴⁶ Butler, *op. cit.*, p. 16.

⁴⁷ *ibid.*

something greater than themselves – this being a quality that might mirror, to some degree, Indigenous world views.

4 Grounding the exhibition in affect

The truths which intelligence grasps directly in the open light of day have something less profound, less *necessary* about them than those which life has communicated to us *in spite of ourselves* in an impression, a material impression because it has reached us through our senses. *Proust*⁴⁸

Grounding the exhibition in affect and sublime awe was considered essential for the experiential and transportive ambitions of the exhibition, but it was primarily a response to Aboriginal painting: much of which elicits an understanding of the power of what is being viewed that is not dependent on knowledge or understanding of what it is that is being viewed, something that I attribute to its affective operations.⁴⁹ It was also intended as a partial counterweight to the Western art constructs within which the exhibition appeared.

Whether Aboriginal painting may be said to be affective and how this might be so is canvassed in Chapter 2. Whether grounding the exhibition in affect might be considered to have been an effective strategy is considered in Chapter 7.

D Exhibition management

The exhibition proposal was accepted by Nick Waterlow AOM, Director, Ivan Dougherty Gallery, UNSW College of Fine Arts, for the gallery's 2004 programme. I was engaged as the curator for the exhibition on a freelance basis, to be supported by IDG staff, particularly by the mentorship of Rilka Oakley. Later, funding was secured from the (then) Museums and Galleries Foundation (MGF) for artists' fees, which they made conditional on IDG providing formal exhibition management support. As a result, Rilka Oakley's role was formalised as Exhibition Manager.

1 Planning

The curatorial and exhibition management approaches taken were informed by the prior completion of the subject 'Exhibition management and curatorial studies',⁵⁰ by project-

⁴⁸ As quoted in Jill Bennett, *op. cit.*, p. 7.

⁴⁹ Farmer, 'Terra Alterius: Land of Another', unpaginated.

⁵⁰ A compulsory component of the Master of Art Administration offered by UNSW College of Fine Arts.

specific research into matters such as Indigenous protocols and industry best practice, and informal discussion with Nick Waterlow, Rilka Oakley and Annabel Pegus of IDG. According to what I had learned in the course 'Exhibition management and curatorial studies' and experience in project management, I prepared a task list and timeline, which were amended during the course of the exhibition to reflect different conceptions of the exhibition and remaining timeframes. Frequent meetings were held with IDG, with IDG and the Indigenous Reference Group, and with IDG and MGF. Additional meetings were held with individual artists.

2 Commissioning of artists and liaison with artists towards delivery of works

The aim that the exhibition be under-pinned by multiplicity of vision and active creation meant that artists needed to be commissioned to create works for the exhibition, or, where it would not be feasible for them to create new work, for them to nominate recent work.

Extensive research was made into Australian artists for invitation to participate in the exhibition. This research included travel from Sydney to Brisbane, Perth and Canberra in order to see work of interest. I was concerned that the exhibition include artists from diverse parts of Australia, and not just those artists well-known in Sydney and Melbourne.

In the early stages of exhibition development, I thought New Zealand artists might provide valuable perspective, but after travelling to Auckland to research particular artists of interest, decided against the inclusion of New Zealand artists. I formed the view that while the inclusion of New Zealand artists would introduce a diversity of perspective, the ambitions of the exhibition would be better served by a diversity of Australian subjectivities.

The selection of non-Indigenous artists was confirmed with the Indigenous Reference Group and the selection of Indigenous artists was informed by the Indigenous Reference Group, as discussed above. The selection of all artists was discussed with Nick Waterlow and Rilka Oakley of IDG.

Initial approaches to artists were made formally to the artist,⁵¹ or, where appropriate, via a representing gallery⁵² or other nominated representative,⁵³ by letters written and signed by

⁵¹ In the case of Barbara Campbell-Allen, Joanne Searle and Lynette Wallworth.

⁵² In the case of Gordon Bennett, Julie Dowling, Shaun Gladwell, Jonathan Jones, Guan Wei, and Lena Yarinkura.

myself on IDG letterhead. Discussions in respect of the exhibition concepts and in respect of work in response to the theme were between the artists and myself. Discussions in respect of delivery of the work were between the artists and myself or Rilka Oakley or Annabel Pegus, depending on the subject of the discussion or the timing of the discussion. For example, once a loan was agreed, the loan agreement was made between IDG and the artist.

3 Fund-raising

The concerns of the exhibition were national, and funding was sought for an exhibition tour that would take the exhibition to one venue in each Australian state and territory, and for public programs that would enable public debate of the issues raised by the exhibition. Financial support for the exhibition was sought from government (for example, Visions Australia, the Australia Council, HREOC) and non-government (for example, large corporations with significant national presence, such as Qantas and Macquarie Bank) sources. Anticipated costs included: artists' fees, materials fees, writers' fees, loan fees, copyright fees, production and printing of a catalogue, freight and public programs. Significant funding and support was secured, but not funding for freight or public programs. Accordingly, the exhibition tour was revised to six venues within New South Wales, Victoria and the Australian Capital Territory, so that the freight costs would not exceed the amount recoupable from charging each venue an exhibition fee. Public programs were limited to those initiated and hosted by individual venues.

The financial and in-kind support obtained is as follows:

- Acceptance into the MGF-NETS touring exhibition support scheme, which provided for management of the exhibition tour by MGF-NETS (which is funded by the Australia Council).
- Funding for artist loan fees, from NETS Australia.
- Funding for production and printing of a catalogue, including writers' and copyright fees, from the Gordon Darling Foundation.
- Financial support for the exhibition from IDG.
- Financial support for Lynette Wallworth's work, *Still: Waiting* (2004), from IDG and the UNSW College of Fine Arts.

⁵³ Esme Timbery was contacted via Jonathan Jones, and Shaun Gladwell suggested a (very fruitful) collaboration with Michael Schiavello.

4 Legal issues

IDG, and by extension, the University of New South Wales, took legal responsibility for the exhibition: it entered the necessary contractual relationships with the artists for commission and loan of the artworks; it was the applicant and recipient of grants and grant monies, and thus was responsible for acquitting those grants; and as publisher of the exhibition catalogue, IDG took responsibility for obtaining copyright permission to reproduce images of the artworks and the essays in the catalogue. Further, all occupational health and safety issues were the responsibility of the gallery.

E Reflections on the curatorial rationale

The specific curatorial approaches described above are better understood in the context of other exhibitions. In this section, the curatorial rationale is compared with that of three other exhibitions. The first is an exhibition, *Native Title Business*, that, amongst others,⁵⁴ enquires into the rights and relationships between Australia's Indigenous and non-Indigenous peoples. The second is the exhibition *Turn the Soil* curated by Kevin Murray, which sought to re-imagine Australia's past, specifically with respect to what Australia might have been like, if colonised by a people other than the British. The third is the exhibition *Talking About Abstraction*, curated by Felicity Fenner. This was an exhibition of abstract works by Indigenous and non-Indigenous artists for consideration of their formal qualities, particularly of how the formal qualities of Indigenous artists have influenced non-Indigenous artists.

1 *Native Title Business*

Native Title Business, curated by Joan G. Winter, was first exhibited at the Queensland Museum from 1 July to 11 August 2002, and dedicated "In the year of the 10th anniversary of the Australian High Court Mabo Decision [...] to the memory of Eddie Koiki Mabo 1937 – 1992" and to "all those who went before him and all those who will follow him."⁵⁵ It was an important exhibition with "60 plus artists from all States and the Northern

⁵⁴ For example, *Beyond the Pale: Adelaide Biennial of Australian Art*, curated by Brenda Croft. See the catalogue: State Gallery of South Australia, *Beyond the Pale: Adelaide Biennial of Australian Art* (Adelaide: South Australian State Government Publications, 2000).

⁵⁵ Winter, *op. cit.*, p. 7.

Territory”,⁵⁶ touring venues across Australia from 1 July 2002 to 30 October 2005.⁵⁷ Joan G. Winter wrote that:

The main aim of *Native Title Business* is to promote understanding and reconciliation on native title, land and water rights in Australia. Its ultimate aim is to influence public opinion enough so that our politicians, through increased understanding in the community, may enact more humane, less racist native title and other laws affecting Indigenous Australians. [...] Each work has been chosen to present a point of access, an understandable hook on which the general public may learn something about not only contemporary visual arts practices, but the vexing, ignored post-contact and legalistic history of Aboriginal Australia, culminating in its most recent public manifestation: Native Title Law.⁵⁸

Amongst the sixty-plus artists whose work comprised *Native Title Business*, two – Gordon Bennett and Julie Dowling – also participated in *Terra Alterius: Land of Another*. Gordon Bennett’s 1989 work *Terra Nullius*,⁵⁹ which depicts the moment in which Cook claimed Australian soil for the British crown through English and Aboriginal eyes, is the first work reproduced in the catalogue accompanying the exhibition. And thus, in the catalogue of *Native Title Business*, if not the exhibition itself, represents the starting point of the history of the relationships between Australia’s Indigenous and non-Indigenous peoples. The work is used as a “point of access, an understandable hook”⁶⁰ for discussion. The text explains native title, the *Native Title Act* and the *Wik* decision, and the potential for co-existence and agreement-making. Julie Dowling’s 2002 work, *Yalgoo*,⁶¹ is accompanied by text with the heading “Claims Divide Families”.⁶² This text is Julie Dowling’s description of the impetus for the painting, which reads as follows:

In this picture, my grand-uncle George Latham and my grandmother Mollie Dowling (nee Latham) sit before the Yalgo landscape. A brother and sister pushed to fight over land rights as set out by people in government. My grandmother was taken from her country at 11 years old and placed in an orphanage in Perth, while her older brother George ran away from the welfare authorities and lived off the land.

The native title process has divided these two surviving siblings. My uncle knows himself as Noongar and my grandmother says she is Badimia based on the oral histories they both carry with them.

Both have lost the majority of their family, language and sacred sites to the mining, wheat, cattle and sheep industries. I wanted to show them holding hands across the country of

⁵⁶ *ibid.*, p. 9.

⁵⁷ *ibid.*, p. 6.

⁵⁸ *ibid.*, p. 9.

⁵⁹ Gordon Bennett, *Terra Nullius* (1989), Acrylic on canvas, 75 x 225 cm, in the collection of the Gold Coast City Art Gallery.

⁶⁰ Winter, *op. cit.*, p. 9.

⁶¹ Julie Dowling, *Yalgoo* (2002), Acrylic and red ochre on canvas, 120 x 150 cm.

⁶² Winter, *op. cit.*, p. 58 (image on page 59).

their blood in the hope that future generations can go back and respect the remains of their ancestors buried in this place and come together as one.⁶³

Accordingly, while each exhibition sought to further understanding of the issues surrounding the rights and relationships of Indigenous and non-Indigenous Australians, and to further the reconciliation process, the ways in which the two exhibitions went about this were different. In respect of each other, the two exhibitions might be described as follows: Where *Native Title Business* stimulated understanding and consideration of where we are and how we arrived here, including of hopes for the future, *Terra Alterius: Land of Another* was focussed on the future, stimulating consideration of where we might go from here, and how we might get there. In other words, *Native Title Business* ensured that the experience and viewpoints necessary to understanding Indigenous “needs and aspirations”⁶⁴ were accessible, as well as presenting many of those needs and aspirations; *Terra Alterius: Land of Another* asked what Australia would be like if these needs and aspirations were met, and what psychological and ideological state would be a necessary precursor.

Clearly it is prior cultural activities such as *Native Title Business* and works like Peter Read’s *Belonging*⁶⁵ that have made antecedent cases and posed antecedent questions, that make it possible for *Terra Alterius: Land of Another* to explore the question, “What would a reconciled Australia be like?”.

2 *Talking about Abstraction*

The “basic tenet of *Talking About Abstraction*”, curated by Felicity Fenner and held at Ivan Dougherty Gallery from 27 May – 3 July 2004, was that, “[t]he current generation of young to mid-career non-Indigenous abstract painters in Australia have been inspired and influenced by Aboriginal painting more than any other.”⁶⁶ Fenner elaborated on this tenet and described her inclusions as follows:

Two sub-themes emerge from the exhibition. One is that the new, innovative rather than traditional forms of Aboriginal imagery have, not surprisingly in art historical terms, been particularly influential. Second, the influence is not restricted to the work of non-Indigenous artists. The late Emily Kame Kngwarreye, as the first Aboriginal woman artist

⁶³ *ibid.*

⁶⁴ *ibid.*, p. 9.

⁶⁵ P. Read, *Belonging: Australians, Place and Aboriginal Ownership* (Oakleigh, Vic: Cambridge University Press, 2000).

⁶⁶ Fenner, *op. cit.*, unpaginated.

to achieve international renown and Turkey Tolson Tjupurrula, as one of the leaders of Papunya Tula's dynamic and influential visual culture, are included here for their early influence over recent abstract painting both within and beyond their own traditional (including narrative and gender-specific) contexts.[...] The Aboriginal artists included and the geographic regions reflected in this exhibition are determined by the perceived degree of innovation and influence. [...] The non-Indigenous artists in this exhibition have been selected on the basis of the clearly articulated influence of their practice of Indigenous art, specifically of the Aboriginal artists represented in the exhibition.⁶⁷

Fenner's following comments identify curatorial issues attendant to the exhibition that are also attendant to *Terra Alterius: Land of Another*. They show that different curatorial approaches may be taken to these issues, depending on the particular premise and ambition of the exhibition.

Locating Aboriginal painting within the western art arena remains fraught and politically sensitive [...] The intersection between Aboriginal and non-Indigenous culture is not a black and white one: it's a complex grey zone of debates about tradition, change and ownership, guilt and appropriation. This complexity is an inherent part of projects that bring together Indigenous and non-Indigenous art [...] Curators risk undermining in exhibitions such as this one the role of cultural heritage in both Aboriginal and non-Indigenous painting. *Talking About Abstraction* acknowledges that risk, embracing the fact that the Aboriginal and non-Indigenous paintings here have emerged from very diverse cultural backgrounds and that their intersection occurs at a painterly rather than broader cultural level. In creating a forum that does not simply reveal formal parallels, but makes a case for the influence of one on the other (the "other" in this case being the western-trained artists), the exhibition highlights rather than obfuscates the fact of their difference.⁶⁸

Like *Talking About Abstraction*, *Terra Alterius: Land of Another* acknowledged the 'very diverse cultural backgrounds' of the Indigenous and non-Indigenous artists in the exhibition, but it differed from *Talking About Abstraction* in that it posited an intersection for these works at a cultural rather than a formal level. The intersection was a cultural one because of the particular theme of the exhibition and because each of the artists responded to that theme, either by creating new work or nominating new work in response to it. The criterion for cultural exchange was the response made to the exhibition theme.

Ironically, given the premise of the exhibition, the cultural intersection occurred as a result of that part of each artist's practice that is 'Australian', in that it has developed in response to and participates in contemporary Australia, with all its complexity, that has resulted from the claiming of Australia soil for the British Crown and all that has happened since. As

⁶⁷ *ibid.*

⁶⁸ *ibid.*

stated above, the common or shared language of the artists was the language of contemporary Australian art as enlarged by Indigenous Australian art. There is no doubt that, despite curatorial strategies attempting amelioration of the fact, the exhibition asked the artists to act within a non-Indigenous construct, and consequently, that their work be understood and discussed within the terms of that construct.

The comparison with *Talking About Abstraction* raises the question (which I have been asked), “Does the collective imagination of *Terra Alterius* as an exhibition somehow diminish what you were trying to do?”. This question highlights the central and continuing crisis of the exhibition: that the premise of the exhibition relies on two impossibilities – first, the repeal of Australia’s postcolonial history, and concomitant restoration of Indigenous cultures to their nature prior to the originary contact of this history; and second, the reconstruction of the British as something other than they were, to a culture possessing the concept of *terra alterius* and the values it encapsulates. (The latter has been partly discussed above, by reference to the Waitangi Tribunal’s retrospective utopia.)

Accordingly, the exhibition’s location within Western constructs and discourse is a reminder, at the very moment we seek to use that space to throw off the shackles of Australia’s postcolonial history in order to imagine a reconciled Australia, that any shared future we can imagine and strive for, any reconciled Australia, will be shaped within the constraints and possibilities of its postcolonial history. This reminder highlights the novum or strange newness, the ‘utopian’ element to this exhibition. For the fact of the matter is that Indigenous and non-Indigenous Australians do not engage on Aboriginal terms – in Aboriginal languages or in accordance with Aboriginal cultural values or norms. What is beginning to happen is an expansion of Western/International norms to seek engagement with Indigenous peoples and culture in ways that are respectful of Indigenous cultural values. It again draws attention to the bi-cultural lived reality of Indigenous Australians. This reminder also highlights the exhibition’s reliance on the subjectivity of each artist, in their purposes and processes in response to the theme, the way in which the exhibition seeks a multiplicity of visualisation and active creation of *Terra Alterius: Land of Another*.

3 *Turn the Soil*

Turn the Soil, curated by Kevin Murray, was a touring exhibition (1997-1998) “of works by [eleven] second-generation Australian craftspersons [...] asked to make works as though it

was their parents' nations that had colonised Australia".⁶⁹ The craftspersons' parental origins included Latvia, Lebanon, Isreal, Greece, Portugal, Vietnam, Albania, Sweden, Palestine, and Hungary. Their works included weavings, ceramics, installation and tapestry. Associated 'Off the Beaten Tracks Workshops' were held at each tour venue, "to invite other talents into the speculation",⁷⁰ and each created an alternative history of a specific other Australia. These were: Shukkinak, colonised by the Phoenicians;⁷¹ Yuzhem, colonised by Russians;⁷² Shao-lin, colonised by the Japanese;⁷³ Artemos, colonised by Greeks;⁷⁴ Nieuw Holland, colonised by the Dutch;⁷⁵ Woomera, colonised by the Vikings;⁷⁶ and Lusitania, colonised by the Portuguese.⁷⁷ The question "What if no-one colonised Australia?" was also canvassed.⁷⁸ The exhibition tour and public programs were supported by Craft Victoria, NETS and Visions of Australia. Murray's briefing notes are dated 1995, and the exhibition tour and workshops were conducted between March 1997 and October 1998. The presence and influence of *Turn the Soil* are continued by a catalogue and internet documentation hosted on www.kitez.com.

The basic 'What if?' strategy employed by *Terra Alterius: Land of Another* is the same as that employed in the exhibition *Turn the Soil*, with a very similar 'What if?' posed by each exhibition – a different colonisation of Australia – for the purpose of providing fresh perspectives on contemporary Australia. *Turn the Soil* sought to peel back the "British culture [that] adheres to Australia almost like a skin which contains the life of the nation" in order to facilitate "new ways of thinking about nationhood", the sorts of thinking demanded by the "introduction of Mabo legislation and debate about the possibility of Australia becoming a republic";⁷⁹ to "turn the soil" so that a new identity has fresh soil in

⁶⁹ K. Murray, 'Guidelines for Prospective Participants: 'Off the Beaten Track' Workshops', <<http://kitez.com/soil/track/ttscode.html>>, accessed 6 June 2005.

⁷⁰ *ibid.*

⁷¹ Melbourne, Victoria, March 1997: K. Murray, 'Feedback', <<http://www.craftvic.asn.au/turnthesoil/track/>>, accessed 6 June 2005.

⁷² Gladstone, Queensland, May 1997: *ibid.*

⁷³ Port Pirie, South Australia, July 1997: *ibid.*

⁷⁴ Mt Gambier, South Australia, September 1997: *ibid.*

⁷⁵ Morwell, Victoria, February 1998: *ibid.*

⁷⁶ Sydney, New South Wales, July 1998: *ibid.*

⁷⁷ Broken Hill, New South Wales, October 1998: *ibid.*

⁷⁸ The Canberra workshop was to consider three scenarios based on the question, "What if no-one colonised Australia?", which were "The Indonesian Option", "The Utopia Option" and "The Wordly Option": K. Murray, 'What if no-one had colonised Australia?', <<http://kitez.com/soil/cn/options.htm>>, accessed 7 February 2007. However, poor attendance of this workshop led to these options being canvassed by a questionnaire sent to participants of the *Making New Ground* conference held in Canberra (16–17 May 1998) and an Internet response form: K. Murray, *TTS News and Almanac*, No. 9, 29 May 1998, 'The Canberra – Sydney Leg', <<http://kitez.com/soil/ttsnc-s.htm>>, accessed 18 August 2005.

⁷⁹ K. Murray, 'Next please ...', <<http://kitez.com/soil/book/ttsidea.html>>, accessed 6 June 2005.

which to grow”.⁸⁰ The similarity of the two exhibitions’ point of divergence – to use ‘What if?’ parlance – makes it necessary to note that I was unaware of another exhibition imagining other versions of Australia until 1 December 2004, after *Terra Alterius: Land of Another* was curated and shown at IDG. I only identified this as *Turn the Soil* in June 2005.⁸¹ A comparison of the exhibitions yields insights into the possibilities of the ‘What if?’ strategy employed in each exhibition.

The divergences between the exhibitions are best established from Murray’s explanation of his idea and his instructions to workshop participants.

Since the second world war, waves of migrants have come to Australia from places outside the British Empire. Despite this influx of new cultures, their presence makes little difference to the *official* identity of Australia. [...] For some this situation is a source of alienation, for others it is the fresh promise of a new country that puts the past behind. From a creative point of view, this cultural dissonance is a relatively untapped source of ideas and inspiration. One way of drawing out this line of creativity is to speculate on the other possible histories of Australia: what would this land look like if a different nation – not Britain – had colonised it.

There’s a point to this speculation.

For nearly two hundred years, Australia has governed itself according to the British model. During that time, artists such as John Glover pictured the land in terms that English men and women could understand. But will Australia always have a British monarch – its public property be known as Crown land, and its biggest cities named after distinguished members of the British Isles?

There are, of course, many reasons why this question is now being asked. It is more difficult nowadays to celebrate the colonisation of Australia as testimony to the glory of the British Empire. This is partly due to increased awareness of the effects of this colonisation on pre-existing aboriginal cultures, the natural right of the British to claim this land as their own has been brought into question.

The introduction of Mabo legislation and debate about the possibility of Australia becoming a republic demands a new way of thinking about nationhood. The problem is that British culture adheres to Australia almost like a skin which contains the life of the nation. It is difficult to imagine this continent without the trappings of British colonisation.⁸²

⁸⁰ *ibid.*

⁸¹ In questions and comments following presentation of a paper about *Terra Alterius: Land of Another*, a fellow conference attendee asked me whether I knew about an exhibition about other versions of Australia developed by Craft Victoria. I followed this up in June 2005, finding, via Craft Victoria’s website, the extensive material documenting *Turn the Soil*. The artist and jeweller Tracey Clement had earlier, possibly in late 2003, said she thought that there was a craft exhibition similar to what I proposed, called *Terra Spiritus*. Research at the time failed to find *Turn the Soil*. In retrospect, this is because I was looking for re-imaginings of Australia directed at Indigenous issues and variations of the ‘terra’ theme. I did find *Turn the Soil* in the form of forward advertising for *Neverland*, a book to be based on the exhibition, which could have, but did not in the fact, lead me back to *Turn the Soil*.

⁸² Murray, ‘Next please ...’.

Murray describes the purpose of the workshops as:

multiple:

- To understand British colonisation better by imagining how it could have been different
- To fully realise otherwise half-formed fantasies of what Australia would have been like if given over to a foreign culture
- To enhance the sense of possibility with the prospect of Australia becoming a republic

The task of the workshops is to create a picture of what Australia *as a nation* would have been like under different historical circumstances. This involves constructing the trappings of nationhood, such as flag, anthem and map.⁸³

The workshops were set up to be run with about fifteen people.⁸⁴ And the scenarios are frequently attributed to the participants who created the scenario.⁸⁵

The curatorial synergies between the exhibitions are many and manifold. Both exhibitions used metaphors of everyday experience. In *Turn the Soil*, these included the metaphor of soil and its turning, an injunction to “imagine having a cup of tea” in order to illustrate how this is different for people from different cultures,⁸⁶ and describing the exhibition process as “putting the nation on the couch”.⁸⁷ Both used art as a means of engaging with political issues. Both exhibitions used the device of imagining an alternative Australia. This ‘What if?’ strategy was used in similar ways. Each other Australia was to be achieved by collective processes – collective re-imagining, collective construction. The ambition of both exhibitions was for Australian society to be looked at anew.⁸⁸ Neither was concerned to predict or prescribe these other Australias, but with the throwing up of possibility and what the contrast reveals about Australia.

The curatorial divergences are instructive as to and reflective of the different purposes of the exhibitions. For example, the land of Australia was central to the premises of both exhibitions. *Turn the Soil* used the general and Australia-specific metaphors of soil, of ground, of farming and cultivation to convey the premise of the exhibition:

⁸³ Murray, ‘Guidelines...’.

⁸⁴ K. Murray, *TTS News & Almanac*, 16 February 1997, < <http://kitezh.com/soil/ttsn7-2.html> >, accessed 18 August 2005.

⁸⁵ See, for example, the attribution on K. Murray, ‘Shukkinak: A Country to Dye For’, < <http://kitezh.com/soil/ml/shdraft.html> >, accessed 18 August 2005.

⁸⁶ K. Murray, ‘The Australian Tea Ceremony: Curatorial briefing notes by Kevin Murray’, < <http://kitezh.com/soil/book/ttstea.html> >, accessed 18 August 2005.

⁸⁷ Murray, ‘Guidelines...’.

⁸⁸ “What is important is the collective participation in this reconstruction, rather than the blind following of tradition.”: *ibid.*

Earth, land and soil are enduring symbols of national substance. It is the ground which we are seen to share. [...] For Aboriginal people the ground and its rhythms provide an enduring expression of powerful spiritual forces which are recognised and experienced, sometimes overtly and sometimes more subtly, through the movement and structure of the earth.

This sensibility is shaped by the food practices particular to Aboriginal communities. Land for the invaders, bringing modern agriculture, means something quite different: soil is a substance to be trained and nurtured. It is part of the annual cycle of farming to turn the soil so that it might be oxygenated and refreshed for the sowing of new seed.

By analogy, Australia seems at a point where its identity needs new focus. To prepare for a new beginning, an exercise which entertains alternate possible histories to the English settlement of Australia would be most useful. Such an imaginative exercise promises to 'turn the soil' so that a new identity has fresh soil in which to grow.⁸⁹

The land of Australia was also presented as a shared land in *Terra Alterius: Land of Another*, but this arose from the responses of the artists to the theme, rather than the theme itself. *Terra Alterius: Land of Another* was predicated on recognition of the land of Australia as belonging to its Indigenous inhabitants, in the sense of their having a prior relationship with land (in their own terms) which could or should have constituted a greater claim to possession than that of those who came after.

The ambition of each exhibition was to generate other versions of Australia, in order that contemporary Australian society might be looked at anew. *Turn the Soil* imagined variations of the colonisation of Australia in order to disrupt the British trappings of contemporary Australia and generate possibilities for Australian identity and nationhood. *Terra Alterius: Land of Another* sought to imagine an Australia in which colonisation itself was avoided, in order to explore the political and social terrain of a reconciled Australia. The perspective this difference offers on the utility of the concept of *terra alterius* is discussed in Chapter 6.

⁸⁹

Murray, 'Next please ...'.

Chapter 5 The exhibition *Terra Alterius: Land of Another*

A Introduction

Terra Alterius: Land of Another was a touring exhibition comprising works by twelve Australian artists, Indigenous and non-Indigenous, who each created or nominated work in response to the theme: What would Australia be like if the British had recognised it as *terra alterius*, 'land of another', rather than as *terra nullius*, 'land of no-one'?

Each of the participating artists was invited from a knowledge of their practice and from a sense of intrigue – how would he or she imagine *Terra Alterius*? This chapter introduces each of the participating artists (Part B 'The artists') and describes the resultant exhibition (Part C 'The artworks') and its effect (Part D 'The effect of the exhibition: the revelation of another Australia').

Terra Alterius: Land of Another was curated for Ivan Dougherty Gallery (IDG) for the period 19 August to 25 September 2004. Museums and Galleries NSW (MGNSW) (formerly MGF) toured *Terra Alterius: Land of Another* to an additional five venues in New South Wales, Victoria and the Australian Capital Territory until March 2006. The exhibition was documented by a catalogue, and the concerns of the exhibition were further explored in this catalogue, in a symposium 'The Possibilities of *Terra Alterius*', and in an education kit. The physical characteristics of the exhibition, the attendances, and the activities undertaken to extend its reach are described in Part E 'The form and reach of *Terra Alterius: Land of Another*'.

B The artists

Terra Alterius: Land of Another comprised works by Gordon Bennett, Barbara Campbell-Allen, Julie Dowling (Yamatji/Noongar), Shaun Gladwell + Michael Schiavello, Jonathan Jones (Waridjuri/Kamilaroi), Joanne Searle, Esme Timbery (Bidjigal), Freddie Timms (Gija), Lynette Wallworth, Guan Wei and Lena Yarinkura (Kune/Rembarrnga).

Each artist was invited for his or her particular qualities as an artist and an individual, with an eye to the diversity of the group as a whole. The invitations were informed by issues of inclusiveness and voice, and with consciousness of each artist's personal and artistic

attributes – for example, indigeneity, culture, age, place of work, medium or media of practice, and artistic and thematic concerns. Relationships between particular artists were anticipated and particular attributes and qualities were balanced by corresponding attributes and qualities – for example, urban and rural, political and personal. Cohesion, it was thought, would arise from the combined effect of the curatorial approaches (described in Chapter 4) and the artists' concern with the theme. Governing all of the invitations was a sense of intrigue: how would the artist envisage *Terra Alterius: Land of Another*?

The invitation to Gordon Bennett was compelled by his sustained engagement with the issues at the heart of the exhibition, and the visual, intellectual and emotional power he brings to them. Works such as the *Notes to Basquiat series* (1999) (2001) are passionate, nuanced, persuasively argued 'essays', compelling an agitated consciousness in the viewer, who is credited with perceptiveness, intelligence, and integrity. These paintings present the complexity of Indigenous–non-Indigenous relationships, and place these issues in particular personal and international realms, in the words and images of our cultures. Above all, these works make the relational aspects of these issues apparent. Bennett's authority in respect of these issues arises from the complexity of his artistic engagement with them and from the fact that this engagement arises because he himself lives the issues. In the late 1980s, Gordon Bennett decided:

I was in an interesting position: My mind and body had been effectively colonised by Western culture, and yet my Aboriginality, which had been historically, socially and personally repressed, was still part of me [...] there were very real demands to be either one thing or the other. There was still no space for me to simply 'be'. I decided that I would attempt to create a space by adopting a strategy of intervention and disturbance in the field of representation through my art.¹

Bennett is an informed, insightful and erudite thinker on the subject matter: an artist and a public intellectual. What would he think an Australia perceived as *terra alterius* would be like? How would he represent it? There was no doubt it would be an intelligent and emotional response, powerfully executed.

The presence and humility of Barbara Campbell-Allen's work, its humaneness, and her capacity to express in form and with the effects of wood-firing her relationship to place led to her invitation to participate in *Terra Alterius: Land of Another*. Campbell-Allen:

¹ G. Bennett, 'The Manifest Toe', in I. McLean and G. Bennett, *The Art of Gordon Bennett* (Sydney: Craftsman House, 1996), p. 33.

partly eschews traditional ceramic forms for own invented forms and transmutes those traditional ceramic forms she does use. A traditional form's nominal function is thwarted and its particular usage defined by size, shape and texture. Thus, Campbell-Allen's 'Trays' are three-legged, broken-edged, exposed ore-bodies. Platters and servers are cracked and scarred slabs. [...] We are invited to observe and understand the sinew and fibre of each object, its innate character, its particularity and strength. Her invented forms energise and evoke experience and space. 'Flared forms' are inverted mushrooms, with circular canopies reaching from strong, trunk-like, central cores. The cores are vessels – receptive, capable, ready to carry. Some, with flares satellite-dish stiff, receive and reflect [...] Others, with waving, elliptic and undulating flares, energise and invigorate, circulating what they receive.²

How would Campbell-Allen envisage *Terra Alterius*? It was anticipated that her work would be very personal, somehow organic, responsive and relational, and that it would possess quiet strength.

Julie Dowling has a very special capacity for bringing home the personal in the political. Julie Dowling is a Yamatji / Noongar woman who lives and works in Perth, Western Australia. Her project is to investigate and depict, in portraiture, Aboriginal life and culture, and particularly how the tensions of changing Aboriginal culture and between Indigenous and non-Indigenous cultures are lived by and within a particular family and a particular community. These portraits and self-portraits are beautifully realised and thoroughly engaging, and catalogue notes often provide an accompanying story: who the person is, where they come from, who their family is, and their defining characteristics as apparent to Julie Dowling or to the person's community. Often, the portraits depict an individual or group at a moment of tension in respect of identity or culture. Dowling's subjects look directly out of the painting, compelling the viewer to respond from one person to another. Their gazes "communicate a history of pain, loss, betrayal, violence, despair, sadness and, occasionally, hope"³ to which one might respond, as Marcia Langton has put it, "with intelligence and ethics".⁴ It was anticipated that Dowling's response would have powerful personal resonance, deep understanding and political insight.

While art making is frequently a collaborative project in Aboriginal communities, this is less common within the art practice of non-Indigenous Australian artists. Shaun Gladwell + Michael Schiavello's collaboration in this case came about as part of Shaun Gladwell's response to the exhibition theme. Shaun Gladwell – "an accomplished painter, sculptor

² M. Farmer, 'Out of Earth – exploring the plastic possibilities of clay', unpublished review, 2003.

³ 'A note on the paintings of Julie Dowling' in *Antipodes*, June 2002, v 16, p. 120, as quoted in M. Langton, 'The Others', in *Terra Alterius: Land of Another* Catalogue, unpaginated.

⁴ Langton, *op. cit.*, unpaginated.

and video artist whose work encompasses images and ideas that cross cultural and historical boundaries”⁵ – was invited because of the eloquence with which his work meditates upon dynamic and transient occupations of space. Gladwell sought a personal entry point to the theme and to work collaboratively. He suggested that he work with Michael Schiavello, whose work⁶ has highlighted points of tension and crisis between Indigenous and non-Indigenous cultures in Australian society, particularly by the juxtaposition of artefacts and representations. It was anticipated that the collaboration would result in an object-based work with theoretical depth arising from thorough engagement with the concept.

The invitation to Jonathan Jones (Kamiliroi/Wiradjuri) was compelled by his positive, lyrical, urban voice. Hetti Perkins has written of Jones’s works, “At first sight they exist as coolly minimal forms, transformations of the everyday materials of cotton thread and electrical paraphernalia into installations of compelling beauty. Yet, like the seductive landscapes of Western Desert artists that celebrate the travels of the Tingari ancestors, Jones’s lightmaps chart the journeys and indicia of connections that characterise our present day social networks.”⁷ Jones has a rare capacity for bringing things together – techniques from traditionally female crafts and traditionally male trades – and a perhaps rarer insistence that Indigenous and non-Indigenous cultures are, at a grass-roots level at least, pulling together.⁸ It was anticipated that this would be a valuable perspective.

The invitation to ceramicist Joanne Searle was suggested by her works *Selection/Collection* (2004). These works are stained furls of limoges porcelain at rest on each other. Perhaps twigs, eucalyptus bark, or clacking sticks, they are immediately evocative of the Australian bush. Searle describes her practice as based on environmental metaphors and it is suffused with a sense of place. It is work that brings to mind Peter Read’s concept of ‘belonging’, with all that it connotes, positive and negative, in the non-Indigenous Australian context.⁹ It was anticipated that Searle’s response to the theme would be personal and concerned with place.

⁵ ‘Biographies’, in *Terra Alterius: Land of Another* Catalogue, unpaginated.

⁶ For example, works in his exhibition *Ticket Outta Here*, April 1—April 30 2004, Space3, Sydney.

⁷ Hetti Perkins, ‘Jonathan Jones: Lumination’, in *Jonathan Jones* Catalogue (Sydney: Gallery Barry Keldoulis, 2003), unpaginated.

⁸ Jones spoke eloquently on this topic at the *Zones of Contact: 2006 Biennale of Sydney* July Symposium, 8—9 July 2006.

⁹ Read, *op. cit.*

Esme Timbery (Bidjigal) has, according to Jonathan Jones, already “jumped through the portal” to *Terra Alterius*.¹⁰ By this Jones means that her world view is one in which non-Indigenous culture and artefacts are subject to her traditional beliefs, as perhaps in *Terra Alterius*. Timbery holds a traditional view of land, which she has expanded to envelop the new landmarks, such as the Sydney Harbour Bridge, that have been placed on it. In this way, the Sydney Harbour Bridge and the Sydney Opera House are hers, belonging to her community and of her land. Timbery uses her intimate knowledge of her country (extending from La Perouse and Cronulla in Sydney, to Wreck Bay in the South) to locate the shells with which she encrusts her forms.¹¹ Timbery’s work states as fact that non-Indigenous presence in Australia was, is, and will always be premised on the fact that it is first ‘land of another’. It was anticipated that Timbery’s contribution would speak loudly to an audience for whom the Sydney Opera House and the Sydney Harbour Bridge are symbols of national identity.

Freddie Timms (Gija) creates works of stunning beauty and cultural authority. Timms’s work is tradition-based and some may experience it as a gift of a way of being (following Jennifer Biddle, as discussed in Chapter 2) or as operating affectively to generate inquiry (following Jill Bennett, as discussed in Chapter 2). Timms often combines “stories of traditional life and *Ngarranngani* (the Gija word for the period of creation) with his knowledge of the country gained while working as a stockman”,¹² but also engages and changes the surrounding non-Indigenous culture – for example, by establishing Jirrawun Arts to ensure equitable working conditions for himself and the artists of his community.¹³ Timms is one of the few tradition-based Aboriginal painters who from time to time incorporates political comment. It was anticipated that Timms’s response to the theme would be grounded in his cultural perspective and authority.

¹⁰ Jonathan Jones, in conversation.

¹¹ This discussion is indebted to material prepared by Jonathan Jones in conversation with Esme Timbery. See also I. Vanni, ‘Bridging the Gap: the production of tourist objects at La Perouse’, in Sylvia Kleinert and Margo Neale (Eds), *The Oxford Companion to Aboriginal Art and Culture* (South Melbourne: Oxford University Press, 2000).

¹² Farmer, ‘*Terra Alterius*: Land of Another’, unpaginated, and indebted to material prepared by Frances Kofod of Jirrawun Arts Centre, from a conversation between Frances Kofod and Freddie Timms in July 2004.

¹³ Sherman Galleries, ‘Artist Profile: Freddie Timms’, <http://www.shermangalleries.com.au/artists/inartists/artist_profile.asp?artist=60&exhibition=>, accessed 4 November 2006.

The invitation to new media artist Lynette Wallworth was compelled because within her work it is possible to experience profoundly.

Wallworth's work is about the relationships between ourselves and nature, about how we are made up of our physical and biological environments, even as we re-make the world through our activities. The activation of the work by the viewer becomes a metaphor for our connectedness within biological, social and ecological systems. She uses technology to reveal the hidden intricacies of human immersion in the wide, complex world.¹⁴

The definition of reconciliation utilised in Chapter 3 shows why such reflection on and experience of relationships and connectedness seemed important in the context of this exhibition and its concerns. For while an individual or society might come by intellectual means to an acknowledgment of injustice, or might come to appreciate the relative equivalence of values, it is only by emotional as well as intellectual means that it is possible to come to a thorough or radical exchange of values. It was anticipated that Lynette Wallworth would create a deeply resonant and aesthetically beautiful interactive environment in which it would be possible to experience something of *Terra Alterius*.

Guan Wei has made considered contributions to key political issues facing Australia, such as Australia's refugee policy and role as a country of refuge. *Dow – Island (1-48)* (2002) and *Island No. 1* (2002) engage with Australia as an island that is a place of refuge for some and of exclusion for others. Guan Wei incorporates in these works notions of island, utopia, refuge, arcadia, but also of the perils of the journey, playfully depicted as sea monsters. His figures, with their single eyes and gender-neutral, puffy, pink bodies are more vulnerable and more archetypal than human bodies, and thereby speak with the feeling of myth or fable. These paintings are courtly and entirely suitable for commenting on issues of sovereignty: they tell bold, hard truths, but you will always enjoy looking at them. In addition to being someone alert to issues of justice, Guan Wei is someone who has adopted Australia as his country as an adult. It was anticipated that his perspective would be different from that of a non-Indigenous person who had grown up in Australia.

Lena Yarinkura is a Kune/ Rembarrna woman living and working in Maningrida, creating tradition-based, yet innovative fibre-works. "These installations, often decorated with ochre or feathers, have precedents in men's ceremonial objects that have rarely been seen after the 1960s – as well as the small spirit dolls held by women in the Mularra ceremonies.

¹⁴ The National Glass Centre, 'Lynette Wallworth',
<<http://www.nationalglasscentre.com/artistsdetails.php?aid=11>>, accessed 1 January 2007.

Yarinkura's combining of the traditional with the non-traditional makes her work unique."¹⁵ Lena Yarinkura's works show a strong connection to place and are consciously created to embody knowledge – both in terms of the materials used and subject matter. It was these qualities combined with the close observation of her co-inhabitants evident in her practice (see for example, her cast aluminium *Campdog* (2000)) that compelled her invitation. It was anticipated that Lena Yarinkura's response would be singular and resonant of place.

C The artworks

What did this other Australia, *Terra Alterius*, look like? As it turned out, rather fantastical and surprisingly familiar.

The first room of IDG was dominated by a “seven-metre, floor-to-ceiling wall painting by Guan Wei, depicting the Chinese discovery of Australia, or as they may have thought of it, *Big Mouse Kingdom*.”¹⁶ Hung within this wall painting were three panels from Guan Wei's *Exotic flowers and rare grasses series* of 2001, depicting imaginary hybrids of Chinese and Australian plants, which possess powerful medicinal qualities. Guan Wei “invites us to consider a different encounter and the perspective of a different new-coming culture.”¹⁷ This work “reminds us that interactions between existing and new-coming cultures happen worldwide and are ongoing.”¹⁸

No tourist itinerary of Australia would be complete without the Sydney Opera House and the Sydney Harbour Bridge, and these were present in *Terra Alterius* too. With *Untitled (Opera House)* (2002) and *Untitled (Harbour Bridge)* (2002), Esme Timbery has repatriated these architectural forms built on her ancestral lands, encrusting and bedazzling them with shell work based on pre-contact techniques and knowledges.¹⁹ For Timbery, it is a matter of fact that these architectural forms built on her ancestral lands now belong to her too. For others, the new surfaces Timbery has given these iconic forms offered the opportunity to reconsider representations of Australia and Australian national identity.

¹⁵ Art Gallery of New South Wales, *Tradition Today: Indigenous Art in Australia*, (Sydney: Art Gallery of New South Wales, 2004), p. 178.

¹⁶ Farmer, ‘*Terra Alterius*: Land of Another’, unpaginated.

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ This discussion is indebted to material prepared by Jonathan Jones in conversation with Esme Timbery. See also Vanni, *op. cit.*

There were other artefacts in this room – sleek, solemn, inscrutable ceramics; in our archeological exploration, speculatively sacred. These were Joanne Searle’s untitled works, in which she used the astronomical phenomenon of a binary star as an analogy for dialogue between Indigenous and non-Indigenous traditions, suggesting the land is a common centre, an exchange or meeting place. Searle reworked the binary of Self and Other to embody Bernard Smith’s concept of cultural convergence (described in Chapter 3). Searle explained, “In response to Smith’s notion of convergence, I have chosen to make both parts of the binary system of equal size, portraying each part’s individual importance and the equal significance each brings to the dialogical relationship. The movement of the stars orbiting each other results in a record or track. In the same way, exchanges between the two traditions within this land have traced the path of our mutual history and carve a possible path for the future.”²⁰

Visually restrained, minimalist and organic, the last work in this room was the conceptual precursor to other works in the exhibition. “*Antipodes 1A, 2A, 3A* by Jonathan Jones is poised at the moment just prior to encounter. The horizon shifts as the boundary between the sea and land changes with the tide and the ship rises and falls with the swell of the sea. All is still before us: What will the tide bring? On which tide shall we come in?”²¹ Jones offers the potential of this moment again and the question remains: how shall we approach each other? “In Jones’s works, as at that moment, the horizon holds oblique, glancing perspectives. The intricate patterning of warm, orderly and complex community life is not visible. It is hinted however: there is hope in the linkages between the separate, equivalent values of red, blue and black that represent the still discrete cultures.”²²

The second gallery was devoted to a new media installation by Lynette Wallworth, which offered the opportunity to reflect on moments of first contact. *Still: Waiting* (2004) was an immersive environment that changed the moment it was entered – the entrance startling a flock of Corellas into flight. This offered viewers the opportunity to observe how the environment responded to their actions and then, if others joined them in the environment, negotiate with them as to how they proceeded. It was only with time and

²⁰ Artist’s statement, June 2004.

²¹ Farmer, ‘*Terra Alterius: Land of Another*’, unpaginated.

²² *ibid.*

observation – stillness – that the true characteristics and complexities of the environment were revealed.

The interior gallery contained work by six artists.

Freddie Timms's painting *Stoney Creek, Sally Malay Mine* (2003) is based in his knowledge of land and the current experience of his community. "The Sally Malay Nickel mine at Stone Creek is 10 kilometres south of Frog Hollow (part of Timms's wife's country, and where he started painting in the late 1980s and 1990s), and 40 kilometres south of Warmun (Turkey Creek). At the time Timms completed this painting, community negotiations between the Sally Malay mining company and the traditional owners were taking place. He was listening to people talking about the mine all around him. Now, as in the *Ngarrannggani*, the land is the site of encounter."²³

Resting together on the side wall, was a breeding pair of a species evolved to *Terra Alterius* – Shaun Gladwell + Michael Schiavello's *Retread* (2004). "But instead of this introduced species breeding to dominant proportions and to devastating effect, it had designed itself in a sympathetic relationship to its environment."²⁴ It sought to "move without trace, to function without marks".²⁵ *Retread* also embodied a process, a re-treading of history, that is a speculative way forward.²⁶

Barbara Campbell-Allen's baked and fissured ceramic installation *Old Rivers* (2004) commanded a diagonal axis across the floor. Animated by their encrusted, marked and scarred surfaces, the evocative forms of this work were intimate representations of places, often rivers, that together built an understanding of the Australian continent. "As a whole, the installation shared the apparent repetition and relentlessness, the mesmerising awe, of the Australian landscape at scale, as seen when driving through it or flying over it."²⁷

Lena Yarinkura's work, *Untitled (Mice in Tree)* (2004), affected sheer delight by its natural materials – the delicacy of the white feathers that moved in response to movement in the gallery, and the endearing inquisitiveness and activity of the mice. These mice have bored

²³ *ibid.*, and indebted to material prepared by Frances Kofod of Jirrawun Arts Centre, from a conversation between Frances Kofod and Freddie Timms in July 2004.

²⁴ Artists' statement, June 2004.

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ Farmer, 'Terra Alterius: Land of Another', unpaginated.

the tree, live on it and within it, have entwined and festooned its near every surface for their purposes, and ultimately, are ephemera to the stoic, constant tree.

Lizzy, Tully, Spacey (2004) is a family portrait by Julie Dowling of friends of hers – the strong, proud, loving Wadjula, or non-Aboriginal, Lizzy, Balardong Spacey, and their eleven-year old son, Tully. When painting these works, Dowling, a Namatji/Noongar woman, was trying to understand the divide between Wudjula and Aboriginal people, because as she says, “It doesn’t have to be that way. This family of three is iconic of my belief in anti-imperial enlightenment and they represent to me the relationships that do happen today.”²⁸

The final works in this room were two abstract paintings by Gordon Bennett, *Number 28* (2003) and *Number 32* (2003), simply painted in strong, loaded colours that allowed very personal and spiritual readings. The formal qualities of the paintings invoke the Christian trinity – a sense of things simultaneously being separate and united – also a sense of things simultaneously screened and revealed. The presence of these works is strong and resolute, forged by the tension of their components. Gordon Bennett responded “to the exhibition theme by nominating these works that show how he imagines he would paint, if Australia were *Terra Alterius*”. And yet, these works and Bennett’s return to abstraction were not in response to the exhibition theme as such.²⁹ If these works are as deeply personal as they appear, it would seem that Gordon Bennett has found the space he has sought, in which he can ‘simply be’. The latter, if even partly true, would be cause for genuine excitement. For it “might indicate that the momentum towards *Terra Alterius* and the incidence of its presence is reaching critical mass”.³⁰

D The effect of the exhibition: The revelation of another Australia

While all the works in *Terra Alterius: Land of Another* presented ‘ways of approach’ and ‘ways of being’, broadly speaking, the works by Indigenous artists are more about the presence or experience of *Terra Alterius*; whereas the works by non-Indigenous artists are more concerned with the ways in which non-Indigenous Australians might have approached or might now approach Indigenous Australians, the ways in which *Terra Alterius* might be realised.

²⁸ Artist’s statement, June 2004.

²⁹ Farmer, ‘*Terra Alterius: Land of Another*’, unpaginated, for this argument at greater length.

³⁰ *Ibid.*

The Indigenous works are all based in the lives of living people, either in the life of the artist or of people known to the artist. So those things present in the exhibition – the pride in land, in culture, in self; the strength; the love; the understanding; the ‘space to simply be’; the negotiation; the continuation of relationship to land and of traditional practices; the presence of evolving and hybrid forms of practice – are all present in contemporary Australia. Similarly, the processes shown in the works of the non-Indigenous artists reflect real processes, such as the enormous grass-roots support for symbolic activity and reconciliation processes such as the Seas of Hands and Bridge walks. Even the whimsy and humour of a Chinese discovery of Australia and a breeding pair of bicycles evolved to move without trace are firmly located in reality – the hard graft of adapting to a new country and culture and the evolutionary forces of attributes checked and developed.

The artworks were so firmly based in people’s lives and what Australians see and experience around them that the exhibition appeared to reflect a current reality, not an alternate one. What was hidden from view is that the bi-cultural lived reality of Indigenous lives commonly involves stress and tragedy at a pitch and frequency rarely experienced in non-Indigenous communities.³¹ This is borne out when images of the Redfern and Palm Island riots in response to alleged police brutality are compared with the state-sanctioned images of Australia in the opening ceremony of the Sydney 2000 Olympic Games; when the paintings which Gordon Bennett and Julie Dowling have included in the exhibition *Terra Alterius: Land of Another* are compared with their usual work;³² and by the exhibition catalogue, in which Aboriginal artist and curator r e a writes of the difficulty in imagining Australia as *Terra Alterius* and the emotional distress that accompanies this attempt. The exhibition did show another Australia – a wholly positive one. This other Australia is present in contemporary Australia – but not all the time – and in some lives, not at all or all too rarely.

What emerges is a reconciled Australia less distinct or determined in its form than in its processes and its diversity, and one that has transcended rather than renounced its colonised status. According to *Terra Alterius: Land of Another*, a reconciled Australia is just

³¹ As evidenced by the statistics on infant mortality rates, life expectancy, preventable disease, family and sexual violence, crime, incarceration, and addiction.

³² Here compare Gordon Bennett’s *Notes to Basquiat series* (1999) (2001), and *Terra Nullius* (1989); Julie Dowling’s *Yalgo* (2002); the curvilinear social connections in works in the *Jonathan Jones* exhibition, September 2003, Gallery Barry Keldoulis.

what Betty Little described – an Australia in which Indigenous people and Indigenous culture are respected. Above all, the revelation of the presence of instances of and approaches to a reconciled Australia in the ‘here and now’ highlights the real possibility of its achievement. This is discussed further in Chapter 6.

E The form and reach of *Terra Alterius: Land of Another*

1 *Terra Alterius: Land of Another* at IDG

Terra Alterius: Land of Another was curated for IDG and the final form of the exhibition was shaped by the intellectual and physical context of IDG. IDG “is a major contemporary art exhibiting space and educational resource of The University of New South Wales College of Fine Arts. It mounts approximately ten exhibitions per year, focussing on 20th century and contemporary Australian and international art of all disciplines.”³³ The role of the Director, Nick Waterlow, and of IDG staff, particularly Rilka Oakley, is described in Chapter 4. *Terra Alterius: Land of Another* was commissioned to fit within IDG, which has space equivalent to 64 running metres. Labels identified and provided information about the artworks. There was no wall text.

IDG has estimated that 1,218 people attended the exhibition during the period 19 August to 25 September 2004.

2 Catalogue

Generous funding from the Gordon Darling Foundation made it possible to produce a catalogue to accompany the exhibition. The intention of the catalogue was to introduce and discuss the theme *terra alterius*, and to document and thereby extend the life of the exhibition. It was sought to include a variety of voices in the catalogue and particularly to find Indigenous and non-Indigenous responses to the theme.

The contents of this catalogue, also entitled *Terra Alterius: Land of Another* (attached), are a foreword by Nick Waterlow and three essays. The first essay, ‘*Terra Alterius: Land of Another*’, written by myself, introduces the concept of *terra alterius* and the exhibition, and discusses the concerns of the exhibition and the particular works of each artist. The second

³³ ‘Ivan Dougherty Gallery’, Pamphlet, (Paddington: UNSW College of Fine Arts, undated), unpaginated.

essay, 'The Others', was commissioned from Professor Marcia Langton AM, a descendant of the Yiman and Bidjara peoples of the central and western regions of Queensland and Professor of Australian Indigenous Studies at the University of Melbourne. Professor Langton places the exhibition within its cultural, historical and political context, and concludes with a way forward: "It is necessary to engage, to make history, to be implicated, to change. Looking back at the past might be enlightening, but it can also be enervating. Innovation is required to make a new possibility, and this requires critical imagination and not merely historical deliberation."³⁴ The third essay, '*terra era*', was commissioned from r e a, a visual artist from the Gamilaraay/Wailwan people, who lives in Sydney and works in the medium of photography and digital technologies. r e a was asked to respond to the exhibition theme and the exhibition from the perspective of an artist and curator. r e a's contribution powerfully demonstrates the difficulties an Indigenous person might experience when considering *terra alterius*, that is, in considering a different version of the past that might have avoided desperate circumstances for their ancestors, their community and for themselves. In r e a's contribution we read of grief for what might have been and of disruption of identity.

3 Public program

The public program accompanying the exhibition in its first showing at IDG comprised a symposium, a lecture and two curator's talks. The symposium, 'The possibilities of *Terra Alterius*' was hosted by UNSW COFA with the aim of broadening participation in discussion of the idea *terra alterius*. Discussants included:

- Barbara Campbell-Allen, Joanne Searle and Lynette Wallworth, exhibition artists, and Jonathan Jones, exhibition artist and member of the Indigenous Reference Group;
- Associate Professor Sue Green of the Wiradjuri nation, Director of Nura Gili Indigenous Programs, UNSW, and member of the Indigenous Reference Group, who welcomed us to land and contributed personal and political perspectives; and
- Sean Brennan, Director, Treaty Project, Gilbert + Tobin Centre of Public Law, UNSW, who was able to address legal and political progress towards a Treaty.

³⁴ Langton, *op. cit.*, unpaginated.

4 Education kit

An education kit for the exhibition was written by Bachelor of Art Education students, under the direction of Kim Snepvangers and Dr Penny McKeon, Senior Lecturer in Art Education, and Head, respectively, of UNSW COFA's School of Art Education. Seven artists were selected on the basis that their work would provoke discussion and activities that would tie into the curriculum. These artists were: Barbara Campbell-Allen,³⁵ Julie Dowling,³⁶ Jonathon Jones,³⁷ Freddie Timms,³⁸ Lynette Wallworth,³⁹ and Guan Wei.⁴⁰ MGNSW (formerly MGF) reports that "The Education Kit and resources were used frequently at the host venues with distributions to local primary and secondary art coordinators (and relevant tertiary institutions if nearby)."⁴¹

5 Tour

MGF (now MGNSW) accepted *Terra Alterius: Land of Another* into its MGF-NETS scheme, and arranged the following exhibition tour.

- | | |
|---------------------------------------|---------------------------|
| • Moree Plains Gallery, NSW | 11 March—9 April 2005 |
| • Goulburn Regional Art Gallery, NSW | 23 April—22 May 2005 |
| • Swan Hill Regional Art Gallery, VIC | 29 July—11 September 2005 |
| • ANU School of Art Gallery, ACT | 6 October—30 October 2005 |
| • Tamworth City Gallery, NSW | 11 February—19 March 2006 |

The exhibition report prepared by MGNSW states that, "Galleries felt that the exhibition content and presentation was of a high standard and allowed for creative programming and interpretation by the host venues."⁴² And that, "The exhibition was well attended – particularly by students, and members of the local Indigenous communities."⁴³ According to MGNSW, the exhibition was attended by an additional 5,853 people in this time.⁴⁴

³⁵ Written and compiled by Kirsten Duncombe and Emma Fenton.

³⁶ Written and compiled by Penny-Ann Knight and Jacqueline Pugh.

³⁷ Written and compiled by Claire Platt-Hepworth and Melinda Robertson.

³⁸ Written and compiled by Alex Cyreszko and Natalie Pullen.

³⁹ Written and compiled by Tanya Demello and Zoh McEnally.

⁴⁰ Written and compiled by Robert Caggegi and Bryan Fisher.

⁴¹ MGNSW, 'Terra Alterius: Land of Another' Exhibition Report, (Woolloomooloo, NSW: MGNSW, 2006), unpaginated.

⁴² *ibid.*

⁴³ *ibid.*

⁴⁴ *ibid.*

Chapter 6: *Terra Alterius*: The present and future Australia

A Introduction

The exhibition *Terra Alterius: Land of Another* was an experiment in the political possibilities of art and the exhibition space, designed to disrupt the psychological *terra nullius* characteristic of contemporary Australia. The exhibition sought to create another Australia, *Terra Alterius*, within which viewers could explore the political and social terrain of a reconciled Australia, the experience of which would enable them to look at contemporary Australia anew. However, because the exhibition comprised not artworks selected to the theme but new works created for or nominated by artists in response to the theme, whether the exhibition might succeed in its ambitions and what this other Australia might be like remained in question until the exhibition was first installed at IDG. There was, in the planning of the exhibition, the prospect that the exhibition might create another Australia with another Australian art and another Australian art history. These later prospects retreated. *Terra Alterius*, described in Chapter 5, turned out to be ‘surprisingly familiar’.

The familiar nature of *Terra Alterius* suggests that the multiple curatorial strategies combined to perform Bloch’s utopian function – to reveal the desired utopia in the present. This argument and the utility of the concept of *terra alterius* are supported by comparison with another counterfactual exhibition, *Turn the Soil*, in Part B, ‘The very real possibility of a reconciled Australia’.

Differences between the reconciled Australia created by the utopian function in *Terra Alterius: Land of Another* and the retrospective utopia attributed to the Waitangi Tribunal suggest that the conceits contained in the exhibition’s ‘What if?’ strategy are resolved by the strategy’s deployment in the form of a counterfactual exhibition. In an exhibition, the strategy operates not to deny the past but to transcend it. The premise is an imagination of an implausible past but the utopian future created by the exhibition itself is a credible extension of reality. This argument is supported by Bloch’s discussion of art and utopia, and in Part C, ‘Counterfactual exhibition as affective politics’, the exhibition is characterised as an act of ‘affective utopianism’.

Although the concept of *terra alterius* is seen as having played a crucial role, in Part D, ‘The continued utility of the concept of *terra alterius*’, it is questioned whether its utility can extend beyond Australia.

B The very real possibility of a reconciled Australia

1 The presence of *Terra Alterius*

That an exhibition seeking to present another Australia by re-imagining Australia’s past in a way that bettered or avoided colonisation should result in works so reflective of contemporary Australia raises the question: did the exhibition achieve its aim? Joanna Mendelssohn reviewed the exhibition and described *Terra Alterius* as follows:

Marshalling a small group of artists to help her realise this vision, Farmer found – perhaps to her surprise – that *Terra Alterius* may already be reality. In their daily life, these artists already practise different ways of thinking and making, accepting different responses to history and the environment. Some of the artists are indigenous Australians, others are from our many immigrant cultures. What they share is a spirit of generosity, the embrace of difference, so missing from our official government doctrine of selfish greed.¹

The tension identified by Mendelssohn, the difference between the approaches taken by many individuals and that of the government, suggests that the exhibition did succeed in presenting another Australia. In this other Australia, the ways of being and approach Mendelssohn identifies are ongoing characteristics of the whole rather than of individuals, groups, projects or times. As argued in Chapter 5, this other Australia is present in contemporary Australia, but not all the time, and in some lives, not at all or all too rarely.

2 The exhibition as “anticipatory intelligence”²

That the political and social terrain of a reconciled Australia should look so familiar suggests that the exhibition concept and multiple curatorial strategies combined to perform Bloch’s utopian function (discussed in Chapter 4) – revealing the desired utopia in the ‘here and now’. Thus, the utility of the exhibition is, in Blochian terms, in its “anticipatory consciousness”.³ The concept of *terra alterius* is a crucial component in the performance of this function, as it is the means of communicating the desired utopia.

¹ J. Mendelssohn, ‘The secret magical hybrid life of us’, Wednesday, September 1, 2004, *New Matilda*.

² Thrift, *op. cit.*, p. 66.

³ Alain Touraine, ‘Society as Utopia’, in Shaer et al, *op. cit.*, p. 28.

re a's catalogue essay shows how, in an Australia conceiving of itself in terms of *terra nullius*, the concept of *terra alterius* introduces possibility, how it operates to disrupt and lift psychological *terra nullius* for both Indigenous and non-Indigenous Australians. Thus the concept of *terra alterius* proves to be an effective novum or strange newness. These arguments can be tested against a control of sorts, the exhibition *Turn the Soil* curated by Kevin Murray, discussed in Chapter 3.

In respect of the first argument, that a counterfactual exhibition might operate as 'anticipatory intelligence' to reveal something present but not yet apparent, *Turn the Soil* can provide insight because of the striking similarity of its curatorial strategy and its results. Both exhibitions used the 'What if?' strategy of counterfactual history in a similar way – to imagine a different colonisation of Australia. Each was achieved by collective processes – collective re-imagining, collective construction. Neither curator was concerned to predict or prescribe these other Australias, but with the throwing up of possibility and what the contrast might reveal about the real Australia. In addition, similar ideas about craft,⁴ in the case of *Turn the Soil*, and art and the exhibition space, in the case of *Terra Alterius: Land of Another*, operating outside of politics and law animated each curatorial rationale. The resulting works are deeply personal, hybrid and layered with meanings. The *Turn the Soil* works show the multicultural lived reality of Australians and parallel the presence in *Terra Alterius: Land of Another* of works that show the ways of approach and being present in contemporary Australia, including the bi-cultural lived reality of Indigenous Australians.

Neither exhibition set out to present a utopia; however, in both exhibitions the 'What if?' strategy can be said to have performed Bloch's 'utopian function', which "as the comprehended activity of expectation, of a hopeful presentiment, keeps the alliance with everything dawning in the world."⁵ Neither exhibition sought to imagine the future, but to re-imagine the past in order to disrupt assumptions in the present. The exhibitions sought to generate possibility rather than to create an ideal society.⁶ Nonetheless, each exhibition

⁴ "The national identity of the decorative arts comes somewhere between the public and personal spheres. [...] At the heart of [the difference between Anglo-Australian and Albanian-Australian tea drinking rituals] is the production of objects which orchestrate the rituals that bind people together at an intimate level." K Murray, 'The Australian ...', pp. 1-2. "Craft, which is often read as an anonymous 'spirit of the age' / 'genius of the race' production, can be a marker of difference and recalcitrance – objects outside the complicities of the legislative-bureaucratic nation producing technology." P. Morrissey, 'Curatorial Briefing Notes by Phillip Morrissey', <<http://kitezh.com/soil/book/pmor.html>>, accessed 6 June 2005, p. 3.

⁵ Bloch, *op. cit.*, p. 105.

⁶ Although *Terra Alterius: Land of Another* identified a reconciled Australia as a desirable state and specifically sought to create another Australia, *Terra Alterius*, as means of exploring that state, artists were

was concerned with Australia's future and the specified purpose of each – to generate possibilities – can be characterised as hopeful of contributing to a positive future. Moreover, *Terra Alterius: Land of Another* clearly identified an inadequate present – Australia conceived of in terms of *terra nullius* – and the catalyst for *Turn the Soil* – debate about the constitutional structure of the nation, that is, the nature of government – is a classic subject of utopian thought.

To say that the exhibitions revealed something present but not yet apparent is not to say that they revealed a previously unknown aspect of society. Multiculturalism and reconciliation processes, respectively, were the clear contexts for *Turn the Soil* and *Terra Alterius: Land of Another*. Rather, in each case the 'What if?' strategy brought focus to these attributes as being crucial to the question at hand. The eye searching for the future is returned to the present, and the potential of particular attributes is made apparent. In each exhibition, particular present attributes are more dominant in the exhibition than in lived experience, and more fully expressed in lived experience than in the formal apparatus of the nation.

This is a possibility that Murray attributed to the strategy and anticipated, when he described the strategy as being a way in which to draw out creativity from the "cultural dissonance" that arises between the presence of many cultures in Australia and lack of change to "the *official* identity of Australia [– the L]aws, politics, language [...] grounded in the British models".⁷ And when he likened the workshop process to "putting the nation on the couch"⁸ and wrote: "The outcomes from imagining how others might have done it will probably have more to say about the currents and undercurrents that drive Australian culture at present, than it does about actual historical circumstances."⁹ This possibility was presaged also by Phillip Morrissey's comments on what craft specifically might bring to the debates surrounding Australian identity and nationhood: "[C]raft, which is often read as an anonymous 'spirit of the age' / 'genius of the race' production, can be a marker of difference and recalcitrance – objects outside the complicities of the legislative-bureaucratic nation producing technology."¹⁰

invited to consider that an alternative past might have led to unpalatable alternative presents. In respect of *Turn the Soil*, Phillip Morrissey wrote, "While celebratory and utopic approaches to the exhibition are important I've chosen to write against this, at least on this occasion...": Morrissey, *op. cit.*

⁷ Murray, 'Next please ...'.

⁸ Murray, 'Guidelines'.

⁹ *ibid.*

¹⁰ Morrissey, *op. cit.*

Nor would readers of Bloch be surprised, as Bloch not only argued that the utopian function was to reveal “the Conscious and Known Activity within the Not-Yet-Conscious”¹¹ but also for art as “the Visible Anticipatory Illumination”.¹² *Terra Alterius: Land of Another* and *Turn the Soil* might be described, in Blochian terms, as “aesthetically attempted anticipatory illumination”.¹³

In respect of the second argument – that the concept of *terra alterius* is an effective novum for the consideration of a reconciled Australia – the reason *Turn the Soil* can provide insight into the concept of *terra alterius* is that even with the *Mabo* legislation as a driver, the majority of the *Turn the Soil* artworks and workshop scenarios still assume an eventual colonial political superiority over Australia’s Indigenous peoples. Weaver Philomena Hali “finds a sympathy between a Portuguese way of using whatever materials come to hand and the Aboriginal weaving techniques”,¹⁴ but the other works reflect engagement of the parental culture either directly with the land of Australia – for example, weavings that “match Latvian symbols with Australian flora [...] in secondary rather than the traditional primary colours”¹⁵ – or with contemporary Australia culture – for example, ornamented barbeque tools.¹⁶ Although several of the scenarios envisage a hybrid spiritual practice,¹⁷ and the Phoenician scenario describes a hybrid culture arising from the capacity of Phoenicians’ to act more sensitively towards Indigenous people than the British,¹⁸ the

¹¹ Bloch, *op. cit.*, p. 103.

¹² *ibid.*, p. 141.

¹³ *ibid.*, p. 146.

¹⁴ K. Murray, ‘Curators floor talk’, <<http://kitezh.com/soil/exhibit/ttstour.html>>, accessed 6 June 2005.

¹⁵ K. Murray, ‘Anita Apinis-Herman’, <<http://kitezh.com/soil/exhibit/ttszah.html>>, accessed 6 June 2006, describing Anita Apinis-Herman’s, *Dzimtene*, six weavings.

¹⁶ Vizma Bruns’s *Sparke Brown BBQ Tools*, Aluminium, two utensils, 40 x 9, documented at K Murray, ‘Vizma Bruns’, <<http://kitezh.com/soil/exhibit/ttszvb.html>>, accessed 6 June 2006.

¹⁷ Shao-lin (Australia colonised by Japan) is an “Asian version of Switzerland [with] a mixture of different peoples: Okinawan, Aboriginal, Chinese, Dutch, Japanese, and Ainu.”: K Murray, ‘Shao-lin’, <<http://kitezh.com/soil/p/jpschaolin.html>>, accessed 6 June 2005. “The state religion is a mixture of Aboriginal ritual and Shinto”: *ibid.* In Woomera (Australia colonised by the Vikings), Viking myth is updated as a result of contact with Aboriginal people and sites associated with the rainbow serpent: K. Murray and workshop participants, ‘Mad Max meets The Lord of the Rings’, <<http://kitezh.com/soil/sy/viking.htm>>, accessed 6 June 2006. In Shukkinak (Australian colonised by the Phoenicians), “Contact with Aboriginal mythology caused Shukkinak religion to develop in particular ways. The discovery of ‘women’s business’ strengthened the power of the female priestly class.”: Murray, ‘Shukkinak ...’. Though not really a hybrid spiritual practice, Lusitania (Australia colonised by Portugal) gives rise to the first Aboriginal Pope: K Murray, ‘Lusitania’, <<http://kitezh.com/soil/bh/lusitania.htm>>, accessed 6 June 2005.

¹⁸ “As successful traders in many lands the Phoenicians were possessed of a certain innate sensitivity to contact with other cultures, so relations between these colonists and the Aborigines developed with a peacefulness that us descendants of a barbaric European culture are almost incapable of imagining. The two groups grew close after a time through a commerce in myths and stories, in ritual objects and in deep

Russian example is more typical. This Russian Australia, Yuzhem, says Murray, “turns out to be a way of exploring Australia as a blank slate for tired nations to realise a potential hampered by traditions.”¹⁹ Significantly, it took the direct question of the Canberra workshop, “What if no-one colonised Australia?”²⁰ to generate another version of Australia in which colonisation might be said to be avoided. In this scenario, “either Australia gradually becomes an Islamic state, is exploited by ruthless operators keen to play on tribal rivalries, or develops into a utopian settlement where information technology merges with mythological dreaming”.²¹ Considering these exhibitions together, it would appear that the layered assumptions of Britishness and of colonisation are to be peeled back separately.

3 Colonisation retained and transcended

Despite an exhibition premise that explicitly invokes a ‘good’ or avoided colonisation, *Terra Alterius* did not resile from its colonised past. It has been shown that the concept of *terra alterius* was useful for imaging a reconciled Australia precisely because it focussed the re-imagination of Australia’s past on what was seen as inadequate in the present: the negative consequences of colonisation. It explicitly invoked the opposite, being an avoidance of or ‘better’ colonisation. Perhaps surprisingly then, none of the ways of being or encounter presented in the exhibition are unknown in the contemporary Australia resultant from colonisation, nor are they necessarily inconsistent with it. In contemporary Australia, as in *Terra Alterius*, there are national icons in the stewardship of Indigenous owners, bi-cultural families, cautious and empathetic encounters, negotiations over land, and potent hybrid forms.

This retention of the colonised state in the exhibition, despite its implicit rejection in the exhibition premise, means that the exhibition itself avoided the two impossibilities contained in the exhibition premise. These impossibilities are, as described in Chapter 5, first, the repeal of Australia’s postcolonial history and concordant restoration of Indigenous cultures to their nature prior to contact; and second, the reconstruction of the

metaphysical visions.” David Odell, ‘Stranded in Shamen-Hadashti’,
<<http://kitezh.com/soil/ml/ttsodell.html>>, accessed 6 June 2005.

¹⁹ K. Murray, *TTS News & Almanac*, No.5, 12 June 1997, <<http://kitezh.com/soil/ttsn12-6.html>>, accessed 4 April 2006.

²⁰ K. Murray, ‘Turn the Soil’, <<http://www.lib.latrobe.edu.au/AHR/emuse/Mabo/murray.html>>, accessed 27 August 2006; ‘Feedback’, <<http://kitezh.com/soil/track/index.htm>>, accessed 15 January 2007. See also the responses: Various, ‘Responses’, <<http://kitezh.com/soil/cn/response.htm>>, accessed 6 June 2005, and the material addressing the non-colonisation of Australia intended for Murray’s unpublished book, *Neverland*: Various, <<http://kitezh.com/neverland/index.htm>>, accessed 7 February 2007.

²¹ Murray, ‘Feedback’.

British as something other than they were, to a culture possessing the concept of *terra alterius* and the values it encapsulates. Here it is useful to contrast the nature of the retrospective utopia Oliver argues has been created by the Waitangi Tribunal (discussed in Chapter 5).

A future, already shaped by the prospective reversal of a history of loss, is discovered in the past, not (except by way of its denial) in the past that occurred but in the past that was promised. Both the promised past and the to-be-achieved future are characterised by self-determination, partnership, power-sharing, prosperity and stability, all within the parameters of an enhanced tribal polity. [...] At the heart of the Tribunal's depiction of a 'possible' past is a 'known' future, a kind of paradise lost at the dawn of colonial time.²²

Oliver criticises this retrospective utopia for its unfeasibility, describing it as “imperial outcome without the vices of imperialism”.²³ In comparison, the reconciled Australia in *Terra Alterius: Land of Another* was one of imperial vision achieved and transcended, not in the sense of a ‘good colonisation’ but in the sense that the colonisation was realised and then transformed. The imperial vision in all its imperial vice is a constituent part of the utopia. This is because it is a constituent part of the past and present that compel the utopian vision. *Terra Alterius* was, therefore, truly a vision of a reconciled Australia.

This quality of either denying or transcending the past suggests that the forum in which a counterfactual strategy is deployed is crucial to its capacity to perform the utopian function. The retrospective utopia attributed to the Waitangi Tribunal is, as discussed in Chapter 4, an alternative history created as by-product or means of effecting reparation and redress as constituent parts of reconciliation. The other Australia, *Terra Alterius*, in the exhibition *Terra Alterius: Land of Another* was a “productive premonition” of a reconciled Australia.²⁴ Thus, the benefit of a counterfactual exhibition over an alternative history for utopian purposes is that it allows full force to the transcendental potential of the utopian function. Its benefit over an alternative history (and probably also over a counterfactual history) lies in the manner of its link to history: counter-intuitively, by placing itself firmly outside the realm of history it is able to explore the future in a way that completely contains the past. Because it is fully constituent of the past and present, it is a true deployment of the utopian function; it is truly a productive premonition rather than a wish. Because it is perceivable as continuous with reality, the presented utopia is also perceivable as plausible and possible. It is perceivable as a real alternative to be usefully contrasted with the inadequate present.

²² Oliver, *op. cit.*, p. 26-27.

²³ *ibid.*, p. 27.

²⁴ Bloch, quoted by Thrift, *op. cit.*, p. 66.

The retention of the colonial past also goes to the question of what sort of Aboriginality, what sort of Indigenous way of being, might be present in a reconciled Australia. The exhibition never found a way to do what the Waitangi Tribunal is charged with seeking to do – to restore a pre-encounter Indigenous way of being. Instead, the works in the exhibition showed the bi-cultural lived reality of Indigenous lives. The effect was to suggest that Aboriginal Australia is changed. The effect of the works emphasising encounter was to suggest that it is now incumbent on non-Indigenous Australia to change or to continue to change.

The reconciled Australia presented in *Terra Alterius: Land of Another* has been described here and in Chapter 5 as one less distinct or determined in its form than in its processes and its diversity, and one that has transcended rather than renounced its colonised status. The basis of these processes would seem simple: respect for Indigenous people and Indigenous culture, as described by Betty Little, and a spirit of generosity, an embrace of difference, as described by Joanna Mendelssohn. The effect of the works in *Terra Alterius: Land of Another* was to suggest that a reconciled Australia is a real possibility. Comparison of *Terra Alterius* with contemporary Australia suggests that if a reconciled Australia is to be achieved, it will be achieved on one level by personal interaction – the making of friendships and families; and at another by the interaction of the instruments of the former coloniser and the former colonised – by the similarities and differences between such things as the common law and Indigenous law, Aboriginal and non-Indigenous art, and *by the changes wrought in them*. This comparison also suggests that a reconciled Australia may need to be made and remade, just as dispossession is, by individuals and institutions in each generation.

C Counterfactual exhibition as affective politics

How the curatorial strategies employed in *Terra Alterius: Land of Another* combined to operate as a ‘productive premonition’ of a reconciled Australia can be explained by Bloch’s discussion of art and utopia. The fit between Bloch’s philosophical discussion and the curatorial strategies used is so tight that the exhibition could be seen as an experiment in putting the theory into practice. However, the curatorial strategies were not developed with knowledge of Bloch’s work or in response to it. Rather, each curatorial strategy was a direct response to the political catalysts or artistic contexts of the exhibition.

The catalyst and primary context for the exhibition was the dispossession of Australia's Indigenous peoples, the consequences of this dispossession and the uncompleted reconciliation of Australia's Indigenous and non-Indigenous peoples (see Chapter 2). A number of the ideas and strategies employed were direct responses to this context: the concept of *terra alterius* as an opposite to an Australia conceived of as *terra nullius*; the attempted creation of another Australia, *Terra Alterius*, based on a counterfactual premise; the staging of this creation as an act of imagination and exploration.

The primary artistic context of the exhibition was an Australian art in which Aboriginal painting is now the mainstream and benchmark but that is also alert to issues of appropriation (discussed in Chapter 3). The strategies of realising the exhibition by a multiplicity of vision and active creation (including the work of the Indigenous Reference Group), the grounding of the exhibition in affect, and working within Indigenous protocols were developed in response to these contexts. They were also responses to key curatorial challenges: How to restage encounter within a colonial context in a way that is not appropriative yet true to the ambitions of the exhibition? How to intensify the Aboriginal presence in the exhibition and negotiate the conceit that it might be possible to access or approximate pre-encounter Aboriginality?

It was by no means certain that the exhibition would achieve its aims or that these strategies would be successful in fact. After the fact, it can be seen that the exhibition strategies operated to achieve the exhibition aims, in anticipated and unexpected ways.

The exhibition had a clear utopian impulse, that opened it to (the non-Blochian) criticism of being idealistic and necessarily doomed. The strategy of multiplicity of vision and active creation that was developed in a response to concerns of voice and appropriation also operated to resolve many of the problems attendant on utopian visions. It was anticipated that the multiplicity of vision and active creation would avoid issues related to the totalitarian potential of utopian vision. Hindsight reveals the openness of this strategy as a major contributing factor to the exhibition's performance of the utopian function.

The counterfactual creation of another Australia was always flawed by the conceit that the British would have had to be other than they were and the impossibility of re-staging

encounter. There was tension too between the possibilities attributed to the exhibition space as a space outside of the terrains of law and politics, and the exhibition space's status as a western instrument with no place in traditional Aboriginal culture. It was not anticipated, but with hindsight it seems that the tensions implicit in the counterfactual premise were countered by the deployment of it in an exhibition. The exhibition space operates outside the constraints of history, in the sense that it is not bound to the factual, causal and narrative qualities that are commonly and traditionally attributed to history. Within this space, the effect of giving expression to a counterfactual premise for utopian purposes is not to deny the past but to transcend it. The premise is an imagination of an implausible past but the utopian future created by the exhibition itself is a credible extension of reality.

The strategy of grounding the exhibition in affect was intended to support the experiential ambitions of the exhibition and to act as a partial counterweight to the Western art constructs within which the exhibition appeared. The latter was a response to Aboriginal painting, which was seen as often eliciting understanding of the power of what is viewed independent of cultural knowledge, a capacity attributed to its affective operations and seen as the source of its political and artistic success (as discussed in Chapter 2).

The grounding of the exhibition in affect turns out to be have been crucial to the exhibition's success: by the employment of this strategy in combination with the others, *Terra Alterius: Land of Another* became an act of "affective utopianism".²⁵ Just why this staging might be successful is explained by Bloch. His same discussion also provides insight into the tension in the conception of *Terra Alterius: Land of Another* of the imaginative exhibition space as a 'safe place, apart from the demands of law and politics' and yet at the same time able to make a political contribution. Bloch observed that "in all the great systems of reason in the rationalistic modern age, the aesthetic component is omitted."²⁶ He then asks, "But what is the meaning of the enormous impact of these [artistic and literary] works in form and content in regard to the world and legitimate issues?"²⁷ His answer is as follows.

[A]rtistic illusion is generally not only mere illusion but one wrapped in images, a meaning that only portrays in images what can be carried on, where *the exaggeration and the telling of*

²⁵

ibid.

²⁶

Bloch, *op. cit.*, pp. 142-143.

²⁷

ibid., p. 145.

stories (Ausfabelung) represent an anticipatory illumination of reality circulating and signifying the active present (Bewegt-Vorhandenen), in an anticipatory illumination, which portrays things in a specifically aesthetic immanent way. Here, individual, social, and also elemental events are illuminated that the usual or sharp senses can barely detect yet. [...] Anticipatory illumination itself is attainable by virtue of the fact that the craft (Metier) of propelling something to the end takes place in dialectically open space, where all objects can be aesthetically portrayed. To portray aesthetically means to be more immanent and accomplished, to be more elaborate, more essential than in the direct and sensual or direct and historical presence of this object. This elaboration, as anticipatory illumination, also remains an outward appearance, but it does not remain fantasy. Rather, everything that appears in the art images is sharpened, condensed, or made more decisive, and this is rarely shown by reality that is experienced. This decisiveness is based in the subjects themselves, makes the art with a substantiated illusion recognizable when looked at in the theatre as paradigmatic institution. This art remains virtual but in the same sense as a mirror image is virtual; i.e., it reproduces an object, outside of itself, in all its depth onto a plane of reflection.²⁸

Bloch summarises this argument in a statement that also describes the ambition and limits of the exhibition *Terra Alterius: Land of Another*.

Thus, the solution to the question of aesthetic truth lies in this direction: art is a laboratory and also a feast of accomplished possibilities plus the experienced alternatives within it while the performance as well as the result take place in the manner of the substantiated illusion, i.e., of the worldly completed anticipatory illumination.

In great art, exaggeration as well as telling stories are most visibly applied to tendentious consequence and concrete utopia. Whether, of course, the call for perfection—we could call it the godless prayer of poetry—becomes practical to some degree and not only remains within aesthetic anticipatory illumination is not for poetry to decide but for society.²⁹

The affects of beauty and sublime awe, the approach to encounter, are also placed within this schema.

Wherever art does not play into the hands of illusion, there beauty, even sublimity, is that which mediates a presentiment of future freedom. Often rounded, never closed, Goethe's maxim of life is also valid for the arts—with the accent of conscience and content placed ultimately on openness.³⁰

Thus it is the aesthetic and affective nature of the 'attempted anticipatory illumination' that avoids the conceit of 'good colonisation' embodied in the counterfactual exhibition concept. The exhibition concept of *terra alterius* was crucial for the naming of the desired utopia, one opposite to the dispossession embodied in the term *terra nullius*, but it was the collective imagination of *terra alterius* in an exhibition – which provided freedom from history in addition to law and politics and yet kept it tethered to the present and thereby to

²⁸ Bloch, *op. cit.*, p. 146.

²⁹ *ibid.*, p. 147-148.

³⁰ *ibid.*, p. 148.

the results of history – that gave the imagined utopia its particular quality of ‘real possibility’. It looked so much like the present because it was of the present. It was utopian because it was the present “shorn of its defects and impurities”,³¹ at least in respect of the aspect of the present identified as inadequate. It had political utility, because it provided a clear vision of something near to hand but only achievable by political will. It had political effect because it not only gave clearer vision, but was also affectively communicative.

Nigel Thrift’s 2005 call for political practice of this nature is discussed in Chapter 2. Thrift describes the contemporary enlargement of the envelope of the political to include affective operations and then argues that this requires a progressive political agenda creating a politics of affect.³² A key aspect of the agenda Thrift suggests is engagement with “a productive forward sense of life [...] which must necessarily be, in part, an affective exercise of what Bloch calls ‘productive premonition’”.³³ Thrift argues for affective politics to augment rather than replace traditional politics, for it to be the “‘research and development’ that will allow us to expand the envelope of the political and so both restore the spaces of moral and political reflection that ‘man’ has collapsed and bring new forms of politics into being.”³⁴

The research and development conducted by *Terra Alterius: Land of Another* predates Thrift’s call (Murray’s conception of *Turn the Soil* predates it by a full decade); nevertheless it is useful to place the exhibition within Thrift’s schema. As described in Chapter 2, what Thrift is calling into being is not an approach that privileges reason over emotion, modern over pre-modern, a factual domain of politics and law over an imaginative domain of art. Nor is it one that mixes these without discernment. It is an approach that values, comprehends and draws on each of these things and formulates them in diverse relationships and for productive purposes. A world characterised by this approach could be seen as reconciling its constituent parts and pasts as developed by encounters between its constituent peoples and world views. Such a world or intellectual project is not new –

³¹ Oliver, *op. cit.*, p. 27.

³² “[A]ll kinds of corporate and state institutions are trying to formulate bodies of knowledge [...] of complex states of affective becoming, ‘regimes of feeling’ which are bound to become constitutive of new political practices. It therefore becomes incumbent on those forces which regard these developments as rather worrying – and indeed as likely to lead to a new kind of velvet dictatorship – to produce their own analyses and political agendas.” Thrift, *op. cit.*, p. 66.

³³ Thrift, *op. cit.*, p. 66.

³⁴ Thrift, *op. cit.*, p. 73.

Bloch, for example, in seeking to rehabilitate utopia and explain the power of aesthetics in the world, was an inhabitant; it is just not dominant.

Thrift's definition of affective politics and Bloch's description of 'productive premonition' are entirely consistent with the aims, execution and effect of *Terra Alterius: Land of Another*. Accordingly, it is possible to describe *Terra Alterius: Land of Another* as a productive premonition of a reconciled Australia and to categorise this production as an act of affective politics. The exhibition achieved its aim to provide a means of exploring the political and social terrain of a reconciled Australia. The curatorial strategies proved to be successful in fact and explicable by theory.

D The continued utility of the concept of *terra alterius*

The utility of the concept *terra alterius* may prove to be limited to Australia and to a particular time in Australia's history. Chapter 2 describes how the concept of *terra alterius* was conceived of as an opposite to a particular understanding of the concept of *terra nullius* prevalent in Australia from about 1992 to perhaps mid-2005. This was a popular understanding of *terra nullius* as a legal doctrine employed by the British to acquire sovereignty over Australia, on the basis that the land was uninhabited or effectively so. That chapter also describes the call for disuse of the term *terra nullius* in respect of Australia, which would suggest that the (herein argued) utility of the concept *terra alterius* and the exhibition for Australia would not endure. However, in Chapter 3 it is argued that use of the term will not be abandoned, but clarified. The argument is made that the concept of *terra alterius* survives attacks on the term *terra nullius*, first, because the term *terra nullius* will itself survive them, and secondly, because although the concept *terra alterius* derives evocative power from juxtaposition with the term *terra nullius*, the concept *terra alterius* is something more than a straight opposite to *terra nullius*.

Whether the concept *terra alterius* would be useful to other countries seeking to explore debates about the rights and relationships of their Indigenous and non-Indigenous peoples could be expected to depend on the understanding of and uses made of the term *terra nullius* in the particular country. Candidates for countries in which the term *terra alterius* might be useful can be drawn from those identified by Gosden as colonised in the style of *terra nullius*, or in which debates about *res nullius* formed part of the colonisation. However,

it is not clear whether any of these countries conceive or have conceived of themselves in terms of *terra nullius* to the same extent as Australia. For example, New Zealand is characterised by Gosden as having had a '*terra nullius*' style colonisation, but there the term is associated with Australia and would be most unlikely to find resonance within the population. In Canada, the term is used to some extent, as evidenced by the book title, *People of Terra Nullius: Betrayal and Rebirth in Aboriginal Canada*,³⁵ and by use of the term in legal and reconciliation discourses.³⁶ However, without further research beyond the scope of this thesis, the precise meaning conveyed by this term, the extent of its use and its resonance with the public is not clear.

Accordingly, despite the natural law geneology of *terra nullius* and international usage of the term as a means of categorising the legal status of land and a style of colonisation described in Chapter 2, it may be that the utility of the concept *terra alterius* is limited to Australia. It is speculated that the term has not, in other countries, been similarly used and understood in the telling of national history and in narratives accompanying the legal development of native title, so as to be of similar utility in evoking an opposite to dispossession or disrupting assumptions about the present.

³⁵ B. Richardson, *People of Terra Nullius: Betrayal and Rebirth in Aboriginal Canada*, (Washington: University of Washington Press, 1994).

³⁶ See, for example, M. Asch, 'From Terra Nullius to Affirmation: Reconciling Aboriginal Rights with the Canadian Constitution', *Canadian Journal of Law and Society*, Volume 17, No 2, (2002).

Chapter 7 Conclusion

The conclusion of this thesis is that the exhibition *Terra Alterius: Land of Another* was a useful approach to the debates surrounding the rights and relationships of Indigenous and non-Indigenous Australians, particularly for the focus it brought to the question of how we might shape our shared future.

By creating another version of Australia, *Terra Alterius*, the exhibition provided viewers with a means of exploring the political and social terrain of a reconciled Australia. *Terra Alterius* was characterised by ways of being and ways of approach evident in contemporary Australia but not characteristic of it. The familiarity of *Terra Alterius*, particularly its sense of being continuous with the Australia arising from the colonial past, imparted a sense of plausibility to the nature of this reconciled Australia and of the possibility of its realisation. The effect of the exhibition is, in Blochian terms, one of ‘anticipatory intelligence’ or ‘productive premonition’ – the revelation of the desired utopia in the here and now.

The curatorial strategies employed to realise the exhibition were successful in fact. The concept of *terra alterius*, the ‘What if?’ re-imagination of Australia’s past, the multiplicity of vision and active creation, the grounding of the exhibition in affect, and the working within Indigenous protocols were strategies developed in response to the particular political and artistic contexts of the exhibition. These strategies combined to perform the utopian function described by Bloch. In particular, the tensions implicit in the counterfactual premise – the impossibility of either a ‘good colonisation’ or of re-staging encounter – were countered by the deployment of it in an exhibition and by the grounding of the exhibition in the affects of beauty and sublime awe. It was the collective imagination of *Terra Alterius* within an exhibition space and outside the factual, causal and narrative attributes of history that enabled *Terra Alterius* to retain rather than deny the colonial past, and thereby to possess the qualities of plausibility and possibility. It was the positive affective operations of the artworks that enabled the ways of being and approach present in *Terra Alterius* to be experienced.

The political utility of the exhibition’s affective utopianism is highlighted by Thrift’s argument for a progressive agenda for a politics of affect in response to the increasing use of affective operations within politics.

The concept of *terra alterius* was crucial to the realisation of the exhibition, clearly identifying the nature of the desired reconciled Australia as an opposite to Indigenous dispossession. The concept of *terra alterius* is likely to survive attacks on the term *terra nullius*, first, because the term *terra nullius* is likely to survive them, and secondly, because although the concept *terra alterius* derives evocative power from juxtaposition with the term *terra nullius*, the concept *terra alterius* is something more than a straight opposite to *terra nullius*. The concept *terra alterius* is not likely to be useful in debates surrounding Indigenous and non-Indigenous rights and relationships in other countries, for example, those whose colonial history may be described as *terra nullius*, unless these debates have been previously and widely conducted in terms of *terra nullius*.

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