



terra nullius

A law relating to new land discoveries and how they were formally recognised by European powers. This law gave countries the authority to govern new territories across the world.

*Land that is legally deemed to be unoccupied or uninhabited
Land that is unowned*

From 1770, the power and authority of land ownership of the entire Australian continent came under British colonial rule, leaving the native inhabitants with no property rights in their own land.

How did this happen?

When setting out on his first voyage of discovery, Captain James Cook was given the task to head south and search for the great southern continent called New Holland. His responsibilities included using his skills as an excellent cartographer to map and chart parts of the coastline as he observed.

In addition to this, the British government gave Cook secret orders; to endeavour to cultivate a friendship and alliance with any people who may be living there, for the purpose of gaining land for possible colonisation.

These orders gave Cook clear instructions to not claim any land if he saw that it was inhabited. Instead, he could negotiate with the natives to purchase land using any resources which was considered acceptable to both parties of the agreement. Resources could include trading goods, offering protection from the British government, or currency.

This was the procedure that was commonly taken in other parts of the world where agreements would be made to buy land, such as from native American Indians, or for the purchase of land in west Africa needed to transport convicts to and begin colonisation. In fact, *terra nullius* was not a standard policy used to claim colonial land beyond Britain.

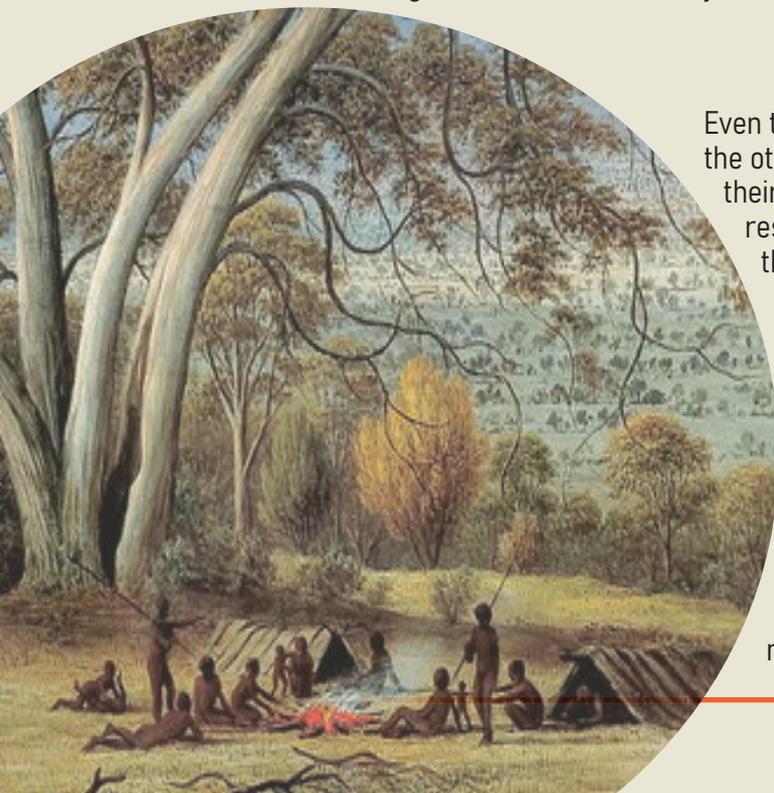
James Cook could take possession of land for His Majesty, **only if he found the land uninhabited.**

After landing in Botany Bay 1770, Cook observed a sparsely populated land, noting sightings of small native gatherings sitting around campfires and various groups fishing in nearby waters. He recorded observations in his journals, including “the natives do not appear to be numerous.” Joseph Banks, the accompanying botanist also scribed in his journal “this immense tract of land, considerably larger than all of Europe, is thinly inhabited” They incorrectly determined the remainder of the continent must be ‘totally uninhabited.’

Even though they had not travelled to the interior and across to the other side of the land to confirm this, Cook and Banks based their conclusions on imagining how limited food or fresh water resources would be available for anyone to successfully survive the harsh environment. Therefore, Britons believed Australia was a mostly empty continent.

Countries throughout Europe agreed that it was not lawful for settlers to claim inhabited land. *But they had never considered what they could do with land that appeared to be sparsely inhabited.*

In addition to this, the British believed the aborigines were not very technologically advanced, particularly in agricultural practices. They did not appear to know about the skills of cultivation as they were hunters and gatherers, not farmers.





The lack of evidence of native farming was also an important point in determining legal claim to the land, as the British believed engaging in agriculture gave property rights to landowners.

By the time the First Fleet arrived in 1788, British law had still failed to recognise Australian indigenous populations, which would now be subject to the laws of the Crown.

As the colonists grew in number, they cleared the land for farming. New laws in property rights were established and brutally enforced. Highly influential and powerful leaders of the colonies decided the location of their new land and how much they chose to claim for themselves. Inevitably, indigenous people would cross newly acquired settler's property, which was now considered unlawful. The crime of trespassing resulted in severe disciplinary action.

Soon, many of the indigenous people occupied the prisons alongside the convicts and in most cases, they were killed as murder was considered a rightful action by the newcomers when defending their land rights.

Colonial governments established a large police force, consisting of military men and convicts, to split up aboriginal groups and move them on to other places to avoid conflict.

After initial tolerance and curiosity, indigenous people found they were not welcome in their own land and their populations suffered through introduced diseases and illness, such as smallpox and viral infections. They found themselves in constant conflict with the colonisers.

Within the first 100 years, the indigenous population was severely reduced, and the British government finally decided to protect the people who were left. Official policies created at the time included instruction on how to manage Aboriginal and Torres Strait Islander people, including forcing them to live in designated areas called reservations. The British establishment imposed new social and religious order, placing indigenous ancestral and spiritual beliefs in danger of being lost forever.

Terra nullius remained the law in Australia up until 1992. After decades of fighting for recognition of indigenous land rights, the **Native Title Act** was passed in 1993 by Australia's High Court.

INQUIRY TASKS

Terra nullius

Write an explanation of your understanding of this law, including how the British government of the time used it against Australian indigenous populations during the first twenty years of European settlement.

MABO and Native Title

The **Mabo Case** was a significant legal case in Australia that recognised land rights for indigenous people. Investigate the Mabo Case Act and write about its importance and impact on how Australia manages land claims today.

Watch this video to understand how a historic decision was handed down for Australian indigenous peoples:

[Mabo Day and Native Title: Who was Eddie Mabo and what was his legacy?](#) 3:28mins



Research the **Native Title Act** passed in 1993 after the High Court overturned the doctrine of terra nullius in handing down its decision in the Mabo Case.

Write a report on what the Act is about and explain the impact it has had on both indigenous and other Australian communities to this day.

FURTHER RESOURCES

[The National Museum of Australia](#)

[My Place - 1788 Waruwi](#)

[Australian Together - Our History](#)

