



**DESERT(ED)
SPACE AND
ENVIRONMENTAL
JUSTICE**

**ADDRESSING THE
ONGOING COLONIALITY
OF SPATIAL IMAGINARIES
IN DEVELOPMENT**

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Desert(ed) Space and Environmental Justice

Land dispossession has been, and continues to be, a pressing issue in environmental justice as it affects the most marginalised communities around the world. This essay starts by discussing the concept of terra nullius, its definition, origin and the way that the idea continues to be adopted as a justification mechanism for land dispossession globally. This essay will then explore a series of recent and contemporary examples which reveal how the idea of terra nullius, even though the term is no longer explicitly used, has served to forward colonial land dispossession of Indigenous and marginalised groups. In particular, this essay draws from the case studies of the dispossession of the Indigenous Sámi peoples in Norway (Tuori, 2015), the construction of national identity of Singapore which ignores the Indigenous Malay population (Barr, 2021) and the ongoing large-scale development projects in Ethiopia which have led to large-scale dispossession and relocation of local populations (Makki, 2013). Ultimately, this essay will make the case that the trope of empty space continues to be influential in cultural, economic and governance contexts and results in dangerous assumptions and misconceptions about the relationships of peoples and their land around the world.

Based on the concept in Roman Law of *res nullius*, or ownerless thing, the terra nullius narrative sustains that if land is not owned, or sufficiently utilized, it can then be taken by occupation (Tuori, 2015). This notion was translated into early-modern international law to justify the occupation of 'empty' territory by states.

The latest developments in the understanding of empty space and occupation were intrinsically linked to modern ideas of progress in the colonial and capitalist expansion from the 17th to the 20th century (Fitzmaurice, 2014). The Agricultural Argument supported by Locke and other philosophers in the 17th and 18th century sustained that land needs to be made 'productive' through human activity and that only this way it can acquire value and achieve progress (Hendlin, 2014). This understanding served colonial powers to question the extent to which Indigenous groups were making sufficient use of the land and therefore justify its occupation. I argue there is an inherent and problematic fallacy to the logic of defining space as empty and devoid of human life when, in fact, this claim is completely misguided. Indigenous and mobile pastoralist groups around the world were not acknowledged as owners of the land they inhabited as they were seen as less than human (Hendlin, 2014). The *terra nullius* discourse essentialized their naturalism and represented them as passive in nature and therefore not making productive use of the land.

Practices of Indigenous land dispossession have varied across time and space. A recurring theme, however, is the association of Indigenous with uncivilised and therefore not having rights (Tuori, 2015). This became evident in the colonisation of Australia, as it was effectively declared empty territory, neglecting the Indigenous hunter gatherers which resided on the land (Tuori, 2015). Tuori (2015) compares the colonisation of Australia to the case of the 19th century land dispossession from the Saami peoples of Lapland (a regions which extends across the territories of Norway, Finland, Sweden and Russia) to illustrate how the practices of colonisation and land dispossession were

not exclusive to the Global South and occurred even within Europe. Saami people were seen as nomadic savages, who were represented in opposition to the civilised agricultural settlers. In 1848 Norway declared state ownership over the Indigenous lands of the Saami people of Lapland that were within their state borders, using the terra nullius doctrine to justify this decision. These examples reflect the cultural context in which the trope of empty space can be instrumentalized to justify Indigenous land dispossession. Because the territory was considered 'empty,' it could be legally occupied rather than obtained through conquest.

The notion of Terra nullius has shaped the way societies have viewed the relationship between people and the land for centuries, eventually becoming a social norm in some contexts. This perspective has been employed after the establishment of settler colonialism and land dispossession in cultural contexts related to maintaining and solidifying national identity. A recent study of this practice is provided by Barr (2021) who examines the case of state-driven national identity building efforts in Singapore since the 1960s. The Malays have lived in the territory that is now Singapore for millenia prior to the British colonisation of the territory and, as such, Malay Singaporeans are considered the Indigenous peoples of Singapore. Barr (2021) analyses the centuries of pre-colonial Malay history that have been excluded in historical accounts and the way in which the Malay community has been reframed as an immigrant, as opposed to an Indigenous community. Omitting the early Malay population from historical accounts facilitated the representation of terra nullius in what we now recognize as Singapore. The creation of a new post-colonial national identity was crafted by the country's rulers following the retreat of the British colonisers. This

identity was characterised by a strong emphasis on the ideas of modernity and meritocracy. In this example, the trope of empty space is ‘instrumentalized’ by the state in order to justify the modern Singaporean state and national identity.

The dispossession of Indigenous land is one important form of ‘land grab’ which is justified through the use of the *terra nullius* doctrine. However, Gilbert (2015) suggests that a new form of land grabbing today employs the same rationale based on the trope of empty space. Contemporary land grabbing sits within a global economic context and is characterised by fast, large scale and long-term contracts for commercial and industrial purposes such as biofuel cultivation, tourism and agribusiness. The intersection between the cultural and economic contexts of land grabbing is explored by Makki (2013) who argues that economic development projects in Ethiopia are facilitated through the dispossession of land from local communities. Makki (2013) maintains that *terra nullius* representations are used to justify large-scale enclosures of land which aim to exploit the territory’s economic value. For example, the regional government of the Gambella region in Ethiopia ceded parts of a former national park with important ecological value and spiritual significance for the Indigenous communities to private investors for the development of large-scale infrastructure projects. This case study is significant because it clearly reflects how the trope of empty space can be instrumentalized as an ‘opportunity’ in economic contexts to encourage investors and generate economic value from a space which was previously portrayed as unproductive.

This particular example is also useful to examine the intersections between the economic and governance

contexts, which further serve to exemplify how the *terra nullius* narrative can be used to justify and enact policies of occupation. Governance, in this context, refers to the various actors, institutions, cultural norms and power dynamics which operate at various scales (Bevir, 2009). Considering the governance context prompts us to question who is doing the ‘instrumentalizing’, where is this happening and with what purpose. In the case of Ethiopia, Makki (2013) describes the involvement of national and multilateral institutions such as the World Bank in implementing productivity-enhancing technologies in what is allegedly *terra nullius*. The relationships between actors involves direct cooperation between the state and large-scale investors, engaging in a top-down process of land reform which excludes Indigenous communities. These Indigenous peoples may have other forms of governance over the land which derives its value from the practices and interactions involving non-human entities such as spirits and energies (Humphrey, 1995). This illustrates how different social agencies involved in the governance contexts can become involved with the way space is perceived, including as an ‘empty’ space, and consequently how and by whom it is utilised (Migelbrink et al., 2013).

The spatial politics motivated by the *terra nullius* doctrine are only addressed in human rights frameworks to a very limited extent. This can be traced back to the fact that land rights are not normally associated with human rights, but with property rights (Gilbert, 2014). Indigenous communities are systematically disadvantaged from these property rights. Mobile pastoralist communities, for example, are still vulnerable to land grabs and land dispossession, justified through the trope of empty space (Makki, 2013).

This is due to mobile pastoralist ownership of land not being recognised in most legislations and land tenure systems (Gilbert, 2014). International law is inherently skewed in favour of individual property rights for productive agricultural entitlement (Fitzmaurice, 2014). However, there have been some recent legal developments in the international frameworks which directly address the rights of Indigenous peoples to their land. The most significant of these is the Indigenous and Tribal Peoples Convention of 1989 (No. 169) of the International Labour Organization (ILO). Up to this day, this is the only legally binding international treaty on human rights which directly addresses mobile pastoralists and is open to ratification (ILO, 2019). The Convention 169 was established with the overall purpose of overcoming discrimination against Indigenous peoples and ensuring the legal and safe use of their customs, traditions and institutions (ILO, 2009). In 2007, another important development took place as the UN passed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Nevertheless, as opposed to the ILO Convention 169, the UNDRIP does not mention nomadic people specifically and is legally non-binding. Overall, it can be argued that very rarely have land rights concerns been addressed from a human rights point of view (Gilbert, 2014).

Where land rights have been addressed through a human rights lens, it is also important to note that there have been significant challenges associated with the ratification and implementation of these land-based rights. The year 2019 marked the 30th anniversary of the ILO Convention 169 and, thirty years later, only 23 countries have ratified the agreement, most of them in Central and South America. The USA, Canada, Australia, New Zealand and South Africa, all countries which

Tuori (2015) highlights for their employment of the *terra nullius* doctrine as a justification for Indigenous land dispossession, have not ratified the agreement. Furthermore, Larsen (2020) critically interrogates the Convention 169 framework and its implementation. The study suggests that groups and governments continue to challenge the existence and definition of 'Indigenous' to justify non-ratification and provide land rights. Mobile pastoralists of the South Gobi province in Mongolia, for example, highlighted in their letter of complaint (2013) to the CAO that the company involved in the Oyu Tolgoi mining project argued that mobile herders had no access to claim access to land because they were not considered an Indigenous ethnic minority.

Even if rights are granted on paper and agreements are ratified, there may still be "significant politics of influence, voice [and] redistribution" (Larsen, 2020: 97) involved. Different actors involved in the governance context may have different interpretations of the Convention 169 provisions, especially around participation and consultation. Importantly, too, is the disconnect between Indigenous priorities and the policies advanced by country delegations due to the absence of mechanisms and spaces for Indigenous organisations to directly engage with ILO systems. Gilbert (2015) argues that this legislation is incredibly technical and opaque, designed in a way which favours investors over local communities. This essay, therefore, argues that the spatial politics of *terra nullius* which disproportionately affect Indigenous communities have been addressed only to a very limited extent in human rights frameworks. This may be firstly attributed to the lack of such agreements and secondly to the critical issues associated with their ratification and implementation of these.

iTerra nullius, as a political concept, acquired an important performative dimension in justifying colonial land dispossession (Hendlin, 2014). This essay sustains that the trope of empty space, which was more overtly utilized for colonial and capitalist expansion from the 16th to the 20th century (Fitzmaurice, 2014), continues to be influential in cultural, economic and governance contexts. Together, the examples outlined in this essay show how the cultural, economic and governance contexts are not mutually exclusive spheres. Ultimately, the trope of empty space has been, and continues to be, instrumentalized in a multiplicity of contexts as a means to justify and enact specific policies and beliefs related to the occupation of land. The large-scale land acquisitions which continue to take place today across the Global South (Makki, 2013) disproportionately affects the more than 5,000 distinct Indigenous peoples around the world (ILO, 2009). These uneven spatial politics motivated by terra nullius have only been addressed by human rights frameworks to a very limited extent. Most noticeably, this has been done through the ILO convention 169 and the more recent UNDRIP. These frameworks, however, also involve issues related to their ratification and implementation which undermines their objectives. It is therefore vital to keep improving data collection, analysis and dissemination to inform policy databases and promote public policies that promote Indigenous peoples' rights to land (ILO, 2019). Understanding how the trope of empty space is instrumentalized is but the first step in addressing the spatial politics which it constructs and ultimately moving towards a more inclusive, sustainable and just future.

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