

# Utopia as “No-Place”: Utopias, Colonialism and International Law

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‘If Utopia is a paradise for its own inhabitants, it is causing life to be very much like hell to all other nations.’ (Avineri 1962)

## 1 Introduction

Etymologically, utopia is both the no-place (*ou-topos*) and the good-place (*eu-topos*). Across international and domestic law, ideas of the good-place or the better-place each inform, inspire and drive political and legal reform projects. Within international law, famously, Martii Koskenniemi coined the binary that he argues underpins international law – Apology or Utopia (Koskenniemi 2006, Cassese 2012, Nicholson 2018) – while Phillip Allott offers his own utopia for international law, *Eunomia* (Allott 2001, 2016).<sup>3</sup> Domestically, in Bolivia for example, feminist and Indigenous utopian-thinking such as the ‘Political, Feminist Constitution of the State: The Impossible Country We Build as Women’ written by the *Mujeres Creando* collective formed part of lobbying for constitutional change (Galindo and Creando 2022). From Walidah Imarisha and adrienne maree brown’s ‘visionary fiction’ that underpins their Black feminist activism (Imarisha 2015, Williams 2015), to utopian feminist manifestos, alongside draft constitutions as exercises in utopian-thinking, such as those led by women activists in

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Australia in the Women’s Constitutional Convention in 1998 (Karpin and O’Connell 2005, cited in Rubio-Marín 2020: 248), utopianism as both a literary and political genre has a close synergy with law and legal reform.

As feminist constitutional scholars, we have written about the potential of utopian-thinking in reconceptualising key tenets of constitutionalism – constituent power and democratic decision-making (Houghton and O’Donoghue 2020, 2023, Houghton 2023). Yet in doing this work, we recognise the need to ‘place’ or position ourselves. As two white western women, located within the Global North, we write from a place of privilege. We acknowledge that working within a tradition of feminist utopian literature and feminist speculative theory necessitates an interrogation of the colonial roots of western utopian projects. This article picks up the idea of ‘place’, and focuses not on the ‘good place’, but on the construction of ‘no place’ in colonial utopias.

Literary scholarship has long commented on the productive interrelationship between utopianism and colonialism (Kumar 1987: 423). For example, Jeffrey Knapp argues that More’s *Utopia* ‘contains perhaps the first Tudor attempt to elaborate a theory of colonialization’ (Knapp 1994: 21, Avineri 1962: 273).<sup>4</sup> Moylan suggests that utopian writers were reflecting the social experiments that were ongoing around them, be they state-backed companies engaged in colonial expansion, Christian religious adventurers such as the Puritans or Jesuits, fur traders, slavers, merchants, or writers of travel narratives (Moylan 1986: 4). Experimental utopian texts play out anxieties over the governance of territory and place, and sit alongside real utopian experiments (Denbo 2016: 147, Jones 2018). Fictional experiments can be seen across utopian novels where the Americas, but especially the islands of the Pacific and Australia, appeared to offer places where imagination could be used to terraform places into a utopia (Moylan 1986: 4). That this transformation included an inherent destruction of people’s lives and livelihoods remained uncritiqued in these fictional texts. Crucially, Moylan argues that these utopias formed part of ideology formation (Moylan 1986: 5). The reports of ‘discovery’, the civilising missions,

the mapping of land, and the legal opinions of Locke, Hobbes and Grotius as to the legal rights of the West over land and sea, as well as the opinions of the Pope over the Americas,<sup>5</sup> formed part of the ideological foundation of colonialism alongside literary utopias. As one iteration of the development of colonial ideologies, Henry Neville's *Isle of Pines* acts as a warning to colonisers about not doing colonisation properly, building on the idea that fictional utopias offer lessons for real-life colonial experiments. In this article, we bring this discourse on the relationship between utopias and colonialism and place it in dialogue with international legal scholarship on the role of international law in colonial practices. By placing utopias and international law in their contexts, and reading them together, we recognise that they inform and are informed by colonial exploration, forming a co-constitutive relationship (Gevers 2021).

In this article, we consider early modern western fictional utopias, written by men in the 16th and 17th centuries. One resonance across the examples chosen is the vague geographical location of the fictional utopias; each text is situated in or around Australasia and the Pacific. Thomas More's *Utopia* was published in 1516, just as the era of colonialism accelerates and Utopia is imagined to be somewhere in the Pacific Ocean (Marks 2022). Francis Bacon wrote his utopia, *New Atlantis*, in 1626, less than twenty years after Hugo Grotius' *Mare Liberum*,<sup>6</sup> and just as the first Europeans landed on mainland Australia (Hempel 2019: 114). Bacon's *New Atlantis* is set somewhere in the Pacific Ocean, in a place that is beyond both Great Atlantis (America) and the Orient, that is *incognita* (Jowitt 2018: 132). This is important in our context as *Terra Australis* had been *incognita* in this region since antiquity. The choice of Atlantis is also pointed as it too refers to antiquity and to a no-place that does exist but is hidden (Tozer 1971: 167). In *New Atlantis*, we have an English imaginary of the colonisation of the Pacific region before the English had navigated there but where trade routes were rapidly expanding (Jowitt 2018: 129). Henry Neville's *The Isle of Pines, or, A late discovery of a fourth island near Terra Australis Incognita by Henry Cornelius van Sloetten* was published in 1668, not long after the *English Navigation Act 1660*. In utilising a setting that

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evokes growing trade in that region, Neville exploited contemporary interests in colonialism and exploration, providing an experimental setting in which contemporary anxieties about patriarchal government, colonial mastery, slave revolts and sexuality could be played out (Denbo 2016: 149). Denis Vairasse’s *The History of Sevarambians*, published in 1675, begins with a shipwreck of a voyage *en route* to Jakarta before the characters go onshore to *Terra Australis*, and Gabriel de Foigny’s *A Discovery of Terra Incognita Australis* was published in 1693.

The lives of some of the authors considered in this article begin to evidence the interrelationship between utopias, law and colonialism. Thomas More was Lord Chancellor (one of the highest offices of state) when he wrote *Utopia*. More was also well aware of England’s nascent colonialism; his family were involved in early Tudor colonialism. For instance, in 1517, his brother-in-law John Rastell was part of a colonial voyage to settle Newfoundland, and More took care of his affairs while he was absent.<sup>7</sup> More wrote *Utopia* within a colonial ambience, and it is essential to read his work in that context. Francis Bacon was also Lord Chancellor and a key player in early English colonisation in the Americas, including writing a Report on the Virginia Colony in 1609 and later receiving a Charter for a colony in Newfoundland, which included a stamp describing Bacon as the ‘guiding spirit in colonization’.<sup>8</sup> He was an advocate for the plantation of Ireland and regularly used a literary mode in making his political and legal claims (Albanese 1990). Henry Neville was an English parliamentarian and lawmaker.

This article builds on this exploration of the co-constitutive nature of utopia, colonialism, and law to interrogate the construction of ‘no-place’. As place is a social construct (Harvey 1996: 261, cited in Hyde 2019: 242), scholars consider what social processes coincide to construct ideas of ‘place’. Within utopias, we can unpack what social processes are used to construct ‘no-place’. In this article, we are concerned with the production of nobody’s place (*terra nullius*), *res nullius* (nobody’s thing) and the use of *terra incognita* (unknown place) in utopias and international law. These no-places, both as legal fictions and literary

fictions, are creations, spaces emptied so that that place can then be used by the colonisers. The structure of the article is as follows: the next section will consider three techniques used to construct no-places in utopian fiction. It will highlight the ways in which international law draws on similar mechanisms. These techniques are: first, concepts of *terra nullius* or nobody's land; second, ideas of science and mapping as a way to exert authority over a place; and, third the use of race, gender and sexuality in suppressing or erasing inhabitants (fictional or otherwise) by putting them into their place.

## **2 Colonial Utopias and the Construction of 'no-place'**

When reading utopian texts alongside international law to consider the question of 'no place', it becomes apparent that these 'no-places' go through a process of being rendered empty before being reconstructed as potential property. Shane Chalmers argues, '[t]he utopic act of negating a given place, and projecting onto the emptied space another "better" one, a future-perfect one, is the settler-colonial move' (Chalmers 2023: 14). There are several techniques used to construct 'no-place' across utopian literature, such as mapping and science, race, gender and sexuality. These techniques have correlations in international law, which often uses similar techniques of dispossession (Bhandar 2018).<sup>9</sup> The next three sub-sections will explore some of these techniques: first, the concept of *terra nullius*; second, how science and mapping is imagined and utilised; third, the role of race, gender and sexuality in constructing 'no places'.

### **A Constructing No Place: Terra Nullius**

International law has its own concept of 'no-place' in the form of *terra nullius*. This terminology means that the land belonged to no one, but it can also refer to 'lands that were not civilized', or land that was 'not subjected to settlement and cultivation in the model of European occupation' (Hyde 2019: 240). The concept is often discussed in relation to Australia to deny the Indigenous peoples or Aboriginal and Torres Strait Islander peoples their land. Research by Chalmers indicates that *terra nullius* was not used in the 19th century during the

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colonisation of Australia, but rather it was a term that emerged in the international legal discourse on Australia in the early 20th century that was later cemented as an idea in the legal case of *Mabo v Queensland* (Chalmers 2020, Borch 2001). In *Mabo*, the High Court declared that Australia was not *terra nullius* in 1788, thus recognising Native Title to land (Simpson 1993). To talk of *terra nullius* in the 16th through to 19th centuries is arguably, therefore, anachronistic. Yet, the idea of *terra nullius*, which encapsulates the rendering of place as empty so as to then make it potential property, can still be traced through the colonial utopian imaginary and contemporaneous legal debates on colonial encounters.

John Carey argues that one of the difficulties utopianism as a genre faces is to persuade people to give up their property (Carey 2005: xiii). This is the crux of what 16th century lawyers were facing, particularly in the context of colonialism. In the work of Francisco de Vitoria and Francisco Suárez, how to create a legitimate narrative to remove property – a western legal concept that in itself was part of the colonial exportation – from Indigenous populations was a key debate (Anghie 2007: 18). Theologians such as Vitoria and Suárez took a path of partial recognition of the humanity of Indigenous populations and their potential Christianity as a technology of dispossession. Vitoria for example wrote that the Indigenous population were ‘not wholly unintelligent’, but ‘unfit to found or administer a lawful State upto the standard required by human and civil claims. Accordingly, they have no proper laws nor magistrates, and are not even capable of controlling their family affairs’ (de Vitoria 1557: 161, cited in Anghie 2006: 743). For these Spanish scholastic international lawyers, this was a fiction to justify the removal of land (Zeitlin 2023). But this was unsatisfactory to political thinkers, such as Francis Bacon in the 17th century. For Bacon, there was no longer any recognition of the property of Indigenous populations (Anghie 2007: 28, 32). The Pacific Zone was regarded as navigable by those with the power to do so, and they could claim dominion over those routes and rule the seas. The early-modern fictional utopias faced a similar conundrum and found alternative ways of dealing with ‘persuading’ Indigenous peoples to

give up their property. Conquest, combined with the rationalism of science and law, made it 'natural' for lands to be taken in this way, and *New Atlantis* demonstrates to a 17th century audience the benefits that could accrue. By the 18th century, the scholastic approach of Vitoria and Suárez needed to be updated to construct the populations out of a territory rather than attempting to place them within the bounds of European property ownership. For Emer de Vattel, where a country was 'uninhabited and without an owner' it could be taken (De Vattel 1758: §207). He 'expressly made the quality of occupation and use of territory as the primary criteria of membership in the natural society of nations' (Mahmud 2007: 542). These legal fictions on place and property are invoked in the contemporary fictional utopias.

The utopias of More and Neville reflect ideas of *terra nullius* and *res nullius* as key components of their world-building. More's *Utopia* is set on an island where the Indigenous population is murdered and enslaved to create utopia. The emptying of a place to make it a 'thing' was already a biblical construct. God had sanctioned Jonah to empty the promised land of its population, though there is no archaeological evidence that such a massacre took place (Rubenstein 2022: 48-49). More, a lawyer and a theologian, would have been very aware of these passages of the Bible, which had already been used by the Pope to divide up the Americas and to sanction domination over land and sea (particularly trade routes).<sup>5</sup> In *Isle of Pines*, Neville constructs an empty island, as the absent 'wild people' who may live on the island are *incognito* and never appear. Neville makes use of this emptiness to alter the island to the will of the settlers (Boesky 1995: 173). Colonial utopias such as these create nobody's land through violence or by ignoring the existence of previous inhabitants. They violate or discount Indigenous populations, often murdering, enslaving, studying, and/or 'civilising' them. Through these fictional utopias, the utilisation of *terra nullius* and related concepts become part of the ideology formation of colonialism as they become commonplace and accepted techniques in colonial rule.

*Terra Australis Incognita* offers an example of how utopias, fictional and real, come together in the colonial imaginary. *Terra Australis*

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*Incognita* is a notional landmass southeast of India. The idea of this landmass derived from Aristotle’s idea of geometrical symmetry and later Roman cartography that would make it likely there was a continent there, and it was included in maps (Tozer 1971: 167). It was *incognito*, a place that is concealed and unknown and so an apparent ‘empty’ space to be imprinted upon (Serras 2011). To the European imagination, Australia existed theoretically before Europeans first arrived. The Australia of the European imagination had a theoretical emptiness and absence of ownership:

From the Eurocentric view of the world, to which most Australians adhere, Australia was ‘empty’ until 1788 [...] Terra Incognita [...] For the first settlers the Aborigines did not count [...] in European eyes, the land lay open for the taking, and like the Aborigine, it needed redeeming, civilising and colonizing (Powell 1975, cited in Williams 2011: 88).

The colonial utopian imagination was able to imagine the colony in this territory before its location is fixed. The entire region becomes a site of utopian thought, and according to these colonisers the place must be civilised, both temporally and spatially. To the colonisers, Indigenous and Aboriginal understandings of time, space and relations with land are entirely set aside (Williams 2005: 302). *Terra Australis Incognita* offered an imagined space on which to establish utopian plans of conquest, which were then realisable once its location was revealed. This place was, as Irene Watson outlines, where ‘new world fantasies would appear and become reality for all beings, including the natives, the flora and the fauna’ and in doing so (as Watson further argues) it was necessary for international law to ‘deny that First Nations Peoples held ancient relationships to their lands’ (Watson 2014: 6). In this denial, places are created as no-places. Australia is colonised through the use of law, but also through the development of a colonial imagination in literary utopias.

*Terra Australis Incognita* is a (fictional) place, hidden but nonetheless real, and its (fictional) colonialisation occurs by both working with and against its territoriality and reality as a place where people live.



Potentially drawing inspiration from the fictional experiments, which had normalised these practices for their readership, colonial projects used similar techniques to construct 'no-places' that justified and legitimised colonisation. As noted above, Australia is often (mis)understood as having been legally treated as *terra nullius* by the British during colonisation (Simpson 1993: 204). The British treated Australia as ungoverned and (un)owned, highlighting the duality of being both empty yet with people present (but the Indigenous people did not exist within the law's colonial scopic frame) (Fitzmaurice 2014). As Keenan describes, 'barbarous countries' were regarded as legally equivalent to uninhabited ones, so British sovereignty could be asserted without the need for any agreement with Indigenous populations (Keenan 2020: 452). Reading law and literature together, it emerges that *terra nullius* (as a 20th century term) and other related concepts are informed by earlier international legal discourse, colonial practices and literary utopian projects (Mickelson 2014: 625).

## **B Mastering No-Place: Science and Mapping**

Themes of discovery and the advancement of science are intertwined with the colonial project. Linked to these notions of discovery and science is mapping (whether through cartography or description), and mapping facilitated the mastery of places and people (Jones 2019). Science and maps are woven into the utopian fictions. For example, de Foigny's *Terra Incognita* makes explicit reference to cartographic terms of longitude and latitude, and is based on early scientific musings on the location of this hidden place, and More's *Utopia* is often recognisable by the wood-cut prints of a map of Utopia that appeared on its frontpiece (Bushell 2020: 50). De Foigny's blending of fact and fiction in *Terra Incognita* was so successful that the book was often circulated alongside factual travel accounts (Hempel 2019: 114). In that sense, this pre-figurative *Incognita* space is transformed for the early readership into reality. Scientific and social mapping processes are some of the mechanisms utilised within international law and literary utopias to construct 'place'.

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The interrelationship between science, discovery and colonialism, and utopias can be explored through the personality of Francis Bacon. Bacon was an early advocate of a modern scientific method, a colonial advocate, a Lord Chancellor, and a writer. He embodies a new world and a new science meeting law and politics (Albanese 1990: 506). He forms part of what Charlotte Epstein describes as the production of the scopic regimes of modernity (Epstein 2020: 221). Alongside others like Grotius, Suárez, Hobbes and Locke, Bacon is a key figure in the ordering and disciplining that creates what is natural and unnatural in our legal-political world, including our view of the universal as excluding women and non-white bodies (Epstein 2020: 226-237).

It is not surprising then that Bacon’s *New Atlantis* is firmly rooted in science and exploration (Coperías Aguilar 2019: 98). When the sailors in *New Atlantis* arrive at Bensalem it is already a Christian society focusing on scientific research (Chalmers 2023: 13). Bensalem is ‘discovered’ by Europeans as an idealised society based on reason and rationality, and where the colonial process of religious conversion has already taken place. In contrast to Indigenous populations found in other utopias, the people in Bensalem have advanced scientific civilisation, but this is not due to their innate intelligence or ingenuity, but rather because they have sent out covert expeditions and brought civilisation, including Christianity, back with them. They are advanced because they have accepted European civilisation. Such notions of benefits of European civilisation are evocative of Vitoria’s claims that the Spanish would help guide and civilise people in the Americas (Anghie 2006: 743).

In international law, maps play a role in this mastery of place. Henry Jones argues that the legalised processes of mapping, registering, and claiming land is key to how ‘law organises and controls spaces’ within colonial processes (Jones 2019: 187). Social and geographical processes of mapping were complemented by international law’s use of territory to carve up the planet (Mickelson 2014). As Karin Mickelson argues, ‘international lawyers found ways to understand and differentiate between types of territory at around the same time as cartographers

were seeking ways to represent a new understanding of the globe' (Mickelson 2014: 622). In a discussion on the International Court of Justice's *Western Sahara* Advisory Opinion,<sup>10</sup> which rejects the argument that Western Sahara was *terra nullius*, Vasuki Nesiah shows how '[t]he production of places through the fixing of boundaries and the naming of names is an enduring legacy of colonial exploration and appropriation of territory' (Nesiah 2003: 23).

Related to the concept of *terra nullius*, discussed in the previous sub-section, is the question of land use. Through an understanding of science, rationality and reason, law and international law made fine distinctions based on 'proper' land use, and, as such, created categories of no-place. In the 16th century, Vitoria, in his justification of Spanish colonialism, referred to the uncivilised cultivation of the land by peoples of the Americas; 'hence their lack [...] of systematic agriculture, of manufacture [...]' (de Vitoria 1557, cited in Mickelson 2014: 627). Similarly, in Australia, 'it was precisely the fact that indigenous Australians did not conform to Western notions of the cultivation and control of nature that made it easier to downplay and deny their connections to the land' (Mickelson 2014: 627). Banner argues that the British colonisers would have been bound to respect existing property rights, but in Australia, the absence of agricultural use of the land 'implied the absence of any property rights' (Banner 2005, cited in Mickelson 2014: 626-627).

This focus on land use is evident in the fictional utopias. In More's *Utopia*, wars of conquest are justified because they satisfy the needs of the domestic (conquering) population (More 2016: 73). The history of Utopia that More produces commences with the subjugation of the 'natives.' The rationale for the violent suppression of the Abraxans and the expropriation of their land for the benefit of colonial interests is that they had not made use of the land; they had left it idle (More 2016: 73, Hardy 2012: 126). A conquest narrative is produced where the invading tyrannical Utopus 'legitimately' decides upon the common good of all, including the Abraxans. This thread of authoritarian or tyrannical sovereigns as the ultimate arbitrators of the common good is interwoven across colonialism (O'Donoghue 2021: 187-188).

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Utopia clearly articulates the settler colonial doctrines of *terra nullius* [no man’s land], *vacuum domicilium* [unoccupied home], and *inane ac vacuum* [idle and waste] which were used by European powers to establish legalistic grounds, via an appeal to the “law of nature” for expropriating the supposedly uninhabited land (Hardy 2012: 125).

The Indigenous Abraxans are replaced by the Utopians through a process of ‘settler indigenisation’ (Veracini 2011: 38). The Utopians are presented as the inherent population that occupy their natural place, a place they have created through the processes of constructing a no-place (Veracini 2011: 194). By maintaining the dual reality of empty and inhabited space, other forms of knowledge – including knowledge and practices of land use – are suppressed and excluded so as to advance the utopian project (Bell 2017: 77-78).

Science and scientific thought, whether that is manifested as a narrative of discovery or an approach to cultivating the land, are tools in the colonial toolbox. Notions of science, as well as maps, can be used to carve up peoples and territories into civilised and uncivilised. Maps and scientific thought are also a key feature in the utopian imagination for constructing the utopian no-place. International law utilises these same practices as it draws boundaries and names territories.

### **C Putting in their place: the inhabitant of No-Place**

No-place is often a place but one where the native inhabitants are removed, decimated or serve as slaves or domestic workers. In Bacon’s and More’s utopias, emptiness is achieved because the inhabitants are not counted as people. Often within these novels, race and gender are used to construct hierarchies. Sexual slavery, misogyny and homophobia are very common tropes of the utopias. In his reading of Edward Gibbon Wakefield’s utopia, Chalmers exposes the overlap between the colonial and patriarchal desires of ‘[m]astery over women, over labour, [and] over nature’ (Chalmers 2023: 12). These are firmly established techniques within colonialism (Nesiah 2003: 4), which are utilised within fictional utopias and international law. This sub-section discusses how race, gender and sexuality are used to construct the no-place.

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The absence of women is itself sometimes constructed as utopian. In Bacon's Bensalem, women are largely absent. Similarly, in de Foigny's *A New Discovery of Terra Incognita Australis*, there are no women, as the 96 million inhabitants are vegetarian hermaphrodites who are gendered male. Women in other texts are mentioned but are in the background. For example, in Michel de Montaigne's influential Essays, including 'Of the Cannibals' published in 1580, he writes that valorous men have many wives but that their role is to warm the milk for the men (de Montaigne, in Claeys and Sargent 2017-118).

The subjugation of women is also a common trope. *The History of the Sevarambians* is filled with sexual imagery, including sexual enslavement. This utopia proffers the notion of the ideal subjugated woman who must either be strictly confined or provide services to men who require sexual pleasure. The men 'keep in all cities a number of women slaves appointed for their use, so that we do not only give every traveller meat, drink and lodging, but also a woman to lie with him openly and lawfully as if she were his wife...' (Vairesse 1675). The shortage of women is regarded as a resource problem to be easily resolved through supply and demand. These women are not counted as part of the population, contributing to its apparent emptiness. This construction of women as property continues within later utopian fiction. For example, in Louis Antoine, Comte de Bougainville's *Voyage Round the World*, written in 1772, Tahiti and its women are hyper-sexualised, and the men are 'offered' young girls. The satisfaction of sexual desires is most often women conforming to male heteronormative sexual desire, sometimes through sexual enslavement, and most often, it is the Indigenous women that are exploited (Comte de Bougainville 1772).

When women are treated badly in these narratives, they are often 'saved' by the arrival of the white explorers. In this sense, the new civilisation saves them in the fictional world, which, as Spivak argues, continues indefinitely in the real world (Spivak 2010: 33). Within international law, feminist scholars have demonstrated how the 'saving' of marginalised and racialised women from 'brown men' is often a justification for intervention by states in international law (Spivak 2010:

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61; Otto 2006: 343, Orford 2002, Delphy 2008).

How people are described and categorised is essential to these fictional texts. For example, in More's *Utopia*, utopians use mercenaries, Zapoletes, who are described as 'hideous, savage and fierce', constructed as less than human and therefore useful in the process of colonial expansionism where two groups are set against each other (More 2016: 133). Bacon's Bensalem was rendered from mainland America, and this is used by Bacon to ascribe to Bensalem a superiority over other Indigenous populations. This establishes a fictional racialised hierarchy in the Pacific region, where Indigenous populations that acknowledge and submit to the superiority of European civilisation are higher than others. This form of racialised scientific approach would become extremely important in the displacement of Indigenous and Aboriginal people in Australia (Bhandar 2018: 106).

Racial hierarchies are prominent in Neville's *Isle of Pines*. George Pine and four women are shipwrecked, including one woman, Phillipa, who is Black and enslaved. Pine is the ancestral line of the inhabitants found by the Dutch sailors. Key to the narrative is that governmental authority derives from the clear delineation of the population along these ancestral lines. Seth Denbo argues that Neville (as a republican) focuses on the patriarchal line as a specific critique of the English monarchical government (Denbo 2016: 154). But, these utopias are also a projection of a colonial ideology in which race and ancestry are pivotal. Racial hierarchies, especially between Phillipa and her descendants and the other inhabitants of the island, are key to the text. Here, Neville offers a peculiar depiction of adventure centred on a Black woman's body.<sup>11</sup> Phillipa's sexuality is described as voracious; her intelligence, her ability to bear pain and her attitude to sexual relations are all deeply embedded in racist tropes as being less human. This view extends to her offspring, who are presented as tyrants, rapists, and the instigators of civil war; underlining their uncivilised behaviour and voracious sexuality, they are also presented as being incapable of using the land properly. Phillipa's descendants are presented as the core root of the failures of governance and order on the island (Denbo 2016: 154).

The regulation of women's sexuality, their modesty, and even their clothing are often key aspects of the utopian texts. And they are also tools of colonialism; as Watson argues, law, land and peoples were all clothed by colonialism (Watson 2014: 56). Women's bodies are used as metaphors for colonial control in the fictional utopias. For example, in the *Isle of Pines*, *terra nullius* is not just the land but also Phillipa's body, where Neville has provided much more detail about the differences between her and the three white women. She beguiled Pine and he, as a coloniser, assumed control of her body.

In the *Isle of Pines*, due to the climate, there is an abundance of food and produce on the island, and this causes a lack of initiative and leads to the inhabitants becoming, as the book describes, 'primitive' as they do not have to strive for their existence (Neville 1999: 189). This colonial project is presented as a failure, partially because of the mixing of races and partially because of its lost industriousness (Boesky 1995). In the text, a colony must remain white in its governance and maintain the standards of civilisation, or it is doomed. This idea that abundance and weather combined with an intermingling of races leads to a descent into primitiveness would become a line of imperial argument within international law, particularly in the 19th Century when scholars such as Bluntschli argued, '[t]he Romans in the East became effeminate, the Germans on the African coast lost their vigour, the English easily become lazy and sensual in India' (Bluntschli 1885: 211, O'Donoghue 2018: 239).

There are further racist tropes in the utopias. For example, the image of the savage. In Gabriel de Foigny's utopia, there is an image of the 'happy savage'. Like de Foigny, Michel de Montaigne (2017: 115), in his 'Of the Cannibals', finds some positives in the cultures of the noble savage living an idealised, uncivilised life in Eden, but these narratives are infused with ideas of racial superiority and the inevitability of the colonisers overtaking their land. Fictional utopias elaborate on the many uses of the logic of categorisation that were legalised (Knox 2023: 58). Antony Anghie, for example, shows how Vitoria drew on ideas of the 'savage' in his legal justification for Spanish

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colonisation in the Americas; ‘Indians’ were constructed ‘as backward and in need of guidance; as irredeemably and hopelessly savage and violent’ (Anghie 2006).

This section has exposed some of the mechanics used in the construction of ‘no place’ in utopias and international law, demonstrating the oft-times symbiotic relationship between law and literature. In More’s *Utopia*, poor land use justifies the emptying of inhabited spaces. In *New Atlantis*, and similarly in *Terra Incognita*, scientific method and science are used to establish mastery over people and places; Neville focuses on rationality, the misuse of land, and the corruption of populations, while de Foigny uses geographical mapping to set out the possibilities of exploitation through encounter. In the *Isle of Pines*, racial hierarchies are constructed to put people in their place. For Vairasse, gendered hierarchies and sexualities are a key theme, a theme which is invoked across the colonial utopias as women are subordinated to men or, as in de Foigny’s or Bacon’s works, entirely written out. These colonial techniques, imagined in the fictional utopias, are inspired by, and inspire, colonial practices that were executed, justified and legitimised by international law.

### **3 Conclusion**

Utopias play a key role in the construction of the colonial imaginary. So tightly intertwined are the utopian projects and colonialism that some scholars argue that utopianism and utopian-thinking cannot be emancipatory (Baudemann 2018: 2). Such a critique overlooks the global history of utopias and the use of utopian-thinking by decolonial and intersectional feminists today (Imarisha 2015: 3). And indeed, even within the colonial utopias discussed in this article, there are fissures that open up the potential of more inclusive utopias, for example de Foigny’s *Terra Incognita* was censored for its queer content (Worden 2020). But what the critique flags is the need to take seriously the colonial trappings of the utopian genre; to understand its role in the construction of place through colonial violence. Heeding Karl Hardy’s call, who argues that ‘recognition of settler colonialism’s contribution



to and naturalization within much of the modern utopian tradition is fundamental to utopian studies' engagement in an ongoing project of "unsettling" (Hardy 2012: 127), we as feminists working within feminist utopian traditions must revisit the colonial foundations of the genre.

Through an understanding of the techniques of constructing 'no-place', this article offers a way to see how law and utopia co-constitute the 'no-place' of colonial encounters and exploration. This article focused on three such techniques that have resonances across international law and utopian fiction. *Terra nullius* is a legal term and idea that is 'naturalized' by its development across international legal thought in the 16th and 17th centuries, and its utilisation in popular fictional utopias. Notions of science and mapping are used to 'master' places and peoples, and through constructions of race, sexuality and gendered stereotypes, people are put in their places. There is no 'no-place' nor 'nobody's thing', rather the lands (and seas) in the novels were inhabited. The 'no-places' of colonial encounters were people's places, their homes, their communities, and their lives.

## Endnotes

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- <sup>2</sup> Aoife O’Donoghue is Professor of Law at the School of Law, Queen’s University Belfast.
- <sup>3</sup> For a critique see, Knop K 2003 Utopia without Apology: Form and Imagination in the Work of Ronald St. John Macdonald *Canadian Yearbook of International Law/Annuaire canadien de droit international* 40 287-308 and Knop K 2005 Eunomia is a woman: Philip Allott and feminism. *European Journal of International Law* 16 315.
- <sup>4</sup> This has reverberations in Carey J ed 2005 *The Faber book of utopias*: Faber & Faber. In the introduction, he describes early Roman Utopias such as Tacitus and describes the Germanic tribes as idealised savages.
- <sup>5</sup> Pope Alexander VI proclaimed *Inter caetera*, which divided the papacy’s known and unknown world between Spain and Portugal, in 1493. See Pope Alexander VI 1493 *Inter Caetera Division of the undiscovered world between Spain and Portugal*. Available at: <https://www.papalencyclicals.net/Alex06/alex06inter.htm>.
- <sup>6</sup> Published in 1609, *Mare Liberum* sets out Hugo Grotius’ principle of the ‘Free Sea’, where the sea was free for all nations to use.
- <sup>7</sup> Oncken, writing in 1922, argues that in More’s utopia, you can trace a justification of colonisation and the ever-increasing expansionist policy towards Ireland and the Americas. Oncken H *Die Utopia des Thomas Morus und das Machtproblem in der Staatslehre* (Sitzungsbericht der Heidelberger Akademie der Wissenschaften, Philosophisch-historische Klasse, Heidelberg, 1922, 2. Abhandlung) 13, Avineri discusses Oncken’s analysis in depth see, Avineri S 1962 War and Slavery in More’s Utopia *International Review of Social History* 7 260-290, 273.
- <sup>8</sup> The ‘Charter of the London and Bristol Company. Earl of Northampton and Associates’ was granted by James I on 2 May 1610. Available at: [https://web.archive.org/web/20131021163440/http://www.heritage.nf.ca/law/lab4/labvol4\\_1701.html](https://web.archive.org/web/20131021163440/http://www.heritage.nf.ca/law/lab4/labvol4_1701.html). See also Nemeč, Thomas F ‘Newfoundland Postage Stamps, 1857–1949: A Brief Historical and Iconographic Study’. Available at: <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=8a6ad8965f04e03ebef248959dd875930592ba39>.

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- <sup>9</sup> Brenna Bhandar describes the multiple ways in which law, in its colonial iterations, goes about processes of racialised land possession.
- <sup>10</sup> *Western Sahara*, Advisory Opinion of 16 October 1975, (1975) ICJ Rep. 12.
- <sup>11</sup> For a discussion on how the 'female body works as an allegory of colonial territory', see Nesiah V 2003 Placing international law: White spaces on a map *Leiden Journal of International Law* 16 1-35, 33.

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