

## Barron Field and the Myth of *Terra Nullius*

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### Abstract

While Judge of the Supreme Court of New South Wales, Barron Field published the first book of poetry in Australia in 1819. Field was also one of the founders of the Philosophical Society of Australasia in 1821.

The year 2019 will see another Australian bicentenary, the 200<sup>th</sup> anniversary of the first book of poetry published in this country. You could be forgiven for knowing neither the book nor its author; you could probably also be forgiven for not finding the event all that worthy of memorialisation, let alone celebration. Aside from a few specialists in colonial literature and a handful of historically inclined local poets, what possible interest could the (exceedingly) minor poetaster Barron Field — yes, his real name — and his *First Fruits of Australian Poetry* hold for contemporary Australians? Would they be of more interest if they were crucial evidence in the establishment of *terra nullius* in this country?

Field's own contemporaries tended to irritation and disinterest, when they weren't downright contemptuous. The wits had, so to speak, a field day with his poems — the man's name, unsurprisingly, providing rich soil for the punsters. As one anonymous squib from the 1820s, now preserved in the Mitchell Library, declares:

“Thy poems, *Barron Field*, I've read  
And thus adjudge their meed —  
So poor a crop proclaims thy head  
A *barren field* indeed!”

Yet it wasn't only his enemies who mocked. Many of Field's friends weren't so keen on his verses, either. In his 1847 obituary for Field in the *New Monthly Magazine*, Horace Smith remarked of Field's poetry that “as truth is my friend, even more than Plato, I must confess my regret that he did not suppress them, for the gods had not made him poetical, his ear appearing to have been absolutely insensible to the requisite rhythm of verse”. Such judgements have recurrently been made of Field's poetry over the subsequent centuries: even when his poems are (irregularly) anthologised, it seems to be more for their quaintness and historical import than for their inherent power or interest. No wonder Field has never really proven to be a key reference for Australian poets or their critics.

Then again, poetry may well have been Field's passion but it wasn't his day job. He was a lawyer, and, more to the point in this context, at the time of producing the book in question he was Judge of the Supreme Court of New South Wales. Appointed in May 1816, Field arrived in Sydney with his wife, Jane, in February 1817, and was immediately catapulted into the highest echelons of colonial society. His salary, supplemented by court fees, was very substantial; he also received a large grant of land in Cabramatta.

According to C. H. Currey's entry in the *Australian Dictionary of Biography*, Field dealt with 165 actions at law and 13 equity suits between April 1817 and January 1821; he also presided at the first sitting of a Supreme Court in Van Diemen's Land in 1819. In other words, Field was an exceedingly important personage at a moment in the fledgling colony of New South Wales when the vagaries of individuals could prove to have disproportionate consequences.

That said, Field doesn't seem to have been a terribly successful law man either. As John Byrnes rather understatedly remarks, "Field was not personally popular." It would probably be more accurate to state that he was outright loathed both by many of his colonial brethren and by the imperial governmental types with whom he had professional dealings. He fought bitterly with Governor Lachlan Macquarie, as well as with John Macarthur, whose appointment to the magistracy Field had attempted to scotch. Macarthur's enmity was such that he sent a threatening letter to Field before the latter's departure to England in 1824. "You will therefore, Sir," Macarthur writes, "be pleased to understand that I accuse you of having knowingly and deliberately committed an act which the manners of a gentleman forbid me to name even under the sanction of your example." This is, as Byrnes notes, an invitation to a duel. Given Macarthur's notorious irritability, it was clearly lucky for Field that he was on his way out at the time.

Yet it wasn't just Macquarie and Macarthur who were hostile to Field. Towering figures in the imperial administration at home were already entertaining doubts about his reliability. John Thomas Bigge, who had been dispatched to New South Wales by Earl Bathurst to investigate the functioning of

the penal colony, and who ended up tabling three critical reports in the House of Commons, wrote of Field:

"The convict part of the population of New South Wales view Mr Justice Field's administration of the law with sentiments of dissatisfaction. The free classes of the population ... equally apprehend the effects of his violent and unforgiving temper, as well as of his personal prejudices, upon his future decisions ... In my opinion, Mr Justice Field does not possess that degree of temper and deliberation necessary to conduct the judicial business of such a Colony."

The negative reviews don't stop there.

Perhaps the most eminent hater was none other than Benjamin Disraeli, who in 1830 pronounced Field to be "a bore and vulgar ... a noisy, obtrusive, jargonical judge ... ever illustrating the obvious, explaining the evident, and expatiating on the commonplace". A rebarbative and inveterate mansplainer, then, *avant la lettre*. It was no doubt in part due to his less-than-winning personality that Field spent the remainder of his career as an ineffectual judge in Gibraltar, retiring to England only a few years before his death. In a summation of Field's contributions in *Dewigged, Bothered, & Bewildered: British Colonial Judges on Trial, 1800–1900*, John McLaren concludes that

"Field's record as a judge could best be described as mercurial, a reflection of his conservative belief system, a commitment to the culture of English law, and an opportunistic streak in his character ... Field's counsel was not invariably sound or in keeping with the Colonial Office's understanding of the legal proprieties."

And yet, and yet ... despite such continued bad press, Field was clearly not without certain impressive endowments. He was a direct descendant of Oliver Cromwell, a fact of which he was exceedingly proud. He had published the self-confessed first analysis of Blackstone's *Commentaries*, aimed at law students, and it went into many editions through the 19<sup>th</sup> century. He was theatre critic for *The Times*. He was friends with the great English Romantic critics Charles Lamb and Leigh Hunt, as well as an aficionado of the Romantic poets, especially William Wordsworth, of whom Field attempted a biography. The publication of the latter was, sadly for Field, vetoed by Wordsworth himself in 1840. Despite this setback, Field, who was a lifelong enthusiast for Elizabethan and Jacobean literature, prepared editions of Thomas Heywood and Thomas Legge for the Shakespeare Society. Lamb in particular seems to have had a real admiration for and friendship with Field. He reviewed *First Fruits* for the radical intellectual journal *The Examiner* in 1820, before dedicating one of his most celebrated essays, "Distant Correspondents", to the lawyer-poet in the same journal in 1822. He also informed Field of the esteem that Wordsworth and Coleridge had apparently shown for Field's poem "The Kangaroo".

Field clearly felt his verses were worthy of attention. The first edition of *First Fruits* in 1819, printed by George Howe in Sydney, and with the legend "Printed for Private Distribution" on the title page, contained two poems, "Botany Bay Flowers" and "The Kangaroo". In 1823, Field had a second, revised and expanded edition, which added further epigraphs and apparatus, as well as four further poems. Finally, in 1825, Field reprinted the poems as an "Appendix" to *Geographi-*

*cal Memoirs on New South Wales; By Various Hands*, a collection he edited, where they sit rather oddly with the journal entries and meteorological charts, the botanical descriptions and the imperialist opinionating.

It has to be admitted that the poems are pretty weird. Wreathed about with an ever-accreting and often-mystifying apparatus of epigraphs and erudition, their subjects are strange, their rhythms erratic, and much of their matter is flagrantly plagiarised. "Botany Bay Flowers", for example, is an extraordinary pastiche of Shakespeare, Milton and Wordsworth (and many more), where Field tells a tale of antipodean botanical adultery, in which he marries one flower, only to be seduced by another. As for "The Kangaroo", let me quote the first stanza:

"Kangaroo! Kangaroo!  
Thou spirit of Australia,  
That redeems from utter failure,  
From perfect desolation,  
And warrants the creation  
Of this fifth part of the earth,  
Which should seem an after-birth,  
Not conceiv'd in the beginning  
(For God bless'd his work at first,  
And saw that it was good),  
But emerg'd at the first sinning,  
When the ground was therefore curst: —  
And hence this barren wood!"

Whatever your feelings about their value, it's difficult to miss the strong satirical streak of these jaunty lines, along with Field's evident preparedness to pun on his own name and person. But it's also significant that Field is using words that, however straightforward they seem today, weren't so at the time. There was as yet — perhaps most notably — no country called "Australia". There were the colonies of New South Wales and Van Diemen's Land, yes, and the name of

*Terra Australis* was an ancient one in Europe. Governor Macquarie had certainly started to moot the idea, following the publication of Matthew Flinders' journals a few years previously, but most people were still referring to the landmass as "New Holland". As David Brooks remarks, "Field's use of the term 'Australia' ... is arguably the first in poetry anywhere." In fact, Field uses the name throughout *First Fruits*, strewing his text with nominal and adjectival variations, even preposterously rhyming it with "failure" and "regalia".

With all this plagiarism and playfulness about, coupled with the explicit colonial attitudinising, it's no wonder that the last few decades have seen a strong revivification of interest in Field's work, particularly among postmodern and postcolonial critics. Many eminent Australian writers and academics — A. N. Cousins, Michael Farrell and David Higgins, among others — have all written important pieces on Field. As Jaya Savige notes in his introduction to a special Australian edition of the prestigious journal *Poetry*, "To twenty-first-century eyes, Field's 'thefts' betray a poetics of appropriation and citation that wouldn't look entirely out of place in a Kenneth Goldsmith class." Yet none of the critics so far has asked the question: why *is First Fruits* called *First Fruits*? This might seem so obvious it's not worth asking: Field *knew* that he was publishing the *first* book of poetry on *Australian* soil, and was pompously belabouring this fact in the title, a fact supported by a number of features in the book.

Furthermore, the invocation of fruits is alerting us to the satirical nature of the poems: one of the (disputed) etymologies for the word "satire" is linked precisely to fruit. As the *Oxford English Dictionary* informs us:

"According to the [Latin] grammarians *satūra* is short for *lanx satūra* ... which is alleged to have been used for a dish containing various kinds of fruit." Moreover, if "first fruits" is an idiomatic expression denominating the earliest returns on labour, it is also, more pointedly, a technical term from ecclesiastical and feudal law. "First fruits", as Justice Field knew very well from his professional role, is a form of *income tax* to the *governor* of a territory.

As for his brief Australian sojourn, residues of Field subsist all over the place. Mount Field in Tasmania is named after him, while Cairncross Island in the Great Barrier Reef takes the maiden name of Field's wife. Soon after arriving in New South Wales, Field had edited *Memoirs of James Hardy Vaux*, famous, among other things, for its influential dictionary of thieves' cant: "A Vocabulary of the Flash Language". As a keen amateur scientist, Field observed, described and collected a wide range of important scientific and exploratory materials, much of which was published by John Murray in 1825 as *Geographical Memoirs on New South Wales; By Various Hands*. Due to such labours, Field has, according to Helen Hewson in the scientific plant journal *Telopea*, "two genera and one species ... named in his honour" (*Fieldia australis*, *Fieldia lissochiloides*, and *Cassia barronfieldii*), as she offers the new combination of *Senna barronfieldii*. As if that wasn't enough, Field was critical to the establishment of the colony's first bank, when, according to C. H. Currey, he mistakenly advised Governor Macquarie that "the governor had power, under his commission, to grant a charter to the Bank of New South Wales". Established in 1817, this bank is still with us: it was renamed Westpac in 1982. At least one other further

legal judgement Field proffered in the course of his antipodean duties would have quite extraordinary effects upon the subsequent history of Australia.

In an important recent comparative study of the relation between colonialism and law, Stuart Banner has demonstrated that Field was decisive in the development of the specifically Australian application of *terra nullius*. One of the abiding puzzles regarding the centrality of this extreme doctrine in Australia is how it came to be established at all. After all, there was no question that the land was inhabited by the Australian Indigenous peoples, a fact acknowledged by all Europeans. If the doctrine had indeed been previously applied in certain colonial circumstances, by the 18<sup>th</sup> century the general policy was acquisition by forms of treaty and contract. Even if the latter were evidently iniquitous, they did not extinguish the facts of inhabitation. For Banner, then, at least four factors contributed to the doctrine in Australia: the land was sparsely inhabited, of another order than other places; the British saw no evidence of Indigenous cultivation of land; the Indigenous peoples were not a military risk of the same order as American or New Zealand peoples; and the Indigenous peoples showed no interest in European goods or trade. (Needless to say, each statement now appears highly contentious.) Hence, although Captain James Cook had expressly been ordered *not* to seize land from any inhabitants, by the 1780s Arthur Phillip was. In such fashion, *terra nullius* was *de facto* already enacted before it was formally declared as doctrine.

How then did *terra nullius* ever come to be *declared* as doctrine at all? “The first such statement,” Banner writes, “appears to have been made in 1819, when a dispute arose

between Lachlan Macquarie, the governor of New South Wales, and Barron Field, judge of the New South Wales Supreme Court, over whether the Crown, acting through Macquarie, had the power to impose taxes on the residents of New South Wales, or whether that power was reserved to Parliament, as was the case with taxes imposed on residents of Britain.” Field, in a self-conscious replay of Sir Edward Coke’s objections to the use of the Kingly Prerogative by James I — that is, to the very disputes that ultimately led to Cromwell’s victory in the English Revolution — came down on the side of Parliament. If Australia had indeed been invaded, then Macquarie, as the representative of the sovereign, would have had that power, but, for Field, Australia was *freely settled*, and this was therefore a parliamentary matter. Earl Bathurst, secretary to the colonies, referred the matter to Samuel Shepherd and Robert Gifford, respectively the attorney and solicitor generals of Great Britain, who accorded with Field.

So as far as we know the first formal statement of *terra nullius* in this country derives from a tax dispute between the colonial governor of the penal colony and the bumptious supreme justice of that colony.

In common European colonial thinking, it was agriculture that established “a more permanent property in the soil” (to quote Blackstone). Field in *Geographical Memoirs* notes the ongoing displacement of Australian flora and fauna through the extension of European-style agriculture in the colony, not to mention the distress of the original inhabitants. Yet it was the agricultural civilisation and its fruits — taxes — that had primacy in European law, and Field could hardly have been more attentive to this fact. Banner’s own comparative studies have induced him

to suggest that “where indigenous people lacked agriculture before European contact... the colonial acknowledgement of indigenous property rights was weaker or nonexistent”. Let us add, following the work of Bill Gammage and Bruce Pascoe, among others: agriculture recognisable to Europeans, that is.

At precisely the same moment that Field is struggling over the legitimate grounds of taxation with Governor Macquarie, he produces these poems and this book. They barely resemble the poetry that he had previously published in the early 1810s, for example in *The Examiner*, nor his only other collection, *Spanish Sketches*, published in 1841. I propose that they can be understood in the context of this dispute, as if Field wrote them to say, “F\*ck you, Macquarie, this satire is all the taxes you’re getting from me.” After all, the name “Australia” in Field’s poetry doesn’t designate a stable financial or tax entity, but functions as an expressly fantastic name drawn from an old European tradition of satirical takes on the Great Unknown Southern Land. Yet, in order to do so, Field had to offer what has proven to be a most iniquitous legal fiction.

So why return to Field today? In an epoch of decolonisation struggles globally, where memorials to such figures as Cecil Rhodes, American Civil War soldiers and, in Australia, Captain Cook have quite rightly become the objects of strenuous contestation, Field is at best a highly ambivalent figure. However, the politics of memory and memorialisation are paramount even in the most recondite academic researches. Every memorialisation is also invariably a form of motivated forgetting; every memorialisation reopens the question of whether there can be some

restitution or reparation without the repetition of misdeed.

Field himself took the question of memorials very seriously. In the second edition of *First Fruits*, the newly added poems directly pick up a European history of memorialisation back to the ancient Greeks, in order to project a potential future of glory for the colony. As a member of the Philosophical Society of Australasia, Field was instrumental in sponsoring the first memorial erected in Botany Bay to Cook and Joseph Banks. Yet at least one of his sonnets, as Chris Healy points out in *From the Ruins of Colonialism*, “is rare in making explicit the violence of the initial British encounters with Aboriginal people and in remembering that the most material European remnant of the *Endeavour*’s brief stay in Botany Bay was a grave”. What the Europeans brought to a locale that they had named precisely for its wild profusion of flora was the mark of death.

In his *Defence of Poetry*, the great Romantic poet Percy Bysshe Shelley resoundingly declared that “poets are the unacknowledged legislators of the world”. This proposition has perhaps never been so directly true as in Australia. “Barren field” is a possible, if lateral, translation of one sense of *terra nullius*. It is as such that — unacknowledged yet omnipresent — the lawyer-poet Barron Field literally imposed his name on this land.

### Acknowledgements

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