

## Legal Footprints

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*Through an exploration in poetry, essay and photographs, I ask and interrogate the jurisprudential question: What are our legal footprints? As a global activity, walking is everywhere, yet it is important to notice the location of where we walk if we are to notice how we walk legally. Addressing the global through the local, because we all walk somewhere, this autoethnographic essay unfolds across a triptych of genres as a way of eliciting some fractal patterns in the movements of laws, the laws of movement, and the place of our feet, legally, in this maze of non-linear movements. More specifically, I argue location matters for how we notice, experience and understand the active nature of laws' moving places in the world, and how this relates to walking. Using the Global Women's March on Washington as an example, I ask how might we understand the ramifications of our global footprints? More specifically, in the common law world, where common law attaches to subjects through the body, of more specifically, the feet, the nature of our legal footprints especially matter. What happens, for example, when we walk in a common law world with multiple forms of laws: one carried by feet, and one carried by land? This is a challenge raised by the question of legal footprints in Australia, and contemplated in this experimental essay through a method of a minor jurisprudence.*

## 1. Bricked Memories (Poetry)<sup>1</sup>

Sometimes I just pause.  
Colours leak and words crumble  
as the city folds into my skin.  
Broken tiles, dusted memories  
and moments of shared belonging  
rest quietly in pockets of impasse  
under the relentless white noise of  
metallic bridges  
guttural growls  
and awkward light fittings.

I walk this hardened city I know so well  
but I walk as a stranger does.  
Curious, not-yet-tainted.  
Fresh. Alive.  
But despite the attempts to not-be-me  
I remember.  
This red brick alcove here  
texture of the sandstone wall there  
that window  
framing the reflection of the  
towering ugliness of my childhood.  
I remember.  
I cannot forget.

Despite my best efforts  
the city holds my memories  
in its tarmac, and  
each time I walk  
each footstep I take  
each time I brush  
against a physical  
reminder of another time in my life  
the bricks release feelings  
- my feelings -  
this emotional medley of past loves  
future hopes, and  
daily worries.

Sometimes it's too strong  
this brick-haunting.  
So strong I move faster  
walk tightly  
catch a bus even though I  
don't want to go anywhere,  
striding into the  
velocity of forgetting.

Other times  
I slow down and  
luxuriate  
in the memory of a kiss.  
Right here.  
The tarmac remembers  
even if the person I loved doesn't.

The bricks recall  
and when I pause  
hold my breath  
I can feel that other time  
that other moment  
that other life.

A memory placed  
a place of memories:  
the city breathes through movement.

Cities hold time  
in ways  
that don't make sense,  
but intriguingly so.  
Alongside my memories  
rest others I do not,  
and never will, know.

Yet if I walk slowly,  
sometimes I can  
feel the outlines  
of whispering memories  
being traced into  
the brickwork,  
placing the layered lives  
that make a city.

The city is here  
now  
made again and again  
in the criss-crossed  
hatching of our lives.

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The city is here  
now  
in the impulse of emotion  
we all breathe  
together.

Isolating - yes -  
but never alone.  
Each footstep.  
Each tread of shoes  
imprints  
individual memories into the  
collective groundwork  
of the city.

If we slow  
    down  
and pay attention  
to the  
after-notes  
of someone else's  
laughter,  
patterned  
into the lines  
of the footpath,  
the city unravels its makings  
sharing its times  
its spaces  
its laws  
and its ways:

its bricked memories.

## 2. Bricked Laws (Essay)

Holding onto the feel and rhythm of the opening poem 'Bricked Memories', this section shifts attention from bricked memories to bricked laws through a change in style: from poetry to essay. Focusing on the ground we walk, and the cities we walk in, I ask one question: *What are our legal footprints?* This is a deceptively complex question and as such, the question itself is the topic and focus of this essay. My aim is to open up this question, and illustrate why it is an important one to ask. The starting place is simply: why this global question? What does it mean to ask about the legal footprints we leave as we walk in our cities, and why might this matter? What does this question assume, provoke, and what does it require of us?

As a global activity, walking is everywhere, yet it is important to notice the location of where we walk if we are to notice how we walk legally. Addressing the global through the local, because we all walk somewhere, this autoethnographic essay unfolds across a triptych of genres as a way of eliciting some of the fractal patterns in the movements of laws, the laws of movement, and the place of our feet, legally, in this maze of non-linear movements. More specifically, I argue location matters for how we notice, experience and understand the active nature of laws' moving places in the world, and how this relates to walking. How, then, might we understand the ramifications of our global footprints? In a common law world, where common law attaches to subjects through the body, of more specifically, the feet, the nature of our legal footprints especially matter. In Australia, for example, what happens when we walk with multiple forms of laws: one carried by feet, and one carried by land? This is a challenge raised by the question of legal footprints, and contemplated in this experimental essay through a method of a minor jurisprudence.

My approach to the question of legal footprints, and the questions it raises, is to start with a brief comment on method, explaining how and why this essay is written as it is. I then question the question by confronting it directly, on its own terms, slowing down and unravelling intertwined assumptions, provocations, and concepts. More specifically,

to emphasise the enormity of the question, this is done by thinking more carefully about the global nature of our footprints, focusing on the Women's March in Washington, and its companion marches worldwide. When it comes to walking, the global is always local, and to this end I conclude with a local example to illustrate future possibilities. The conclusion here is a short photographic essay called 'Legal Footprints in Redfern', taken when I was walking alongside a much-loved mural in Sydney. Across intentional shifts between three genres of poetry, essay, and images, my aim is to elucidate what it means to ask, in the historical key of a minor jurisprudence: 'What are our legal footprints?'

### **A. Minor Jurisprudence as Method**

My method may not be familiar. Aside from notable exceptions (Otomo 2014; Fitzpatrick 2014), most academic essays tend to avoid poetry, and photographic essays, and spend more time answering questions than asking them. Yet in this essay, I do precisely the opposite. More than mere whimsy, however, the form of writing carries the redescriptive work central to my method. In other words, my writing is my method, and my method is to write a minor jurisprudence. Since Panu Minkkinen (1994; 1999) and Peter Goodrich (1996) helpfully opened a conversation in the 1990s as to what a minor jurisprudence is, or could be (see also Tomlins 2015; McVeigh 2015; Barr 2016), and elaborate on their approaches in this collection (Minkinnen 2017; Goodrich 2017), my approach to the 'Law As ...' provocation is distinct in the sense that it concentrates on method. For me, the most exciting possibilities for thinking about 'law as ... a minor jurisprudence in an historical key', the topic of this special collection, rest principally with approaching a minor jurisprudence not as concept or theory, but as method. As method, by embracing the enthusiasm Goodrich describes in his minor jurisprudence (2017), writing in the tone or timbre of a minor jurisprudence opens up new questions as well as the possibility of new patterns of noticing, attendance, thought, experience, conduct and knowledge.

Why write a 'minor' jurisprudence? While not necessarily in

opposition (Barr 2016; Antaki 2017), if a major jurisprudence tends to seek grand truth or definitive answers in more familiar archives, such as cases, reforms, political events etc., to write a minor jurisprudence requires drawing out certain strands of legal practice, often working in less visible archives, such as feet on the ground, a local mural, cycling through a park (Anker 2017) or a bus ride (McVeigh 2017). I often think of Paul Klee's Bauhaus lines he so famously takes for a walk as a reminder that writing a minor jurisprudence is a commitment to noticing the otherwise overlooked; noticing patterns of movement where stillness is seen; noticing how things work, whether lines or places or memories or laws (1973: 6-21). Necessarily incomplete, as not everything can be noticed at once (like the impossibility of noticing a cities collective memories in one set of bricks) the value in this method lies with its ability to provide space for otherwise jurisprudentially overlooked topics, techniques, concepts, practices and sites to slowly, incompletely, yet gently emerge. Offering radical new possibilities for jurisprudential thought, this includes deepening our understandings of where laws are, how they work, and how we might better live 'with' not only our own forms of law, but the laws of others.

More generally, a minor jurisprudence remains a work in the genre of jurisprudence, and jurisprudence, at its most basic, is an act of exercising sound judgment in practical matters of law: *ius prudential* (Cape 2003). In a Ciceronian sense, jurisprudential questions are intensely practical, including questions of how to live with law, and how to do that well: questions of conduct (Cicero 44BC). Living with law is not always easy, especially in a colonial context where relations between laws continue to be fractious, and rarely conducted well. Yet, in the absence of revolution or lawlessness, we must continue to live with law. To do so, and to do so well, it is important we take a position recognising where we are, both in terms of location and within various offices (Barr 2016: ch 1). For example, drawing on Conal Condren's work on early modern histories of office (2006), the office of the critic inherits a tradition of critique and is able to step outside law, yet for the office of the jurist or jurisprudent, as well as the office of the minor jurisprudent (McVeigh 2015), such an escape is not possible (Barr 2016:



48-57). For the jurispudent, the challenge becomes one of remaining critical without abandoning law or official responsibilities to the act of exercising sound judgment in practical matters of law. Personally, I am not convinced there is an outside of law, nor any escape for the common law subject, at least while walking. Even if there was, to step beyond requires abandoning law, and abandoning office: a risky task across the globe, but especially so where I write in Australia, on unceded Aboriginal land, and especially when, for the first time, treaties are currently on foot in Victoria and South Australia.<sup>2</sup>

Taking a position that is companionable in spirit with both Goodrich and Minkkinen's earlier minor jurisprudences, albeit inheriting different traditions and therefore working to different rhythms, and especially resonant with Peter Goodrich's exuberant exaltation in this special issue to create, for me a minor jurisprudence involves taking up the office of jurispudent, accepting the institution of the law I carry (common law), while creatively maintaining a critical stance. In this essay, by taking seriously the jurisprudential challenge of legal footprints, this involves thinking *with* law, and for me at least, asking how to live with a colonial law: a not entirely pleasant task. While never abandoning the possibilities of revolution, by taking a position 'with' law, as a method, a minor jurisprudence temporarily accepts certain aspects while agitating others, noticing what is already there. In this essay, this involves holding temporarily stable the legal activity of footprints to open up the possibility of thinking more carefully about our walking practices, and the legal footprints we leave.

## **B. Legal Place**

With this method, to unfold the question of legal footprints requires attention to how we walk, and to different ways the act of walking is a legal activity or legal movement. It also requires attention to *where* we walk. While walking is a global activity, if we are to ask the question of what our legal footprints are, then where we walk matters. Of course, with so many 'wheres' in the world, the location of our legal footprints varies remarkably, as does their legal nature. Whether the material ground is concrete, sand or soil; country or city; public or

private; as we walk, to ask the question of legal footprints requires us to notice where we are. What is the topography and texture of the earth, the sounds that surround, the light, atmosphere and architectural bounds? Where are we when we walk; geographically, topographically, legally, personally? Are we lost in thought, music, memory? Drifting with the landscape as something catches our eye? Hyper-aware of our feet, breath, our own rhythm? Interweaved amongst the material world, embedded in its atoms and its atmospheres, is what Andreas Philippopoulos-Mihalopoulos (2015) describes as the lawscape. But which one? Which ones? Legal footprints will always involve questions of location, not just in space and time, but also in relation to multiple lawscapes and multiple legal forms. With our feet on the ground, what forms of law do we see, feel, and hear? What laws do we carry, inhabit, inhibit? What laws do we trace, what laws do we stand on, and what laws might we disturb?

It is helpful at this point to consider a global example of walking. As a way of tracking the global through the local, and taking seriously the ever-present local in our global footsteps, consider the recent example of walking in the USA in the aftermath of the election of President Donald Trump, and imagine (or recall) walking in the ‘Women’s March on Washington’ on 21 January 2017, the day after his inauguration (Vick et al 2017; Estevez 2017; Graham 2017). With roughly one million people walking the American federal capital in protest, solidarity and empowerment, what legal footprints did this mass of people leave as they walked from the intersection of Independence Avenue and Southwest Third Street, down the National Mall to the large public park the ‘Ellipse’, just north of the Washington Monument and south of the White House?<sup>3</sup> What personal and collective memories did they trace into the brickwork of the city as they walked tree-lined boulevards? What laws did they carry? What laws did they place or displace?

As the walkers step, they do so as a crowd, raising questions of the law of the crowd (Wall 2016), as well as questions of legal footprints. Notice the ‘where’ of a multitude of footfalls: on roads, footpaths, public parks, before monuments and key legal and political buildings;

jammed in public transport systems underground; walking, pausing, standing resolute; and occasionally lined by police, whose uniformed feet walk to a different rhythm than a crowd. On route, the march walked through evergreen public spaces governed by various layers of US law - federal, state and local regulation - leaving physical and memorial footprints in places clearly central to an architecturally crafted American political and legal identity. More than just leaving physical traces and new additions to the bricked memories of the city, as a collective, these walkers also activated the physical landscape in its multi-jurisdictional layers so familiar to a federalised common law system. As many have shown in law's recent material turn, legal classifications and micro-regulation manifest in the physical layout of places, such as public parks and sidewalks (Blomley 2011), power lines and underground piping (Philippopoulos-Mihalopoulos 2013), as well as traffic lights and disabled parking spaces (Marusek 2014; Marusek 2005). Walking past these material sites of different forms of law does something territorial as footsteps activate the ground.

Noticing the materiality of legal forms in the ground and brickwork surrounds involves recognising where we walk is territorial. In Washington D.C., this is a territory governed primarily, though not exclusively, by an inherited American form of English common law. Also territorial, but generally less visible than the already-largely-invisible place of common law, consider the locations of indigenous laws. While not as easily ascertainable as state or city boundaries, the land in and around the small diamond-shaped state of Washington DC has been, and continues to be, cared for by indigenous peoples and their laws.<sup>4</sup> While the brutality of an ongoing Empire, including forced removals, has complicated indigenous boundaries, many of those travelling to, from and in the Women's March on Washington walked on indigenous lands, such as the traditional lands of the Algonquian speaking Piscataway Peoples, and the tribal lands of the Chickahominy Tribe.<sup>5</sup>

While footsteps might materially trigger both common laws or indigenous laws embedded in the local landscape, beyond territorial

jurisdiction consider different forms of personal jurisdiction, also present in the march. Not just a march of US citizens, even without the empirical data of physical documentation of passports, citizenship, residency or other national emblems, legal identity - especially state identity - invisibly marks our bodies (Griffin 2010). In a sense, this march was a global movement of symbolic passports and concomitant national laws. Whether these laws were civil, Islamic, mixed systems or common law, such as Brazil, Saudi Arabia, Canada or New Zealand, for example, a variety of personal jurisdictions carrying myriad state boundaries were also present in the march.

In addition to state jurisdictions attaching personally to those in the march, international law also attaches to bodies by providing, for example, protections in the form of human rights norms.<sup>6</sup> More materially, as Eslava notes (2015), international law can be felt in key buildings, including ones near the route, such as the United Nations Information Centre or neighbouring International Monetary Fund. Likewise, religious laws were also present in the Women's March on Washington, potentially carried in hearts, minds, conduct, clothing, protest signs, emblems or items in pockets or bags. Even for those not overtly carrying a religious form of law themselves, the act of walking past churches, cemeteries or other religious architectural emblems also potentially leaks into the layers of legal footprints triggered, and left behind, in a kaleidoscope of bricked memories and multiple layers of bricked laws.

With so much potential legal activity and movement in one march, including multiple forms of common law, indigenous law, international law and religious law, consider other simultaneous Women's marches across the globe, and track the cacophony of legal footprints. Across differences in place - in terrain, temperature, atmosphere - and different laws, over 600 Women's Marches occurred globally that day, including marches in Helsinki, Copenhagen, Oslo, Vienna, Prague, Dublin as well post-Brexit London, Bristol, Liverpool, Cardiff and Edinburgh. In the South, marches took place in Buenos Aires, Brasilia, Santiago, Bogota as well as Accra, Nairobi, Jos, Lilongwe, Dar es Salaam, Cape

Town, New Delhi, Erbil, Jakarta, Yangon, Manila and Bangkok. In settler-colonies, where walking comes with a familiar English common law inheritance, marches took place in Dunedin, Wellington, Calgary, Auckland, Edmonton, Montreal, Vancouver, Ottawa as well as Sydney, Canberra and Melbourne. Clearly these global marches were composed of a different set and range of places, laws and legal footprints.

Location matters. Not just for real estate jingles but for how we might notice, experience and potentially understand the active nature of laws' plural places in the world, and how our feet might be involved. For it varies. Take, for example, the multitude of laws present when people marched on unceded Musqueam land in Vancouver or walked on Coastal Salish land in Victoria, British Columbia, Canada. At the same time, approximately 125 people walked (rugged up imaginably) at McMurdo Station in Antarctica in solidarity in a place where territorial jurisdictions are largely displaced by personal ones, engaging a plethora of state and international laws.<sup>7</sup> Therefore, whether walking in Washington D.C. or Vancouver or McMurdo Station, not only does the light and landscape change dramatically, but the layers of laws carried, and triggered, by shoes and soles of walkers change markedly too. Not just in this global example from 21 January 2017, but always. Everyday, when and where we walk. Location matters. As does the place we walk, and the ground we touch: remarkably so. What also matters is our often overlooked feet.

### **C. Common Law Feet**

Walking, as already apparent, is a much more complex activity than its soporific definition as the 'action of moving or travelling at a regular and fairly slow pace by lifting and setting down each foot in turn so that one of the feet is always on the ground' (Oxford English Dictionary 2009). I am not alone in making this argument. Tellingly, in a conversation between Alberto Giacometti and Andrew Breton, Breton asked, 'What is your studio?' and Giacometti replied: 'It is two feet that walk' (Lord 1983: 145). Like Giacometti, and as many philosophers, poets, public artists, writers, geographers and walkers have long known, walking has an intimate association with various forms of knowledge,

modes of political action and practices of individual and social health. Alongside more familiar walkers, such as Hamish Fulton, Francis Alys, William Wordsworth, Thomas A. Clark, Diogenes, Jean-Jacques Rousseau, Walter Benjamin, Michel de Certeau, Henry David Thoreau, Iain Sinclair, Will Self, consider Matsuo Bashō (1694), W.G. Sebald (2002), Robert MacFarlane (2016) and Nick Papadimitriou (2012). To counter this noticeably male list of walkers, also consider Robyn Davidson (1995) and Rebecca Solnit (2001), as well as artists Clare Qualmann, Amy Sharrocks and Bianca Hester. Aside from literature and art, there is also a well-being aspect to walking, observable in the global mega-conference ‘Walk 21’, which resonates with the infamous words of Copenhagen’s foremost peripatetic, Søren Kierkegaard:

I have walked myself into my best thoughts, and I know of no thought so burdensome that one cannot walk away from it ... Besides, it is also apparent that in walking one constantly gets as close to well-being as possible, even if one does not quite reach it ... Health and salvation can only be found in motion (Kierkegaard, 1829-1848 411-412).

However, more than this, the habitual and often unthought step-by-step of walking is not only physical, pleasurable, healthy and an increasingly well-funded government activity, but also political, subversive, and always already juridical. How, then, might walking raise questions of law?

As already illustrated through the global Women’s Marches, with so many wheres in the world, the nature of our footprints varies remarkably, as does relations between walking and law. Having offered the American common law system as the focal point of a global example of how we always walk somewhere, and how that somewhere is not only local, but also lawful in a variety of complex ways, my focus remains on the global family of common law countries, before shifting more specifically to the example of Australia in the final section of this essay. Despite the internal variations in legal content, there is a consistent legal form across the common law world. There is also a constant in how we walk, at least legally. *This is our feet*. As already hinted, one of my jurisprudential arguments about the movement and place of

common law, which I've described at length elsewhere as 'juridical walking' is my argument that walking is a legal practice (Barr 2016: 6-20; 133-149; Barr 2013). In short, walking is much more than the left-to-right and right-to-left of our footsteps. In the common law world, our physical bipedality is also a form of legal movement. In other words, when we walk, we walk with law, shifting the laws we carry into familiar spaces, new terrains, old habits. When we walk we move our feet – our common law feet – and the traces we leave are not just physical, but also legal footprints.

How does this occur? One significant way derives from our inescapable nature as legal subjects: walking while holding the legal designation of 'subject'. Common law's technical masonry is not limited to territorial jurisdiction but includes long histories and ongoing practices of personal jurisdiction. Shifting focus from territorial to personal jurisdiction means the link between walking and common law can be more readily identified (Dorsett and McVeigh 2012). Why? Because common law attaches to it subjects through the body, or more specifically, *the feet*. Designating the feet as the legal bearer of common law, the common law aphorism, as declared so famously by Sir William Blackstone (1765: 106), 'so wherever they go, they carry their laws with them' brutally names the body of the subject – and more specifically the feet – as legal host and carrier, without offering an escape.

Despite similarities amongst common law countries, and common law feet, there is an important difference stemming from the tripartite classifications under the doctrine of discovery (Vattel 1758; Miller 2010). Depending on whether a colony has been classified as ceded, conquered or settled creates a well-known difference between the manner in which law (English common law in this instance) moves into a new colony, and the nature of common law's relationship with local laws. Unlike the 'desert and uncultivated' lands subject to 'occupation':

in conquered or ceded countries, that have already laws of their own, the king may indeed alter and change those laws; but, till he does actually change them, the ancient laws of the country remain, unless such as are against the law of God, as in the case of an infidel country (Blackstone 1765: 106).

If classified as ‘ceded’ or ‘conquered’, the relationship between laws brought with English subjects and the ‘ancient laws of the country’ is one of cohabitation, at least until English law demands otherwise. In locations such as British Columbia or Australia, however, neither ceded nor conquered but post-designated as ‘settled’ or ‘occupied’, common law carries legal consequences ‘immediately’ (Kercher 1995; Ryan 1996). Consider the legal footprints on arrival in the Colony of New South Wales. Moving with the feet of the British Empire – soldiers, prisoners and second sons-alike – common law rapidly stretched into ‘desert and uncultivated’ lands, not simply by maps, flags, buried coins etc. (Benton 2010), but by feet, moving, walking, touching the ground. As Blackstone, former resident and Recorder of Wallingford, and first chair of common law at Oxford University, wrote:

For it is held, that if an uninhabited country be discovered and planted by English subjects, all the English laws are immediately there in force. For as the law is the birthright of every subject, so wherever they go, they carry their laws with them (1765).

However, as Wilfred Prest (2014) notes, this was written in his first edition, and in Blackstone’s revised but commonly overlooked second edition of 1765, which Prest (2014: 151) argues was written in response to the 1765 North American protests and boycotts around the *Stamp Act*, Blackstone rewrote this passage and introduced ‘significant restrictions’ to his general statement:

For it has been held, that if an uninhabited country be discovered and planted by English subjects, all the English laws then in being, which are the birthright of every subject are immediately there in force. *But this must be understood with very many and very great restrictions.* Such colonists carry with them only so much of the English law, as is applicable to their own situation and the condition of an infant colony (1765).

Changes in language between these editions are primarily issues of content rather than form. While Blackstone’s second edition rewrite of this aphorism is a fascinating oversight, especially in Australian jurisprudence, such as Justice Brennan’s leading judgment in *Mabo v*



*Queensland (No 2)* (1992) 175 CLR, these variations do not diminish the question, or consequences, of legal footprints, which are first and foremost a matter of legal form. Irrespective of judicial intervention by provincial judiciatures, which may have - and did in the case of the Colony of New South Wales - alter the *content* of English common law that arrived (Kercher 1995), the *form* of law carried remains central to the nature of our legal footprints. When the form is common law, regardless of the content, this shapes our footsteps as common law marks its place: its shapes and trails, its impositions and burdens. While its immediacy is technically limited to the subject moving in 'uninhabited lands', it is through its form that common law 'arrived'. Its form was - and is - carried by our feet.

More than just questions of place, through Blackstone's formulation, common law walking - our legal footprints - becomes a *place-making* and arguably a *place-taking* activity. Significantly, this legal mode of walking is not just a colonial 'then'. The legal technology of hitch-hiking footsteps continues, grounding common law through leaking footprints, each and every step, not only in Australia, but elsewhere too. Across the globe, especially in the common law worlds of the UK, USA, Canada, New Zealand and Australia, common law subjects continue to host, carry, and place a hitch-hiking common law in shopping centres, car parks, kitchens and manicured parklands, patterning the land with legal footprints. What does this mean for those who walk today as common law subjects?

Therefore, having questioned the question, to ask about our legal footprints in turn requires us to track the physical movements of feet and intertwined movements of law. This requires an increased attention to landscapes, laws, and to what we might think of as our individual or collective legal literacy - an appreciation of our relationship to laws - activated and available to us each time we walk. To this end, I conclude this essay with an example of walking past bricked memories, and bricked laws, of a few painted bricks in Redfern, Sydney, Australia in the '40,000 years' mural. The question, of course, is why end in Redfern?

### 3. Painted Bricks (Images)

On 10 December 1992, then Prime Minister Paul Keating stepped down from the ivory towers of Canberra, walking into the urban political heartland of Aboriginal Australia, '[j]ust a mile or two from the place where the first European settlers landed', to deliver his now famous 'Redfern speech' (Keating 1992).<sup>8</sup> Keating framed his talk with a series of questions about how well, as a society, we know our history, our complex contemporary identity intertwines with 'Aboriginal Australia', and 'how well we know the land we live in' (Keating 1992). Keating's laconic punchline to his opening provocation was telling: 'Redfern is a *good place* to contemplate these things' (Keating 1992). Keating is correct, Redfern is a very good place to contemplate 'these things'.

Redfern is one of the places I walk in Australia, and after a few final introductory words, I offer a photographic essay called 'Legal Footprints in Redfern' in conclusion.<sup>9</sup> Serving as the final triptych in companion with the poetics of bricked memories, and the essays of bricked laws, this a visual story about walking with one law on the land and law of another, about placing my feet on the ground, and on Country that is also in the city too, as I walk alongside the faded painted bricks of the 40,000 Years mural in Redfern, coordinated, designed, and painted by Carol Ruff in 1982, in collaboration with the Redfern community. As I walk, I hear the words of Big Bill Neidjie:

*This story e can listen careful*

*and how you want to feel on your feeling*

*This story e coming through you body,*

*e go right down foot and head, fingernail and blood ...*

*through the heart.*

*And e can feel it because e'll come right through.*

*And when you sleep you might dream something (Neidjie 1989: 18-19).*

As an elder now past, as well as a poet, political leader, writer, walker, and last speaker of the Gaadudju language, Big Bill Neidjie gifted his stories to those willing to listen through his words, and through his decision to share his traditional land with others, a decision now enjoyed by millions who visit the World Heritage National Park in Kakadu, Northern Territory, Australia. With his words as guide,<sup>10</sup> consider the legal consequences of walking in Australia.

As we know, walking occurs with our feet on the ground, and in Australia, this involves a particular complication. Not only do we walk alongside bricked memories collected in our cities, parks, bushland, garages, but we also walk on unceded Aboriginal land. More than just land, however, from the perspective of Aboriginal forms of law, this land is also Country. The Aboriginal use of the word 'Country' in Australia comes in a particular register, as seen in numerous Aboriginal works and ethnographic examples, such as Tonkinson (1978). As an entry point into this deep concept, consider the words of Kaurareg and Meriam architect Kevin O'Brien from his *Finding Country* exhibition in the Australia Pavilion at the 2002 Venice Biennale:

Country is an aboriginal Idea. It is an Idea that binds groupings of aboriginal people to the place of their ancestors, past, current and future. It understands that every moment of the land, sea and sky, its particles, its prospects and its prompts, enables life. It is revealed over time by Camping in it .... It is a matter of belonging. Country is my belief. What is yours? (O'Brien 2012).

Amongst many things, Country is heavily temporal, but certainly not linear. It is a webbing of the material world with the cosmos, across times, and interweaves identity. Located in a material place, as always being somewhere, Country is not only temporal, but spatial too. Country is also a relation with law: a lawful relation, and lawful place. As Country, therefore, in its temporal, spatial and material dimensions, the land *itself* in Australia can be thought of or understood as a material form of Aboriginal law: even in the cities. In other words, Country is not just out bush, but in the city too. When we walk the city, whether we notice or not, we trace and trigger bricked memories, and we walk

on Country too.

My basic proposition that I have been opening up in the three genres of this essay is that in Australia, as we walk on Country, not only do we walk as legal subjects of a state-based law, but we also walk on land that is another form of law. Translate this proposition into an image: the land as law. As an image, with its intense materiality, it provokes more than the idea land 'represents' or is 'metaphorically' Aboriginal law. Pausing, we can choose to resist, internally translating this phrase so that the land becomes like law or mirrors or guides or is significant to law or stands for or represents law. If it helps, consider Christine Black's jurisprudential work on the land as the source of law (2011). Like a case or legislation that is a source of common law, Black places the land in Australia in its topographical abandon as a material source of Aboriginal law, embedded in the familiar land, the dirt, the eroded contours.<sup>11</sup>

Whether carrying the image of land as law or as its source, as millions of daily footsteps touch the ground, imagine these footsteps touching the material basis of multiple forms of Aboriginal law: Noongar law in Perth, Gadigal law in Sydney, Wirundjeri law in Melbourne etc. For those trained in common or even civil law traditions, where images of law tend to coalesce around material items such as buildings of courthouses, parliaments and gavels (Parker 2018) (i.e. man-made items rather than the land itself), accepting the land 'is' law might be conceptually awkward. Yet to see the possibilities of this particular minor jurisprudence, and to see how far this question of legal footprints can take us, hold this image stable, even if this is only possible as a premise.

By way of partial explanation, as an outsider to Aboriginal legal traditions, I have been told the land is law in different ways by people who have the authority to speak for their laws. It was with this understanding that I grew up on Whadjuk Noongar land, alongside the Derbarl Yerrigan, and it is how I write this minor jurisprudence as I move between Wurundjeri, Gadigal, Cammeraygal and Darkinjung Country. By listening to those who know their laws better than I, and

by accepting other ways of knowing law, even if these concepts are hard to translate into my legal idiom of Anglo-Australian common law, I choose to hold this image steady as a way of working alongside other forms of law as a matter of lawful relations, and lawful trust. Of course, this generalised image of 'law as land' does not adequately reflect myriad deep and complex relations between land, law, people and the cosmos across 200+ Aboriginal forms of law in Australia. However, in order to learn to ask different questions about the ongoing legal relations between common laws and Aboriginal laws in Australia, and despite how awkward it may feel, this image is one way of understanding the place of Aboriginal law. Let's accept and then see where it takes us.

Therefore, questioning the question of legal footprints, what I have chosen to hold steady in this essay - in this minor jurisprudence in a non-linear historical key across three triptych genres - is an image of global materiality and motion of feet. When I shift from the global to the local, and consider the example of Australia, I also hold steady a second image of the land as law. What this means is that not only do we walk as legal subjects of a state-based law, but we also walk on land that *is* another form of law. Coupled with poetic tendrils of bricked memories, laced throughout our cities, walking becomes webbed into complex connections with multiple laws: one carried by feet, one carried by land. What does it mean, then, for a common law subject to walk on the law of another, and how might we understand the ramifications of footprints? If lawful walking meets lawful land, how do these two different laws meet? This is the challenge raised by the question of legal footprints.

My final response to this challenge is a local example that emerges from my work with the 'Space, Place and Country' research group at Sydney College of the Arts, University of Sydney. Emanating from a project called 'DownCityStreets', this is a visual splice from an autoethnographic walk alongside an undoubtably iconic and much-loved public mural in Redfern, Sydney. Painted in 1983, the 40,000 Years mural on Lawson Street in Redfern, Sydney, Australia was coordinated and designed by artist Carol Ruff.<sup>12</sup> Commissioned to

create a community mural, Carol Ruff set up shop on Lawson Street and gathered community suggestions by inviting stories of 'what matters to Redfern'. Through letters, photographs and a suggestion box, the most popular suggestion was the Redfern All Blacks - the local Aboriginal rugby team that had just won the 1979 flag. Ruff painted the mural with the help of artists such as Tracey Moffatt, Joe Geia, Colin Nugent, Avril Quail, Kristina Nehm, Charlie Aarons, as well as Eora College students. Consisting of a series of painted panels, the mural stretches across a long bridge wall, roughly 100 metres, over the railbridge outside Redfern train station, with the Sydney skyline as backdrop. The mural tells a series of local stories, painting a lived history and ever-continuing lawful presence in Redfern of Aboriginal peoples, and Aboriginal laws, onto an underwhelming series of red bricks composing a low-rise railbridge wall. From its position on top of the hill, where the winds meet and the roads cross, the mural sits outside the train station on unceded sovereign Gadigal land and takes a position as here, now, still.

The *40,000 Years* mural on Lawson Street is a vital part of Redfern's cultural heritage. It contains a complex weave of Aboriginal histories that relate both to the Redfern area and to the passage of Aboriginal people to and from the city of Sydney from across Australia (Space, Place, Country 2015).

Yet, it is a mural that rapidly deteriorates, and requires urgent retouching. It is also a mural the local community has asked to be noticed, and the artist Carol Ruff consented to being photographed.<sup>13</sup> This is how I notice this mural, and through the mural notice how Country is in the city too, bricked memories and bricked laws weave, and how, when we walk, we continue to trace our legal footprints.

**Olivia Barr**

**Legal Footprints in Redfern:  
A photoessay of Carol Ruff's '40,000  
Years' Mural in Lawson Street,  
Redfern, Sydney, Australia**

**Olivia Barr**



'Details from '40,000 Years Mural'', photographed by Olivia Barr in 2017,  
Lawson Street Redfern, coordinated by Carol Ruff, 1984.





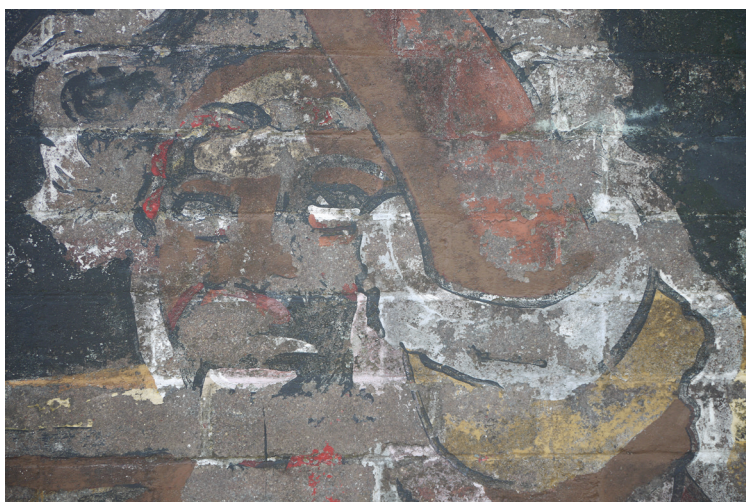








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## Endnotes

\* Dr Olivia Barr, Senior Lecturer, Melbourne Law School, University of Melbourne. Email: [olivia.barr@unimelb.edu.au](mailto:olivia.barr@unimelb.edu.au). All photographs are mine. Thanks to Chris Tomlins for the invitation to participate in his 'Law As...' adventure, and to those at the Berkeley symposium for their comments, especially Rebecca McLennan. Thank you also to the reviewers, and to Laura Griffin, Kirsty Gover, John Borrows, Claire Charters, Ulf Morkenstam and Shaun McVeigh for their careful engagement with related versions. This essay draws on a larger collaborative project 'DownCityStreets' by the Space, Place, Country research cluster at Sydney College of the Arts, University of Sydney, and to this end, I am especially grateful to Bianca Hester and Saskia Beudel for their continued cross-disciplinary generosity, as well as Carol Ruff for creating her public artwork, her permission to reproduce images of her mural, and her continued involvement in the restoration process.

1. This is a poetic reworking of Olivia Barr, 'Bricked Memories' in Felicity Fenner (ed), *People Like Us* (UNSW Galleries, 2015) 24, which was a response to artworks by Daniel Crooks, Volker Kuchelmeister & Laura Fisher, and Michael Nyman. Thanks to Felicity Fenner for the original invitation, and for permission to republish in a revised form.
2. For the latest update, see the Victoria Treaty Forum (28 April 2017) <<http://www.vic.gov.au/aboriginalvictoria/treaty.html>>. Commenced in February 2016, the Victorian government is undertaking Australia's first treaty talks, see, eg, Hamish Fitzsimmons, 'Victorian Government to Begin Talks with First Nations on Australia's First Indigenous Treaty' (ABC News, 26 February 2016) <<http://www.abc.net.au/news/2016-02-26/victoria-to-begin-talks-for-first-indigenous-treaty/7202492>>. In December 2016, the South Australian government also commenced treaty talks, see, eg, 'Caroline Winter, "Treaty: South Australian Government Enters Historic Discussions with Aboriginal Nations' (ABC News, 15 December 2016) <<http://www.abc.net.au/news/2016-12-14/south-australia-enters-historic-treaty-discussions/8120162>>.
3. For the route of the march, see Emily Crockett, 'Women's March on Washington Schedule: Time, Lineup, and What to Expect *Vox*' (19 January 2017) <<http://www.vox.com/identities/2017/1/19/14323732/womens-march-washington-schedule-route-speakers-performers>>.

4. Google maps, for example, generally fails to display indigenous territories in the same way it displays nation-state territories or city boundaries. For a notable exception, see the Nisga'a territory, formally recognised through the *Nisga'a Treaty* (2000) in the Nass Valley in British Columbia, Canada, and visually represented in Google maps.
5. See, eg, Jason Steinhauer, 'The Indians' Capital City: Native Histories of Washington, D.C.' (27 March 2015), <<https://blogs.loc.gov/kluge/2015/03/the-indians-capital-city-native-histories-of-washington-d-c/>> in conversation with historian Joseph Genetin-Pilawa on his forthcoming book, *The Indians' Capital City: 'Secret' Native Histories of Washington, D.C.* See also the Native American and Indigenous Studies Association Conference (2015) hosted in Washington D.C., <<http://2015.naisaconference.org/locale/tribes-in-the-area/>>.
6. See, eg, article 1 of the 1930 *Hague Convention on the Conflict of Nationality Laws*. See also the distinction between the rules of *jus sanguinis* and *jus soli* as an illustration. See generally, Malcolm N Shaw, 'Jurisdiction' in *International Law* (Cambridge University Press, 2008) ch 12. As Shaw notes at 660, the ICJ in the *Liechtenstein v Guatemala (Nottebohm)* case (ICJ Reports, 1955, 4 at 23), held that according to state practice, nationality was 'a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties'.
7. Jurisdictionally, McMurdo Station is a US-based research station located in the New Zealand-claimed Ross Dependency in a continent where sovereignty is off the table and technically not 'claimable' under the *Antarctic Treaty* (1959), which holds Antarctica for the 'common humanity of mankind', not states; see *Antarctic Treaty* (1959) 402 UNTS 71 (1 December 1959), especially article 1(1) and 8(1). For more detail, see Olivia Barr, *A Jurisprudence of Movement* (Routledge, 2016) ch 4.
8. Paul Keating, 'Redfern Speech' (Speech delivered in Redfern Park, 10 December 1992). For the transcript, see <[https://antar.org.au/sites/default/files/paul\\_keating\\_speech\\_transcript.pdf](https://antar.org.au/sites/default/files/paul_keating_speech_transcript.pdf)>. For a sound recording, see <<http://aso.gov.au/titles/spoken-word/keating-speech-redfern-address/>>.



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9. All photographs are mine (October 2016) © Olivia Barr. This series of photographs comprises 'Details from "40,000 Years Mural"', photographed by Olivia Barr in 2017, Lawson Street Redfern, coordinated by Carol Ruff, 1984. These photographs are published with Carol Ruff's copyright permission.
10. Big Bill Neidjie's work is used as a guide here in stark and intentional contrast to the often-cited words of a white male English travel writer who once briefly walked in Australia, and whose travel fiction continues to overpower other voices, especially indigenous voices; see Bruce Chatwin, *Songlines* (1987).
11. Likewise, but in a Canadian context, consider the opening statement of the Gitksan and Wet'suwet'en Nations in *Delgamuukw v British Columbia* [1997] 3 SCR 1010. See also John Borrows, *Drawing out Law: A Spirit's Guide* (University of Toronto Press, 2010); John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (University of Toronto Press; 2002); John Borrows, 'Learning from the Land: Outdoor Indigenous Legal Education' (2016) *Windsor Yearbook on Access to Justice* 33: 1-27.
12. See Carol Ruff <<http://www.carolruff.com/html/index2.html>>.
13. See 'Space, Place, Country' research group, Sydney College of the Arts, University of Sydney and 'DownCityStreets' Project. <<https://downcitystreets.com/>> Community consultation days were run in 2016, and the CEO of the Metropolitan Aboriginal Land Council, Nathan Moran, has been encouraging of any support that could be offered in support of this significant community mural.

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