Canvases as legal maps in native title claims

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Introduction

In this chapter I look into the relationship between law and maps. I explore the extent to which maps can be perceived as an aesthetic representation of space. I use the metaphor 'maps as an aesthetic practice' to interrogate the relationship between paintings and maps within the context of Aboriginal land claims. This is part of a wider enquiry that seeks to explore the meaning of space in law. This is a question that has been of interest for quite some time now in legal geography (see e.g. Blomley 1994; Holder/Harrison 2003; Blomley et al. 2001; Delaney 1998; Braverman et al. 2014), drawing attention to the spatial aspects of relevant legal concepts within the context of evidence in native title claims, such as territory (see e.g. Elden 2013; Mohr 2003), legal pluralism (see e.g. Falk Moore 1978; Merry 1988, 2000; Mellisaris 2004) and *terra nullius* (see e.g. Banner 2007). In addition to studying the social aspects of legal spaces, legal geography also refers to the spatial role of law, the importance of how law is spatially represented (see e.g. Manderson 2005), and also how spaces can disrupt and subvert legal meaning in positivist law (see e.g. de Sousa Santos 2018).

Just like other disciplines, law is engaging with the material turn in the social sciences and humanities (see e.g. Davies 2017; Vermeylen 2017). Law is seeking to extend legal personhood to, for example, the non-human through the recognition of rights of nature (see e.g. Vermeylen 2017). This is particularly relevant when thinking about indigenous peoples' land claims; the legal requirements for evidence in ancestral land claims have so far only recognized a predominantly western worldview in terms of the relationship with the land. Other relations between humans, non-humans and more-than-humans are slowly being recognized in native title claims (see e.g. Anker 2014). How to represent these relations on maps, however, as a part of providing visual evi-

dence of how a group of people are relationally connected to a specific piece of land, remains underexplored. This requires redressing a traumatic legal history where spatial legal concepts, defined by colonial and settler legal authorities, continue to haunt indigenous peoples.

I am particularly interested in the relationship between cartography and the dispossession of indigenous peoples' land and the overlaps of spatial metaphors that can be applied to law and mapping. Both physical and cartographic representations of colonial land claims and subsequent dispossessions have left epistemological and ontological traces in the physical and legal landscape that continue to haunt indigenous peoples in their battles to get their claims over land recognized on the basis of their own spatio-legal concepts.

As part of the ontological turn in cartography (see e.g. Kitchin et al. 2013) and law (see e.g. Davies 2017; Vermeylen 2017), I am looking for alternative representations of the legal landscape that include indigenous peoples' laws which embody the ontological relationship between indigenous peoples and their wider environment. This also includes reflecting on how the connection between the human, the non-human and the more-than-human can be represented in the context of spatio-legal mapping in native title claims.

Indigenous peoples have used maps as a technology in courts to provide evidence of their enduring occupation of land (see Brody, this volume). However, the cartographic convention impedes a culturally appropriate mapping process and outcome. What is conveyed as a neutral mapping process and outcome of indigenous land claims often turns out to be implicated in the colonial project, which misrepresents indigenous peoples' belonging to land and its wider environment (Anker 2018: 14). Despite a raft of counter-mapping projects, it remains questionable to what extent the master's tool can convey indigenous peoples' ways of being (see Introduction and Dieckmann, this volume). In this chapter, I analyze two examples of indigenous mapping projects that are different from conventional topographic mapping: the bark paintings that supported the Blue Mud Bay sea ownership claim in Arnhem Land and the *Ngurrara Canvas II* that was presented in a preliminary hearing before the Native Title Tribunal. Both are examples of relational representations of the link between people, land, sea (in the Blue Mud Case) and law. The cultural understanding of the relationship between the environment and people is more than just a representation of property rights, it also depicts the landscape "as a determinant of or as an active component of people's lives" (Morphy/Morphy 2006: 68). In this chapter, I explore, through these two case studies, whether

indigenous 'artistic' representations of belonging and walking the landscape may provide a better canvas on which ontological belonging and its legal expression can be mapped than conventional mapping processes. Before I turn my attention to the two case studies, I first sketch the joint history of law and mapping, followed by a reflection on how this problematic positivist connection between mapping and lawmaking haunts indigenous peoples when they are asked to provide evidence of their ancestral connection to land in court cases. Problematizing conventional cartography as a technical ploy for legal dispossession, I explore whether visual arts theory may provide the language to start thinking differently about how to map the ontological belonging of indigenous peoples in a particular landscape.

Cartography and law

Establishing legal title in the common law tradition is intricately linked to the concept of memories of how the land was being used. In preliterate times, this could be done through specific – often embodied – rituals. Local knowledge about the relationship between land and legal title was bound up in knowing the rituals that recorded the cultural events that demarcated property (Pottage 1994: 361). "The functional locus of title was in the local knowledge about boundaries and transfers; the ritual of transfer merely underlines the accumulated practice of neighbors and past owners as to who held what rights and where" (Anker 2005: 109). However, establishing legal title through performative practices (like turning the turf) was replaced with the arrival of maps, which removed memory of the rituals and substituted them with a homogenizing and linear grid (ibid.). Proof of title in common law is now established through the logic of exchange on paper and through abstraction (ibid: 108). Cartography has played a role in the dephysicalization of real property in common law (ibid.).

The relationship between maps, law and colonialism has been criticized extensively by critical geographers as the map "renders the land legible through its reduction of the world to boundaries and surface areas, profitable tree species or types of land use, recording only what the state deems valuable" (Anker 2018: 15). The law of property has been affected by a gradual process of dephysicalization; the 'reality' on the ground is not necessarily reflected in securing legal rights or even getting secure access to land (see e.g. Graham 2011).

Despite the somewhat problematic relationship between law and cartography, indigenous peoples have used maps to challenge the dominant legal idea of vacant or empty land, or so-called *terra nullius* (Anker 2018: 14). The attempt to map indigenous land rights, using new technologies such as participatory geographical information systems, is not without its own risks and problems. Maps and cartography in general are part of the colonial process of creating boundaries and containing peoples in pre-conceived spaces. Indigenous peoples' understanding of land and ways of being have often been under- or misrepresented in these mapping exercises (Anker 2018: 14; see e.g. Vermeylen et al. 2012; Dieckmann, this volume).

The use of maps in indigenous peoples' quests to reclaim their lands is part of a wider discussion around acceptable evidence in native title claims. One of the most emblematic encounters between indigenous and universalized western legal systems is reflected in Chief Justice McEachern's famous words: "This is a trial, not a performance", in *Delgamuukw v. R.* (1991). When the Gitksan and the Wet'suwet'en defended their native title claim in British Colombia in the Canadian Court, their evidence was presented in a performance consisting of dances, songs, oral histories and the retelling of collective memories. Chief Justice McEachern dismissed cultural practices as legal evidence but the Court of Appeal later accepted oral evidence (1993, 1997).[1]

Canada has now built a reputation around the admissibility of indigenous evidence in court cases, including songs, dances, regalia and wampum belts (Anker 2018: 14). However, the way oral evidence has been used in court cases is still constrained by a hegemonic legal system of common law that treats alternative evidence as legal facts and that does not really grasp the cultural context and other ways-of-being of indigenous peoples (Anker 2018: 14). The way evidence is being theorized and practiced is now being challenged through the ontological turn in anthropology, which has opened up the debate about the role of natural entities, such as the non-human and beyond-the-human, as legal evidence, including how they are represented on maps (see e.g. Vermeylen 2017).

The way law and cartography depict relations to land is still very much embedded in a colonial discourse of property rights. There is hardly any acknowledgment of the importance of non-human or more-than-human beings. Neither is there awareness that there are other ways to relate to property. At the risk of over-generalizing, property in non-Eurocentric societies is an

1 See also Brody, this volume.

institution or process that builds networks of responsibilities and generosity between humans and non-humans which is very different from a Eurocentric property system that is based on exclusive private rights (see e.g. Borrows 2010; Black 2011). This obviously raises questions about (i) how to map these relationships in a more inclusive and culturally respectful manner, and (ii) how to give legal meaning to these non-hegemonic mapping practices.

Exploring these issues also raises further queries about the role of legal pluralism within the context of providing evidence in land rights claims. A hierarchical approach has often been favored when multiple and often ontologically very different legal systems meet and clash in the court (Vermeylen 2013). State law is still favored as the main body of legal rules, while what has been perceived as informal and unofficial law is tested for its legality against formal state law. Both cartography and law are defined by a positivist approach that characterizes space and law from a dominant worldview that fails to recognize spatial and legal pluralism (Mohr 2003: 54). This mutually reinforcing positivist relationship between space and law can be best demonstrated through the well-known colonial construct of a close and intimate connection between territorial exclusivity and the legal determinacy of the nation-state (ibid: 55). A good example of this spatio-legal construct is the idea of *terra nullius*, which has been used throughout history and across continents to dispossess indigenous peoples. As widely accepted by critical geographers, however, space is fluid and this plurality should also be reflected in the acceptance of law as a fluid body that can represent different legal orders and identities (see e.g. Manderson 2005; Fitzpatrick 2001; Mohr 2003). Concretely, this means that in most cases any territory or land is legally determined by different legal orders that cannot be fixed nor can their legality be decided by formal state law.

One of the main discourses that were used to justify colonization was the idea that spaces outside Europe were empty. These vacant spaces were waiting to be cultivated, Christianized and legalized by white European men. The idea of emptiness was spatially reflected through the perfection of the Roman practice of a Roman grid system consisting of two axes. The coordinates of *cardo* (north-south) and *decumanus* (east-west) became popularized as the Cartesian idea that any point could be projected as a two-dimensional space that could be represented on a map. However, the colonial powers' hegemony was not just limited to a spatial representation of mapping emptiness with coordinates. They also needed to establish political and legal power in these places. This was done through the notion of jurisdiction, whereby

state power coincided with the territory of the state, which was spatially expressed through borders and gridlines when mapping. In other words, Cartesian maps were multifunctional in the sense that they could "map the possibility of emptiness", but simultaneously, could also map "boundaries that may be filled with a legal regime" (Mohr 2003: 60).

Cartography and its accompanying Cartesian grid system contributed to the silencing of the plurality of legal systems that once resided in a particular area. During medieval times distinct groups shared a specific piece of land, each with their own tribal laws which travelled with them when they moved to other parts of a region. Each land thus had multiple jurisdictions. But with modernity and Enlightenment ideas, citizenship was increasingly linked to territorial absolutism, which eventually led to the formation of an "absolute state as a compulsory institution" (ibid: 61). In other words, "the undifferentiated legal space of a state's jurisdiction meets Cartesian space in the homogeneity of its subjects and of its space" (ibid.). It is against this background of a spatio-legal homogeneity that centralizes the power of the state by only recognizing the exclusive jurisdictional boundaries of state law that indigenous peoples are seeking to redress past injustices. One of the many challenges that arise from this situation is a rather prescriptive notion of what can count as legal evidence in indigenous peoples' legal attempts to regain access to and control over their ancestral land.

Evidence of legal title and the use of maps

Indigenous peoples need to be able to access their own laws when they need to provide evidence of their claims to land. For example, in the settler court system, Aboriginal peoples in Australia must provide evidence on two matters: their traditions and customs and their connection to the land claimed (Schreiner 2013: 170). It was only after the famous *Mabo* decisions of the High Court of Australia in 1988 and 1992 that the Native Title Act 1993 came into existence. Before that, Aboriginal peoples were subject to Australian legislation. Under the Native Title Act, Aboriginal peoples had to file everything that could serve as native title, which, according to the Native Title Act of 1993 is:

> "The expression 'native title' or 'native title rights and interests' means the communal, group or individual rights and interests of Aboriginal peoples […] in relation to land or waters, where: (a) the rights and interests are possessed

> under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples […] and (b) the Aboriginal peoples […] by those laws and customs, have a connection with the land or waters; and (c) the rights and interests are recognised by the common law of Australia" (Native Title Act 1993 – s. 233).

The Native Title Act thus adds a very specific legal requirement. It must be demonstrated that there is substantial maintenance of the continuous connection between the laws and customs of contemporary claimants and their ancestors at the time of establishment of British sovereignty (Asche/Trigger 2011: 219). Or, in other words, the law and customs that were once practiced must still be practiced today. This raises the question of how indigenous peoples can present their laws that can prove connection to the land. This is a particularly thorny issue as indigenous peoples' laws are different from the Eurocentric legal system, with the added complexity that indigenous laws are often mistranslated and misrepresented in Eurocentric law (see e.g. Vermeylen 2013, 2015; Schreiner 2013; Teubner 1998). Australia has acknowledged, arguably more so than other jurisdictions, the fluid characteristics of Aboriginal laws and has accepted the idea that "traditional laws" should not be reduced to something that is ancient, sound and authentic (Schreiner 2013: 170).

As part of the process of demonstrating a continuing relationship with the land under Aboriginal peoples' laws and customs, claimants to native title provide oral evidence. Oral testimonials are often corroborated through what are perceived as expert witness statements and evidence from, for example, anthropologists, linguists, archaeologists and historians (see e.g. Reilly 2003; Palmer 2011). Increasingly, the oral testimonies are part of a wider performative process of giving evidence as a way of avoiding the need to seek expert evidence and of establishing Aboriginal law as a source of law on an equal footing with Australian law (Morphy 2007: 31). However, the process of native title claims is still haunted by a colonizing force where the main objective is to enact the sovereignty of a colonizing society over its colonized subjects (ibid.). Courts still struggle with the interpretation of the performative elements of indigenous laws.

The case study of the Yolŋu Blue Mud Bay (which I will discuss in further detail below) is testimony to a growing awareness among Aboriginal peoples that although their indigenous laws and institutions may have been eclipsed by colonial processes, this does not mean that they are a colonized people,

despite the fact that their land has been appropriated. As far as the Yolŋu are concerned, when the colonizers sought access to the Yolŋu heartlands, the ancestors never concluded that the first missions of the colonizers extinguished their sovereignty over their own homelands (Morphy 2007: 31). For the Yolŋu, Mawalan, the head of the land-owning Rirratjingu clan, granted the permission to establish a mission station at Yirrkala in 1935. From a spatial perspective, native title claims embody a meeting place in the courts of different and divergent perspectives on sovereignty. Despite the coming together of European law and Aboriginal law in the physical space of the court, it is still mainly European law that is perceived to be the main or only legitimate source of law in the court, despite the attempt to recognize customs in native title claims. *Rom* or Yolŋu laws are customs that have no legal force within the context of native title claims. Within the context of the court, the intricacies of *Rom* are reduced to performative acts, even though they represent for the Yolŋu people expressions of sovereignty (ibid: 33-34).

Within this context of proving the sovereignty of Aboriginal law, the cartographic representation of rights over land and waters is gaining importance (see e.g. Reilly 2003). Mapping has been used as a way of providing evidence for indigenous peoples' use and belonging to the land. As required by section 62 of the Native Title Act, the external boundaries of the claim and the boundaries of the existing land tenures within the claimed area must be represented on a map (ibid.). Claimants map their relationship to the land. Defendants map improvements to the land under statutory grants as part of their argument that native title must be extinguished within the claim area. In native title claims, two very different spatio-legal descriptions of the land come together on the map that is used in the courts. Dreaming tracks are mapped alongside other spatio-legal symbols in the landscape, such as fences, roads and homesteads representing distinctive ways of viewing the world that can be associated with Aboriginal versus Australian law respectively (see e.g. Reilly 2003). This results in "an epistemological gap between the foundation of native title in Indigenous laws and customs and its cartographic representation" (Reilly 2003: 4). The map's colonial and imperial roots are reflected in the representation of new conquered spaces as blank canvases. This raises the issue of the extent to which maps can actually be used as an inclusive and respectful form of representing Aboriginal law as long as they are embedded and part of a colonial history that has used the idea of *terra nullius* to establish British sovereignty in Australia. Historically, mapping has been used as a tool to convey the message that Aboriginal peoples had no legal rights to the land, as

their relationship to the land did not bear any legal significance. Since *Mabo v Queensland* [No 2] and the Native Title Act, using maps solely to indoctrinate the idea of *terra* and *res nullius* has come under scrutiny and a new form of indigenous mapping has found traction.

This has developed into a practice that can broadly be labelled as indigenous cartography and is sometimes part of a wider movement around critical cartography. "Indigenous cartography is based on relational epistemology that works within a system where 'place' and 'ways of knowing' are intimately linked to Native communities' notions of kinship, oral traditions, and traditional ecological knowledge acquired over the millennia" (Richard 2015: 13). This links to a wider awareness that mapping should also reflect ontological relations as there is a need to map peoples' relationship with land more actively, but also, following Barbara Bender's proposition, to visualize "the active representation of landscapes" (1992: 735).

The two case studies that are the focal point in this chapter reflect the interrelationship between a decolonized approach to mapping and the recognition of Aboriginal law and its representation on the maps that are used as part of the evidence in native title claims. As I have already mentioned above, indigenous cartography is part of a wider critical cartographic movement which addresses some of the by now well-known reservations regarding cartography as a positivist exercise in mapping land ownership.

Instead of repeating the well-rehearsed storyline of critical cartography, spearheaded by the work of John Brian Harley and Denis Wood, who used the concept of deconstructing the map as a political and legal activity (see e.g. Vermeylen et al. 2012), I am telling this story through the artwork of the Canadian artist Landon Mackenzie (for an overview of her artwork see Harmon 2009: 66-71).

I turn to the idea of fusing maps and arts for two specific reasons. First, as Claire Reddleman (2018) has argued, representing the arguments of critical cartography through art opens up a new avenue for critical engagement, which is the role of perspectivism and the relationship with the viewer. As I have argued elsewhere (Vermeylen 2013), the problem that indigenous laws face in native title court cases is the unwillingness of the judges and the judiciary to accept oral histories and narratives as a legal source. Even when indigenous peoples can give evidence through a close narration of their pathways, dreams and visions of their ancestors, the listener – i.e. the judge – struggles to understand the legal merit of these stories. Often, the uniqueness of indigenous legal systems is translated into a legal epistemology that is part

of a positivist legal understanding. Therefore, a study of the friction that occurs when different legal systems and cultures meet in court must also include an analysis of perception and perspectivism (Anker 2018). The knowledge and language to do this can be found in the artistic expression and abstraction of maps.

Second, Aboriginal art is also an expression of indigenous laws and the ontological connection between law and landscape on maps (see e.g. Watson 1994). In the Australian context of art and mapping, Howard Morphy defines art as "a way of acting in the world" (2009: 117). "Art is a way of expressing knowledge – a means of expressing the experience of being-in-the-world and a means of communicating ideas and values" (ibid.). Aboriginal art is revelatory in nature; it "stands for a repertoire of designs and stories (dreamings), depicting shared and sacred knowledge of the world" (Schreiner 2013: 168). Aboriginal art and Aboriginal law must "give evidence of their history and continuity up until today to be in the position to claim the future in separate ways" (ibid: 171). For Aboriginal peoples they are not separate things; "art, law, land and ceremony are all part of a long history" (ibid.). This link between aesthetic practices and law in native title claims has already been expressed through other art practices such as songs, treaty ceremonies and wampum belts (Anker 2014: 141) Some of these artistic expressions of belonging to the land have also been accepted in courts as evidence, of which *R v Van Der Peet* (1996) is a good example.

Maps as art and art as maps

As illustrated through the examples of the Canadian artist Landon Mackenzie, approaching maps as art allows a more immersive and performative perspective that, in addition, also subverts the gaze. Landon Mackenzie started to think about the relationship between her art practice and the politics of land when First Nations' rights were being hotly debated in Canada. Mackenzie questioned the practice of her own landscape paintings and became increasingly interested in overlaying geographical terrain with socio-political ideologies; she started to explore "the complex relationship between politics and how land is visually represented" (Harmon 2009: 66).

The series of Saskatchewan Paintings from 1993 represented her journey into Saskatchewan, where she visited archives and studied old maps from the nineteenth century. That material was not just represented in a map,

but instead she used the old maps as a starting point that she overlaid with her own interpretation of those spaces, including other iconography and stories in those 'maps'. MacKenzie's artwork is a visual representation of Harley's critique of the map, which silences certain histories (Harley 2001) and experiences that can be found in the landscape (see e.g. Vermeylen et al. 2012). MacKenzie represented in her paintings both the gaps she found in the archival material but also how maps depict "tricks of the pens" when they deliberately falsify information to mislead competing explorers (Harmon 2009: 69). She wanted to illustrate in the paintings how records and maps both reveal and conceal history.

This led her onto another project, *Tracking Athabasca: Macke It to Thy Other Side* (Land of Little Sticks), where she sat with a friend of Cree, Chipewyan and Scottish descent on the canvas talking while her friend drew the layout of her childhood village. MacKenzie kept adding more stories onto the canvas as map and in particular added white shapes that squirt over the canvas. As the story goes, her friend was a descendent of the Scottish Governor Simpson, who had allegedly fathered 200 children. Mackenzie represented the traces of this European DNA as part of Canada's history and represented it on the map as trails of white sperm shapes which also symbolized meteorological systems of "whirls and bursts of wind, rain or snow on an aerial weather map" (Harmon 2009: 69). Other cartographic metaphors were also added, such as blue beadwork, to signify the relatively worthless goods that white traders used to exchange for furs with First Peoples (Harmon 2009: 71).

These artworks capture visually some of the developments and critiques in critical cartography. As I have already established in the previous section, cartography and law share a positivistic and objectivist epistemology that has been criticized in critical cartography and critical legal studies (see e.g. de Sousa Santos 1987). The critical perspectives in cartography and law are driven by the same group of scholars that have inspired their respective critical movements; these include, most notably, Michel Foucault and his work on power and knowledge and Jacques Derrida's on deconstruction. Denis Wood (1992) and John Brian Harley (1989; 1992; Harley/Lexton 2001) are the most well-known critical cartographers, applying a Derridean approach to deconstruction and a Foucauldian emphasis on power-knowledge relations to the analysis of cartographic imagery and its history (Reddleman 2018: 3). It is beyond the scope of this chapter to provide an overview of the many approaches in critical cartography, but one of their main contributions is, in the words of Harley, an awareness that "through […] maps a social order is communicated,

reproduced, experienced and explored. Maps do not simply reproduce a topographical reality; they also interpret it" (Harley/Laxton 2001: 45). This makes maps communicative devices that have attracted the attention of artists for their ability to represent and affect behavior (Wood 2006: 5). What makes the relationship between maps and art particularly conducive to be more progressive and inclusive is the fact that art allows the power relations that are embedded in maps to be exposed. Despite widespread beliefs that maps are neutral and represent an objective depiction of a terrain, artists reveal the entangled power relations. They "strip the map from its so-called neutral mask" (Wood 2006: 5) and show the true nature of the map's political prowess. Art therefore becomes a useful conduit through which to critique mapmaking practices (see e.g. Reddleman 2018). Arguably, art deepens the reflective aspect of critical cartography, as it allows the focus to shift from mapmaking practices to the reading and viewing of maps (see e.g. Reddleman 2018; see also von Reumont, this volume).

Conceptualizing maps as artistic expressions helps to shift the perspective to establish a relationship between the viewer (i.e. the court and its judges) and the viewed (i.e. indigenous communities). What is important for indigenous mapping projects is that the viewer gets this sense of being immersed in the landscape so that the viewer can understand indigenous peoples' worldviews and how they relate to a specific place. Indigenous places must not be experienced through a bird's eye view representation as it may distort the landscape and not represent indigenous peoples' relational being-in-the-world (Anker 2018: 27). Instead, representing indigenous places must allow the viewer to feel immersed in the landscape, to feel the connections with other humans, non-humans and more-than-humans. The person-in-place perspective allows an embodied experience of what it means to dwell in a particular landscape. It is only through an embodied being, situated in a landscape, that law and how it is linked to specific landscapes and places can be experienced (see e.g. Anker 2018). It is difficult to convey the performative element of indigenous law through the conventional bird's eye view perspective, as it represents a Eurocentric property regime that uses maps to demarcate boundaries around exclusive claims (see e.g. Anker 2018).

The indigenous maps that are being produced for native title claims are in a sense a cartographic practice in circulation, meaning that we not only have to be aware how the maps have been produced and the different epistemological approaches and worldviews that underpin the production of these maps (see also Introduction, this volume). We also need to think about the

kinds of contexts in which maps are used and the kind of readership or 'viewship' they are exposed to. We must not forget that there is often a hegemonic relationship between space and law reinforcing the idea that positivist Eurocentric law is the only legitimate source of law, regardless of other laws also to be found in that particular space. Therefore, Claire Reddleman (2018) argues that maps as art may offer the potential to act as sites of resistance that go above and beyond counter mapping practices. As I will illustrate with the two case studies of Aboriginal mapping, when producing and seeing maps as art a more immersive and embodied relationship with the viewer may be elicited on the map. The maps that I discuss below share with Mackenzie's map, *Tracking Athabasca: Macke It to Thy Other Side,* the idea that an embodied experience of the map may draw the viewer closer into the world and the experience of the mapmaker. It is through the narratives that are performed on the map that another way of being-in-the-world unfolds on the map, illustrating a more relational approach towards law making and ties to the land.

The *Ngurrara Canvas*[2]

The first case study to be discussed is the *Ngurrara Canvas*. Fifty artists belonging to the Walmajarri, Wangkajunga, Mangala and Juwaliny peoples painted the *Ngurrara Canvas* (an 8x10 meter painting) over a period of 10 days as part of the evidence they provided in the National Native Title Tribunal in 1997. In the 1960s and 1970s, the people belonging to the area of the Great Sandy Desert in the southern Kimberley region had left their land as a result of European invasion, but kept links with their 'country' through ceremonies (Wildburger 2013). Following the *Mabo* High Court decision, the Walmajarri, Wangkajunga, Mangala and Juwaliny peoples claimed title to their land in 1996. In 1997, the Native Title Tribunal set up camp in the homeland of these peoples to start collecting information and data in order to make a decision about whether the claim could be heard in court. It became obvious that there was a discrepancy between the Tribunal officials' high English and the claimants' Aboriginal languages. The variance in language was symbolic of the underlying differences between laws and worldviews; an issue that seemed impossible to bridge (ibid.). To surmount this problem, the idea of *painting* the claimants'

2 The canvas can be viewed at https://www.nma.gov.au/exhibitions/ngurrara (last accessed May 24, 2020).

belonging to their homeland was born. The canvas became a collaborative work and each of the claimants painted their own piece of the land they belonged to and for which they had a responsibility.[3]

The canvas represents the area each artist had responsibility for in terms of land and lore (Anker 2014: 141). In addition to depicting the spiritual places in the landscape, such as the waterholes or *jila*, the relationship between the spiritual places and the artists themselves is also represented on the canvas. The canvas also symbolizes the lore of the Aboriginal peoples in North Western Australia. As one of the claimants and artists, Ngarralja Tommy May, explains, native title claims are about 'blackfella law' (i.e. Aboriginal law) and the painting for him is evidence of that law (Chance 2001: 38). Evidence for Ngarralja Tommy May is not something that refers to static facts and truths, but the painting shows the relation between landscape and knowledge, including Aboriginal law, that is embedded in the landscape. The evidence on the canvas is thus about different ways of knowing and relational ways of being. It depicts different ways of interpreting the relationship between law and landscape; it portrays 'blackfella' law (Anker 2005: 92-93). Besides departing from a common law perspective on property and land, the canvas also subverts a colonial representation of maps and challenges the Western hegemonic dominance of space, property and memory (Hershey et al. 2014: 3). As I have discussed in the first part of this chapter, both maps and law share the tradition of embodying colonial hegemonies (de Sousa Santos 1987). The *Ngurrara Canvas* demonstrates that the law is embedded in the stories that belong to the landscape. This makes the canvas a "legal document that proved and re-established land-ownership" (Wildburger 2013: 205).

As Aboriginal lawyer and writer Larissa Behrendt confirmed:

> The dominant legal culture has an emphasis on the written word, on economic rights and is focused on the individual. By stark contrast, Aboriginal law has an emphasis on oral transmission, the preservation and maintenance of culture and is communally owned. The Ngurrara canvas, by bridging an embodiment of Aboriginal law into the court for consideration by the dominant culture, communicated across the divide. (Behrendt 2008, n.p.)

As I have already alluded to earlier in this chapter, for Aboriginal law to be validated, the hegemonic relationship between Aboriginal law and its view-

3 For more details see https://www.nma.gov.au/exhibitions/ngurrara (last accessed May 24, 2020).

ers, who only know Australian law, must change so that Aboriginal law gets recognized on its own terms without the need for translating it into positivist law. Conventional mapping practices that topographically allocate places on gridlike systems may struggle to depict the relational and embodied aspects of Aboriginal land claims. A different approach of representing perspective between two divergent and in some cases opposing legal systems must be visually depicted in mapping projects. Through its artistic practice, the *Ngurrara Canvas* manages to subvert the colonial practices of perspective. The painting draws the viewer into the canvas so that the non-Aboriginal viewer who is not familiar with the legal meaning of the landscape can become immersed in the worldviews and belief systems of the Aboriginal claimants. One of the claimants, Chuguna Walmajarri Elder, refers specifically to the importance of the viewer when talking about the canvas:

> We're painting so that the non-Aboriginal people from far away, from the city can see that our claim is true. The place is a long way from town in the sandhill desert. There's no rivers here, it's billabong country. It's a big country, with sandhills. We're painting the living waterholes; we are painting them all in one painting, so that the government can look at it, and so that the non-Aboriginal people see whether it's true what we're painting. (Chuguna Walmajarri, quoted in Mohr 2003: 56)

The painting presents the land and its law, and the canvas bridges the topographical representation of a western map and the oral tradition of the claimants (Mohr 2003: 56). The painting represents a performance of the relationship between people and land, and therefore becomes an embodied expression of the law. Unlike any other map before, the canvas distilled a wealth of information that illustrated the connection with the country and became an important source for providing 'legitimate' evidence (Dayman 2016). Unfortunately, the stories on the canvas were still translated onto a 'traditional' map as in the European sense. The claimants described their attachment to the land through stories on the canvas but these were subsequently pinpointed to places on a map to give the claims 'European' reference (Mohr 2003). Non-Aboriginal peoples and lawyers thus located the points on the canvas to specific locations on the map; however, in such a translation process from canvas to map the specific meaning of the places may get lost. As Mohr spells it out: "the law of the land that can be deciphered by an Aboriginal initiate is in no way the same as that which is imagined by a common law judge" (2003: 56). So, although the places may be the same, in terms of their legal language, the

relationship between the place and identity and the legal discourse around property will differ. The different ownership relations, the different identities and laws cannot be mapped using the same set of cultural referents (ibid.). There remains an uncomfortable jarring between the multiple, overlapping and complementary responsibilities for land in Aboriginal laws and the singular and exclusive claims required under common law, including e.g. the Native Title Act. Western law and spatial conceptions still define land with exclusive boundaries and unambiguous coordinates through the translation process from canvas to conventional map (ibid: 57).

This tension between common and indigenous law became particularly poignant in the subsequent development around the Ngurrara claim when the Martu people also lodged a claim to the area called Warla (or on the Western map called the Percival Lakes district), which adjoins and partially overlaps with the Ngurrara claim. While the overlapping claims were not an issue in indigenous law as it allows overlapping relations between land and people, this was more problematic for the common law as the latter still translates native titles to a principle of singular and exclusive claims (see McNamara/Grattan 1999 in Mohr 2003: 57). The so-called overlapping claims were solved by the Federal Court, which enforced its solution that the Ngurrara would drop their claim over the Warla area and the Martu would include Ngurrara claimants in their claim to that area. So despite the canvas being accepted as evidence in the court, western law was still enforcing specific ideas around the relationship between space, law and land that were rooted in Western legal and spatial traditions of exclusive boundaries and unambiguous coordinates. Despite these shortcomings, the canvas still carries, in addition to its artistic significance, a political and legal importance (Dayman 2016: 267). What makes the canvas remarkable is that it exceeds its cartographic function and clearly expresses the legal geography of the landscape (Dayman 2016: 185-186). By owning the process of painting their relationships in the landscape, the Ngurrara artists confirmed their legal affirmation of their ownership of country. The canvas debunked the idea of non-Aboriginals that the Great Sandy Desert is an empty space. But the canvas also conveys the idea that Aboriginal law is performative. Given the vast scale of the canvas, reading the work and soaking up the enormity of its claims can only be experienced by walking on the surface of the canvas. The act of standing and walking the canvas was a purposeful reflection that the claim included individual tracts (as each artist painted their own claim), as well as the interrelation between the broader claims of the group (Dayman 2016: 274). As Dayman explains:

> The most logical exhibition of *Ngurrara Canvas II* happens when the artists are present and sitting or walking over it. The painted surface marks clearly the living waterholes around which there are many such stories but much comes from the dialogue of the artists about the work. From the production, where the artists were spread across the length and breadth of the desert, to the determination ceremony where Justice Gilmour from the Federal Court of Australia traversed the work as he handed out legal tenure documents to the named applicants, the larger canvas in particular has been underfoot regularly. (Dayman 2016: 274-275)

This performative element makes the canvas unique and distinct from other indigenous mapping practices. The legal geography and land tenure are literally discovered when walking through the landscape on the canvas. The *Ngurrara Canvas* task of claiming title came to an end in 2007 when Justice Gilmour handed down the title deeds to the Ngurrara people, confirming that the Court had determined that native title already existed as established by the traditional laws and customs (Dayman 2016: 286). For Anker (2005), this makes the canvas a triptych of proof, truth and map. While these elements may have their own significance for the artists, they also have special meaning in Western law.

The *Saltwater Collection*[4] (Blue Mud Decision)

For Aboriginal peoples, art can be used to mediate the impact of European colonization and empower people to take back control as active agents over their land who control their own destiny (Morphy 2009: 117). This is particularly effectively communicated in what is known as the *Saltwater Collection*, painted by the Yolŋu as part of their native title rights to their seas in Blue Mud Bay. The *Saltwater Collection* is arguably even more interesting to analyze from a legal perspective than the *Ngurrara Canvas* for two reasons. First, the paintings represent the spiritual relationship between the Saltwater People (Aboriginal people and Torres Strait Islanders) and the water. The canvases show ritual performances that relate to the social mechanisms through which the Saltwater Peoples manage and control the seas (McNiven 2004: 329). Expressing

4 The bark painting can be viewed on https://hyperallergic.com/412659/sea-rights-bark-paintings-australia/ (last accessed May 24, 2020).

spiritual attachments to the sea forms an important part of these canvases. Unlike cartographic sea maps, *the Saltwater collection* is unique because of the ability of the paintings to communicate the ontological relationships between peoples and the sea (ibid: 330). Therefore, *the Saltwater Collection* represents an ontological meaning of the laws that relate to the sea (and the land) and provides insights into customary marine tenure of the Saltwater Peoples (ibid: 332).

Second, the *Saltwater Collection* also challenges the meaning of tenure in positivist law, and particularly the Law of the Sea (The United Nations Convention on the Law of the Sea, UNCLOS, 1982). This makes the collection particularly useful to study. Aboriginal art not only embodies Aboriginal law, it also queries and criticizes Eurocentric and international law. Furthermore, one of the biggest challenges Aboriginal law faces is to expose the hegemonic power of Eurocentric property law. The *Saltwater Collection* excels in pushing property theory in new directions by exposing the distinction that has been made between land and water and the rigid boundaries that are drawn between land and sea and in areas that are actually fluid, open and adaptive.

On July 31, 2008, Australia's High Court[5] decided that the Northern Territory Fisheries Act could no longer issue licenses for fishing in waters that fell within the boundaries of land covered by the Aboriginal Land Rights Act. Since this landmark case only the Aboriginal Land Council is entitled to grant fishing licenses. Commercial fishing fleets can no longer enter Aboriginal waters without asking permission. In particular, extending the traditional owners' exclusive native title rights to the intertidal zone was an important victory for Aboriginal peoples in Australia.[6] They had lamented for many years that the Native Title Act 1993 did not recognize the *exclusive possession* of Aboriginal sea estates, despite the recognition of native title rights to water as well as land. Neither did it recognize the *exclusive use* of the resources (mainly fish) of native title in a small part of the sea (Dillon 2002: 15). This is part of a wider legal shortcoming in native title approaches that generally leads to Aboriginal participation in resource management being neglected or ignored (Tan/Jackson 2013: 140). It is widely commented upon that under the Native Title Act

5 Northern Territory of Australia v Arnhem Land Aboriginal Land Trust (2008) 236 CLR 24.

6 For a concise overview of the case and other native title claims in Australia see https://www.creativespirits.info/aboriginalculture/land/blue-mud-bay-high-court-decision#fnref6 (last accessed March 10, 2020).

1993, Aboriginal peoples gained some recognition of their rights in the sea, but these rights were far more limited than the rights in fee simple granted over the land under the Aboriginal Land Rights Act 1976, which left the question of sea ownership open (Morphy/Morphy 2006: 70). Under the Land Rights Act, the Yolŋu people were only granted ownership over land down to the low water mark, which for coastal hunters was insufficient security of tenure as their life centers on the sea (Morphy/Morphy 2006).

When, in 1996, a group of Aboriginal peoples discovered an illegal fishing camp hidden in mangroves on their sacred land in Blue Mud Bay, in northeast Arnhem Land, they decided to create a series of bark paintings to document their history. In particular, finding a severed head of a crocodile, which in Yolŋu culture is their ancestor *Baru*, prompted 46 Yolŋu artists under the leadership of Djambawa Marawili to paint 50 artworks to illustrate in court their rules, philosophies and the stories that link the Yolŋu peoples to the coast, rivers and oceans. As the clan leader Djambawa Marawili testified: "It is time for non-Aboriginal people to learn about this land, learn about the waters. So if we are living the way of reconciliation, you must learn about Native Title and Sea Right."[7] For the Yolŋu people, the bark paintings epitomized the title deeds to the sea rights of coastal waters.

Even more so than the *Ngurrara Canvas*, the *Saltwater Collection* has become a symbol of two divergent cultural traditions of the sea and how they have informed different legal cultures.[8] The cornerstone of the Eurocentric tradition of the sea is captured in UNCLOS 1982, an international legal mechanism that has created boundaries and allocated extensions to territorial zones with sovereign rights. The Law of the Sea represents a revolutionary change in the legal regime which has governed the seas for most of the time since Hugo Grotius published his *Mare Liberum* (open sea) in 1609. The legal scholar Grotius championed the legal principle of the freedom of the seas as he lobbied for the Dutch East India Company in support of their zeal for territorial expansion that required crossing seas. The Law of the Sea moved away from the principles of freedom of the seas and the Convention embraced the idea of the closed sea, which John Selden, Grotius' opponent, argued for in 1635 in his *Mare Clausum* (closed sea). In UNCLOS, coastal states are given sovereign

7 See https://hyperallergic.com/412659/sea-rights-bark-paintings-australia/ (last accessed March 10, 2020).

8 For a detailed anthropological account of the Saltwater Peoples and the Blue Mud Bay, see Barber (2005) and Sharp (2002).

rights to marine resources, which, under conventional international law, were either *res communis* (i.e. belonging to everyone) or *res nullius* (i.e. no owner) (Logue 1982: 28). The Convention is thus a rejection of the Grotian and pre-Grotian view that oceans and their resources should be regarded as *res nullius* or as *res communis*.

Aboriginals' perception of the sea is in stark contrast to this. Using the example of the Yolŋu, the anthropologists Nonie Sharp (2002), Howard Morphy and Frances Morphy (2006) explain in great detail these different traditions of property relations in the sea and how they translate into very different ideas around sea mapping. They explain how Saltwater people have strong conceptions of seawater property and how they own areas of salt water in the same way as they own land, namely on behalf of a clan. This joint ownership with or on behalf of others (which is mainly a link to the ancestors) is very different from conceptions of ownership in common law and the International Law of the Sea. While Grotius and Selden had an opposing view, what they did agree upon was the extension of the principle of state sovereignty over territorial waters. Coastal European states claimed power over the waters adjacent to their territories. Beaches, estuaries, inlets, reefs and fishing grounds, often held in customary ownership by groups of local inhabitants, were absorbed into seas belonging to territorial states (Sharp 2002). This was a process that was accompanied by the portrayal and mapping of seas as vast and empty spaces that were ready to be delineated through the drawing of boundaries.

The *Saltwater Collection* must be interpreted against the background of an ocean politics that has imperialistic and colonial roots. The ocean has mainly been used by a political elite using a historical discourse that was part of an ideology that assumed that European imperial powers were superior on the presumption that they were civilized, which gave them the authority to use the ocean to colonize others perceived as inferior and primitive. As such, "ideational force creates material force that then reinforces the ideational origins and the Western ontology of mechanistic exclusion of people from nature, like the ocean, creating a master ontological narrative about how to live with the sea and those anchored to the sea" (Peter 2009: 61).

While the sea of the Saltwater peoples is full of memory and patterns of belonging (Morphy/Morphy 2006), the sea in Eurocentric thought is emptied of its sentient and spiritual character. It is part of the wider distinction between culture and nature. Detachment from nature and purported objectivity produces a sea that is free from stories and memory, allowing the imposition of base lines and limits in a linear manner. Philip Steinberg (2009) argues

that the objectification of the sea was part of a market-based view of the sea in which possessive individualism became the central cultural value. Before the 19th century there was another history and relationship with the sea, but that changed in the 19th century to one that was part of a European attitude of detachment, precision and measurement linked to a "mercantilist-era ideology" (Steinberg 2009: 480).

A historical look at sea mapping reveals quite an interesting history of the relationship between land and sea prior to the 19th century. Looking at 16th century ocean maps, Steinberg (2009) discovers that the artistic embellishments on the maps, like the dots in the sea and the drawings of sea monsters, were more than just artistic decoration. They represented the view of what the ocean was; most cartographers in the early 16th century made little distinction between land and sea. The ocean was typically represented as a material and textured space through techniques such as stippling and drawing waves. But increasingly this material depiction of the ocean became problematic and provoked a crisis of representation, as ideally the ocean should be depicted as a vast and empty space, an external void, because a material representation of the ocean would be perceived as an obstacle to movement. As Steinberg (2009) further explains, the depiction of the ocean as a textured and material space of nature did not resonate with the emerging ideas around capitalism that wanted to annihilate spaces that were perceived as being empty. Increasingly, cartographers turned away from depicting the ocean as a material space or the ocean as land-like. From 1700 onwards, the ocean is represented as a space of trade routes. The trade routes served the purpose of spreading the idea that the emptiness of the ocean was a space that could be navigated by constructing routes through that empty space. Soon generic commercial routes were depicted, such as the route to the East Indies. As we know the story all too well:

> [B]y depicting the ocean as a space of differentiated and functional routes, the ocean was cartographically represented in a manner that closely paralleled its legal designation during the same time as *mare liberum* or *res extra commercium* (Steinberg 2009: 483).

The bark paintings represent the strong ontological connections between the Yolŋu and the creative forces of their ancestral beings (human and non-human) (Morphy/Morphy 2006: 68). The system of ownership of the Yolŋu is linked to their society and how it is divided into two moieties, the *Dhuwa* and the *Yirritje*. Each moiety (which is patrilineal and exogamous) incorporates a

number of separate clans, denoting the primary level of ownership. What is remarkable and signifies the ontological difference between Eurocentric and Yolŋu ownership is the fact that the distinction between the two moieties also extends into the natural world, with "plants, animals, fish and birds belonging to one moiety or the other" (ibid.). Furthermore, each moiety also has its own spiritual identity and set of ancestors (ibid.).

The bark paintings demonstrate how the Yolŋu's sea rights originate from creator beings who shaped the seas and who gave the Yolŋu rights over them. The creator beings gave Yolŋu people rights and responsibilities for the beaches, reefs, seabed, seal life and waters adjoining their lands. Those waters have spiritual power and the shimmering waters (that are clearly depicted on the bark paintings) speak ancestral power to the Yolŋu, who recreate the spiritual shimmering in the most sacred paintings (Sharp 2002: 11). The intricate knowledge that the Yolŋu have about the geography and geology of the reefs, the channels and the currents are stored in the Yolŋu people's memories, in the stories they tell about the sea and its inhabitants of turtles and fish and about how they are all connected through their life cycles, seasons and sea tides (ibid.). As the bark paintings testify, for the Yolŋu the law is written on the reefs and waters, the channels and passages, the rocks and the beaches. The bark paintings are like a tapestry of their laws (ibid.). Sacred designs or *miny'tji* from each clan, represented through cross-hatched patterns on the bark, give the bark paintings a distinct texture. Each visual detail, whether relating to fishing or cultural heritage, is steeped in the Yolŋu people's traditional and spiritual relationship to the coast and etched into their law.[9]

As Yolŋu elders testify, although the bark paintings may give the appearance of being representational, they are far more complex:

> An icon might show a creature, a cloud, a rock, fire, a spear, or a rope. This can denote an ancestral being as well as its actions, and it may be a code for relations between people, places, and things.[10]

It is in these relations that the bark paintings become political and legal statements. The objects that are illustrated on the bark paintings, relating to either

9 See https://hyperallergic.com/412659/sea-rights-bark-paintings-australia/ (last accessed March 11, 2020).

10 See https://hyperallergic.com/412659/sea-rights-bark-paintings-australia/ (last accessed March 11, 2020).

a natural or a cultural heritage, symbolize traditional and spiritual relationships to the coast. The depiction of these relationships has ultimately supported the court case, as reflected in the High Court's opinion that:

> Aboriginal Land when used in s70(1), should be understood as extending to so much of the fluid (water or atmosphere) as may lie above the land surface within the boundaries of the grant and is ordinarily capable of use by an owner of land.[11]

The High Court thus recognized Yolŋu ownership of the intertidal zone on the edge of the Yolŋu's lands.

I would like to end this section by drawing on the reflections of Helen Watson, on the work she has done around Aboriginal bark paintings and how they relate to maps even though they do not look like maps. (Watson 1994[12]). Watson refers to the bark paintings as *dhulaŋ*, which is the name that the Yolŋu have given to the paintings. *Dhulaŋ* represents *djalkiri*, or the footprints of the ancestors, representing how time, space, personhood and community are constructed in Yolŋu life (Watson 1994). The ancestors left their footprints in the landscape and these can be found in the songlines that depict the time when the two great ancestors created the landscapes of *Dhuwa* and *Yirritja* by living in it. When a clan or a person refers to their *djalkiri*, they refer simultaneously to the country and to the songs, dances, stories and graphic representations that belong to that 'country'. *Djalkiri* refers thus to ownership over country that is represented in the 'Dreaming', or to songlines that are left behind by the ancestors. *Dhulaŋ* is a map that not only depicts significant places for Yolŋu peoples but also invites an embodied and relational experience of the songlines that reflect the relations between humans, non-humans and more-than-humans.

Conclusion

The use of maps as evidence in native title claims has been problematized in this chapter. Native title claims need to recognize Aboriginal law and arguably

11 *Northern Territory of Australia v Arnhem Land Aboriginal Trust* [2008] HCA 29 30 July 2008 D7/2007.

12 See http://territories.indigenousknowledge.org/exhibit-5.html (last accessed May 21, 2020).

also extinguish the hegemonic power of Eurocentric and positivist law in order to be successful. This is where conventional cartographic practices fail to subvert Eurocentric law. Conventional mapping practices are still too much focused on claiming boundaries and exclusive rights over specific territories. As such, they reinforce the imposition of a legal culture that has dispossessed indigenous peoples from their land but, importantly, they also silence other ways of being in the landscape and their expression in the law (see also Dieckmann, this volume). For mapping practices to be helpful in native title claims, they need to show at the very least the tension between the different legal cultures that come together and expose the problematic history of non-recognition of Aboriginal rights.

Conventional cartographic practices share the same epistemological and ontological history as positivist Eurocentric law. Yet there is a danger that, by reprocessing a historiography that has used boundaries on the map and in the law, we are enforcing a specific order on indigenous peoples yet again. Representations of country on the map become the country (Reilly 2003: 12-13). A more subversive language and practice must be expressed on the map. The examples that have been discussed in this chapter explicitly break with the Eurocentric tradition of mapping and law making. It is in their artistic performance that we see a clear manifestation of a specific legal culture that is rooted in a different epistemological and ontological context.

The indigenous maps that have been discussed in this chapter are a good example of a relational approach towards mapping and they express an embodied movement in the landscape. But as the maps are also part of another way of being and moving in the landscape they can also be interpreted as sites of resistance against hegemonic depictions of spaces on maps. They include elements of a political manifesto that seeks to unshackle conventional and colonial representations of land, sea and ownership. By letting the ancestors speak through 'mapping' the cultural and natural objects and subjects, we can follow the paths they have carved in the landscapes. Together with the animals, spirits and all other relational objects and subjects, we are embarking on a journey through time and space. This is what we could refer to as the ontological turn in mapping. The way Yolŋu relate to the natural, cultural and spiritual world is clearly reflected in their mapping practices and in their maps themselves. It is this relationship that also needs to be reflected and incorporated in the law.

For mapping to be useful in native title claims, the map needs to represent the material turn of the law. The coming together of different legal orders

that co-exist in the landscape needs to be expressed on the map. Both the bark paintings and the *Ngurrara Canvas* illustrate the materiality of the law by showing, through, for example, waterholes, songlines, rituals and sacred places, how the law is grounded and contextualized in the sea and on the land, how beings are connected to the ancestors. The relationship with the ancestors that is aesthetically reproduced on the map symbolizes more than just a factual dating of how long these people have resided on a specific piece of land. A waterhole is not just a geo-legal fact that can provide evidence in the court of how long people have resided in a specific area. The waterhole is a relational embodiment of the law; law is *djalkiri*.

The theme of this edited collection is to explore how to map different ways of being. I would like to add that from a legal point of view the law is also an ontology and being. The law's ontology is all about keeping order and maintaining that order by minimizing change. Therefore, the law marginalizes or even distinguishes uncertainty by maintaining an image of solidity, linearity and universality. As legal theorists know (whether or not you agree with this principle), the law needs a *Grundnorm* (see e.g. Kelsen 1949). Hans Kelsen (1881–1973), Austrian jurist and philosopher of law, developed the most rigorous form of positivist theory of law, arguing that the core (*Grundnorm*) of the law can only be found in what is referred to in legal jargon as black letter law. To simplify a complex and abstract debate, the *Grundnorm* is situated in the abstract norms of the law itself. For example, when a judge is adjudicating, his judgement becomes a norm, but in order to come to a legal decision the judge will be relying on higher norms, such as the constitution or statutes. In other words, every norm is based on a higher authority of norms that have been constituted earlier.

What the two case studies have shown, though, is that the *Grundnorm* can also be located in the physicality and materiality of the land and the sea. The maps that were used to illustrate the belonging to the land or the sea are doing more than just claiming ownership over specific geographical areas. The waterholes, the intertidal zones, the paths in the landscape, are all part of the fabric of Aboriginal life; they embody the multiple relationships in the landscapes which have legal significance. Law for Aboriginals is not about the constitution or a statute on a piece of paper. Law is something that is part of the daily rhythms of life. Therefore, the relationship between law and mapping must go beyond positivist Eurocentric cartographic coordinates on the map. It is in the paintbrushes and the performativity of applying the acrylics that

the law appears on the canvas, not as a boundary or a point on the map but as a dialogue, a point of reference with other ways of being.

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