

# READING IMAGES IN THE END TIMES

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## **ABSTRACT**

This review essay engages Desmond Manderson's latest book *Danse Macabre: Temporalities of Law in the Visual Arts*, as an exercise in reading images in the disciplinary field of law and humanities. It situates Manderson's methodology within his broader work in law and aesthetics, discusses its politics in terms of a commitment to Derridean immanent critique, and inquires into the limitations of its scope and approach. It then attempts to use Manderson's book as inspiration to think through the temporal predicament of the climate crisis and the political requirements of climate justice by employing his critical tools in the reading of an artwork.

## **KEYWORDS**

Law, aesthetics, humanities, style, climate crisis

The review essay<sup>1</sup> takes its departure from the latest book of Australian scholar Desmond Manderson, one of the 'founding fathers' of the field of law and humanities, and a highly accomplished scholar and pedagogue. I first encountered Des in 2000 as my Torts lecturer at the University of Sydney, when his fantastic knowledge of history, powerful rhetorical skill, and obvious concern with inequity captured the attention of my young self, a disaffected aesthete with a love of language, suspicion of the instrumentalism of (some of) my legal education, and interest in social justice. Later I was fortunate to be a doctoral student under the auspices of his Canada Research Chair in Law and Discourse at McGill University, and found his expansive approach to 'discourse'<sup>2</sup> intellectually liberating, in its traversal of disciplinary boundaries, knitting together the normative, aesthetic and legal structures that make up our worlds. Against the dogma of legal positivism and the imperatives of critical perspectives that sometimes threaten to subsume law to politics, Des strove to return law to the humanities, 'to ideas of myth and reality, of the historical contingency

<sup>1</sup> I wish to thank Tim Peters, Ed Mussawir, Sarah Keenan and James Parker for conversations that enriched this article.

<sup>2</sup> See Michel Foucault, 'Orders of Discourse' (1971) 10:2 *Social Science Information* 7.

of authority, and of the importance of narrative in the construction of our beliefs.<sup>3</sup> He always insisted on treating law as a ‘resource in signification,’<sup>4</sup> a collective and constructive exercise of meaning-making, and a necessary if not sufficient condition of justice. It is a delight, then, to read and engage with his latest work, *Danse Macabre: Temporalities of Law in the Visual Arts*,<sup>5</sup> which weaves together the many strands of his thinking on law, justice, responsibility, and violence, in a landscape that is familiar to me, but nonetheless contains new and surprising vistas.

*Danse Macabre* is an erudite and wide-ranging text, bold in its claims and ambitious in its scope. It traverses six hundred years of visual art and legal tradition, closely analysing a number of key artworks across three continents. It responds to what Manderson rightly identifies as ‘one of the most urgent tasks of the twenty-first century’: the task of understanding ‘how the *interpenetration* of aesthetics and politics lies at the heart of ideology, at the heart of what is visible to our discourse and what remains outside of it.’<sup>6</sup> The book is an accomplished work of art criticism through the lens of someone who is embedded in asking questions about law, and it proceeds by treating law *as* representation – a representation with material force (Robert Cover’s famous phrase is often ritually invoked to make this point, ‘(l)egal interpretation takes place in a field of pain and death’<sup>7</sup>) – but nonetheless, a representation, a human construct, which takes form, and generates affect.<sup>8</sup> To write about law *and* art, then, is not sufficient – the relationship between them, Manderson asserts in the book’s preface, is ‘not analogical but structural.’<sup>9</sup> If this interdisciplinary gesture is by now deeply familiar, it is in large part because of Manderson’s own extensive scholarship in law and aesthetics, which has demonstrated law’s constitutive imbrication with a wide array of representational forms, including music,<sup>10</sup>

<sup>3</sup> Desmond Manderson, ‘Apocryphal Jurisprudence’ (2001) 23 *Studies in Law, Politics and Society* 81 at 85.

<sup>4</sup> Robert Cover, ‘Foreword: Nomos and Narrative’ (1983) *Harvard Law Review* 4 at 8, cited in Manderson, ‘Apocryphal Jurisprudence’ at 92.

<sup>5</sup> (Cambridge University Press, 2019) (*Danse Macabre*).

<sup>6</sup> *Danse Macabre*, at 79, citing Terry Eagleton, Jacques Rancière, and Chiara Bottici.

<sup>7</sup> Robert Cover, ‘Violence and the Word’ (1986) 95 *Yale Law Journal* 1601, cited in *Danse Macabre*, at 7.

<sup>8</sup> Manderson writes elsewhere, ‘law exists *only* as representations’ and urges us to pay attention to how the fields of culture ‘are crucial agents in the iterative and dynamic process by which those representations are made, gain or lose currency, appeal and power.’ ‘Memory and Echo: Pop cult, hi tech and the irony of tradition’ (2013) 27 *Cultural Studies* 11 at 12.

<sup>9</sup> *Danse Macabre*, at 2. The sculpture in Amsterdam’s old Town hall ‘does not represent or illustrate or ‘signify’ the court’s function, but actually embodies it.’ at 4. ‘Artworks do not simply represent changing concepts of time and discourses of legal justification... these cultural forms form the bridge between them.’ at 16.

<sup>10</sup> Desmond Manderson, *Songs without Music: Aesthetic Dimensions of Law and Justice* (University of California Press, 2000); ‘Making a Point and Making a Noise: A Punk Prayer’ (2016) 12 (1) *Law, Culture and Humanities* 17 (online 2013); ‘Towards Law and Music: Sara Ramshaw, Justice as

children's books,<sup>11</sup> ghost stories,<sup>12</sup> novels,<sup>13</sup> television shows,<sup>14</sup> photographs and documentary film,<sup>15</sup> and video games.<sup>16</sup> Against the fetish for novelty that characterises much of what is often called 'cultural legal studies,'<sup>17</sup> Manderson's scholarship shows a marked preference for more classical, even canonical texts, taking the view that contemporary cultural representations contain echoes or traces of much older popular traditions of legal authority and resistance.<sup>18</sup>

Over the past few years, Manderson has turned his attention to the field of 'law and the visual,'<sup>19</sup> and adopted an aesthetic materialism that does not deny the realm of the imaginal or imaginary but insists on the materiality of images, their 'physical presence,'<sup>20</sup> their sensuous embodiment in cultural artifacts that sit before the eyes of a human viewer.<sup>21</sup> *Danse Macabre* is Manderson's first sustained engagement with the particular medium of painting, and the peculiarities of this representational form are uniquely suited to the themes of his inquiry - particularly, his focus on time. In their 'unnatural stillness,'<sup>22</sup> paintings distil time: most obviously the labour time of their maker, which is condensed and stored-up, detectable in the concrete

Improvisation: The Law of the Extempore (Oxford: Routledge, 2013)' (2014) 25(3) *Law and Critique* 311

<sup>11</sup> Maurice Sendak, *Where the Wild Things Are*, Desmond Manderson, 'From Hunger to Love: Myths of the Source, Interpretation and Constitution of Law in Children's Literature' (2003) 15(1) *Law and Literature* 87.

<sup>12</sup> Henry James, *The Turn of the Screw*, Desmond Manderson, 'Two Turns of the Screw: The Hart-Fuller Debate' in Peter Cane, ed. *The Hart Fuller Debate: 50 Years On* (Hart Publishing, 2009)

<sup>13</sup> D.H. Lawrence, *Kangaroo*, Desmond Manderson, *Kangaroo Courts and the Rule of Law: The Legacy of Modernism* (Routledge: Abingdon 2012).

<sup>14</sup> Desmond Manderson, 'Trust Us Justice: 24, Popular Culture and the Law' in Austin Sarat, ed., *Imagining Legality: Where Law Meets Popular Culture* (University of Alabama Press, 2011) 22, and 'Memory and Echo,' op cit.

<sup>15</sup> Desmond Manderson, 'Trench, trail, screen: scenes from the scopic regime of sovereignty' in Timothy D. Peters and Karen Crawley, eds. *Envisioning Legality: Law, Culture and Representation* (Routledge, 2017).

<sup>16</sup> Desmond Manderson, 'The Dancer from the Dance: Images and Imaginaries' (2020) 2 *Index Journal* <http://index-journal.org/issues/law/part-1-lawscapes/the-dancer-from-the-dance-by-desmond-manderson>

<sup>17</sup> See Cassandra Sharpe and Marett Leiboff, eds. *Cultural Legal Studies: Law's Popular Cultures and the Metamorphosis of Law* (Routledge, 2016), Timothy D. Peters and Karen Crawley, eds. *Envisioning Legality: Law, Culture and Representation* (Routledge, 2017), Kim Weinert, Karen Crawley and Kieran Tranter, eds. *Law, Lawyers and Justice: Through Australian Lenses* (Routledge, 2020).

<sup>18</sup> 'Memory and Echo' at 15

<sup>19</sup> Desmond Manderson, ed. *Law and the Visual: Representations, Technologies, Critique* (University of Toronto Press, 2018).

<sup>20</sup> Manderson, ed. *Law and the Visual*, at 4.

<sup>21</sup> 'Images are representations that, at the same time that they are unquestionably reminders of an absence - both the absence of the representing subject and of the represented object - are also unmistakably present to viewers.' *Danse Macabre*, at 17.

<sup>22</sup> Manderson, *Danse Macabre*, at 7.

materiality of their surfaces and the gestures they display.<sup>23</sup> There is also a temporal dimension in the viewer's encounter with paintings: unlike viewing a film, which unfolds over time, paintings are experienced all at once. Eugène Delacroix had precisely this virtue of painting in mind when he noted that we can see it 'in one instant.'<sup>24</sup> While we have to spend time with film to evaluate it, if we dislike a painting, we can stop looking. This means paintings can present something without necessarily having to make that something appealing to us in conventional ways. The possibility for our encounter with paintings to be confronting or unwelcome is crucial to painting's critical force.

Like any cultural object, paintings are destined to generate encounters across time: between the time of their making and the time(s) of their viewing. For Manderson, the disjuncture between the past of the artwork and the present of the critic is not a problem to be solved, but the very opportunity and occasion for paintings to do their critical work. In *Danse Macabre* he consciously embraces what Mieke Bal calls a 'preposterous' interpretation, re-reading historical images anachronistically through a modern lens in order to incorporate its 'afterlife.'<sup>25</sup> Contrary to the sense of history as monodirectional, moving from past to present, from cause to effect, this approach celebrates juxtaposing, rewriting, reworking, or recasting, recognising that 'the past is altered by the present as much as the present by the past.'<sup>26</sup> *Danse Macabre* is thus an intervention into art history as much as it is into legal theory or jurisprudence. He is not interested in 'a reductive obsession with the historical conditions surrounding the creation of the artwork,' or in 'parsing iconographic details within it.'<sup>27</sup> He is interested in how the painting works on us as viewers, generating 'an electric current that jumps across the synaptic gap from its time to ours.'<sup>28</sup> This is no mere exercise in semiotics. 'Explanation or description are not enough. We must inhabit them, engage with them: think and see the world *with* them both in their own time and ours.'<sup>29</sup>

Manderson's explanation of the critical force of paintings is a culmination of a normative and aesthetic methodology he has developed over two decades. This strategy is early in evidence in his 2003 reading of *Where the Wild Things Are*.<sup>30</sup> Rather than arguing that this iconic children's book *said* something about law or justice, he showed that it *staged a dilemma* between irresolvable positions on

<sup>23</sup> Isabelle Graw, 'The Value of Liveliness' in eds. Isabelle Graw and Ewa Lajer-Burcharth, *Painting Beyond Itself: The Medium in the Post-Medium Condition* (Sternberg Press, 2016) 79, at 100.

<sup>24</sup> Cited in *ibid.*

<sup>25</sup> *Danse Macabre*, 8, 83-84.

<sup>26</sup> TS Eliot, the quotation which opens Mieke Bal, *Quoting Caravaggio* (Chicago: University of Chicago Press, 1999).

<sup>27</sup> *Danse Macabre*, at 8.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Danse Macabre*, at 17.

<sup>30</sup> Desmond Manderson, 'From Hunger to Love', n11.

questions of law and justice. On Manderson's reading, Sendak's classic book presents the undecidability or aporia at the heart of legal interpretation and judgment, and thus 'dramatises the inherent difficulties children face in understanding what it means to be obedient.'<sup>31</sup> This same argumentative structure characterised Manderson's analysis of D.H. Lawrence's novel *Kangaroo*, a novel which, on Manderson's reading, stages, at the level of substance, form and imagery, the contradiction between positivist and romantic modes of authority and ideas of justice. *Kangaroo* enacts the oscillation between two irreconcilable poles that legal judgment cannot resolve, only experience.<sup>32</sup> This oscillation has as its point not a quest to overcome or resolve that tension, but to expose, elaborate, and embrace it. The critical work of Lawrence's novel thus lies in its demonstration of the multi-vocality and unresolved contradictions of human experience, which is 'law's fate and its most important asset.'<sup>33</sup> There is simply no escape from interpretation: so too in *Danse Macabre*, Manderson insists that '(i)nterpretation, whether in law or in art, is never-ending. Imperfection is its fate, criticism, and development its process.'<sup>34</sup>

In *Danse Macabre*, Manderson's strategy, generally speaking, is to take an artwork, offer an orthodox reading, stage a counterposing reading, and then show how the critical force of a work lies in the staging of an irresolution, of multiple and conflicting readings. In this, he is making a case for a certain kind of critical force in visual art: art as critique. The approach models the role of a jurist-critic whose task is to unpick and develop the critique that the artwork makes available. The critique is not immanent to the artwork, although it is wedded to it and tied up in its elements. Rather it is the function of the critic in the present to unpick and unpack the critical potential of the artwork. This approach takes its most programmatic form in his masterful reading of J.M.W. Turner's *The Slave Ship*, in which Manderson works through, firstly, an objective reading (what does the painting represent of the world?), secondly, a subjective reading (how does the painting confront the viewer?), and finally, a critical reading (how does the painting implicate or interpellate the viewer?)<sup>35</sup> So Turner's painting is firstly, a reference to a historical event, and a practice of transporting slaves, secondly, an artistic experiment in sentimentality, in inspiring a lofty pity, and finally, 'a site of response that demands something of, and

<sup>31</sup> *Ibid.*

<sup>32</sup> Manderson, *Kangaroo Courts* at 6, 164.

<sup>33</sup> Manderson, *Kangaroo Courts*, at 6.

<sup>34</sup> *Danse Macabre*, at 80. In his earlier work on Levinas and the notion of proximity in the common law of negligence, he memorably compared judicial precedent to a rosary, praising the common law precisely for its unsettled-ness, its capacity to remember and continually worry over 'that knotty problem of the past... The knots thus formed conserve the *memory* of that disruption and authorize the possibility of new ones to further unsettle a purely internal and conceptual system of order.' See Desmond Manderson, 'Proximity: The Law of Ethics and the Ethics of Law' (2005) 28:3 *University of New South Wales Law Journal* 696

<sup>35</sup> *Danse Macabre*, chapter 4. See also Desmond Manderson, "Bodies in the Water: On Reading Images More Sensibly" (2015) 27:2 *Law and Literature* 279.

constitutes something, in *us*.<sup>36</sup> The critical force of the artwork hinges on its production of an affective dissonance that allows us to question our way of being in the world.<sup>37</sup>

The distinctiveness of Manderson's interdisciplinary gesture in this book is to make the artist into a jurist. His reading of the images gets the artist to make arguments on the terrain of law. This is a textual, grammatical and linguistic approach to reading paintings, which claims that paintings 'argue strongly,'<sup>38</sup> present 'a thesis,'<sup>39</sup> 'create a complicated argument,'<sup>40</sup> present 'a set of potential arguments.'<sup>41</sup> This is achieved by a particular mode of reading images in which each part or element of the image is a figure that can be recomposed into an argument. In Manderson's view there is a point, or a purpose, to be made of the elements of the image, which are themselves particular effects and affects of viewing. These readings frequently proceed by reversing the purported positionality of the figures inside the image (in Bruegel's *Justicia*, the soldiers and citizens are moving 'into the distance, not coming out of it,' which allows him to argue that the vanishing point of the image projects into the future;<sup>42</sup> Christ is 'looking the other way,'<sup>43</sup> establishing an affinity not with judgment but with the victims.) Each chapter builds to a moment in which the viewer is brought into the frame: Bruegel's blindfold 'turns the tables on his viewers... We are all implicated, the image seems to be saying, in the blindness of the law.'<sup>44</sup> The figure in Reynolds' *Justice* is looking back at 'the artist - or the judge or the viewer - himself.'<sup>45</sup> The eyes in Klimt's lost *Jurisprudence* are looking at us, charging us with the stewardship of law.<sup>46</sup> The reading of Duturreau's *Conciliation* reorients the painting around the figure of the Aboriginal leader whose gaze 'creates in us, here and now, the awareness that we are also being watched and judged;<sup>47</sup> the chapter on Turner ends with the striking suggestion that we, gazing upon the painting, are actually *on the slave ship*, authors of the colonial violence it depicts, and implicated in the ongoing atrocity of bodies at sea;<sup>48</sup> Gordon Bennett's *Truganini* 'interpellates the viewer, demanding that we look deep inside ourselves.'<sup>49</sup>

<sup>36</sup> *Danse Macabre*, at 107.

<sup>37</sup> See further Mark Antaki, 'Genre, Critique and Human Rights' (2013) 82:4 *Law and Critique* 974 at 977.

<sup>38</sup> *Danse Macabre*, at 11

<sup>39</sup> *Danse Macabre*, at 22

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> *Danse Macabre*, at 30

<sup>43</sup> *Danse Macabre*, at 32

<sup>44</sup> *Danse Macabre*, at 48.

<sup>45</sup> *Danse Macabre*, at 81.

<sup>46</sup> *Danse Macabre*, at 154-155.

<sup>47</sup> *Danse Macabre*, at 103.

<sup>48</sup> *Danse Macabre*, at 123.

<sup>49</sup> *Danse Macabre*, at 185-186.

As befits not only a historian but also a talented pianist and playwright, Manderson's work is a performance. It's not a treatise so much as a presentation, an immersive and affective experience for the reader. Manderson has a distinctive and daring writerly tone, one in which the style is 'the point,'<sup>50</sup> deliberately cultivated through plays of language ('Gilt by association'<sup>51</sup>), evocative images ('law sits perched like a gibbet at the crossroads of time'<sup>52</sup>), and pithy turns of phrase ('She chooses what to see, the better to see what she chooses'<sup>53</sup>). His writing is sharp, slicing away irrelevancies, and cutting to the heart of the matter, not by reducing complexity, but rather by distilling and layering it. 'A fuller analysis is possible,'<sup>54</sup> he assures us, and we nod, transfixed and expectant. Other writers, he tells us repeatedly, 'miss the point.'<sup>55</sup> Indeed, for a writer so attuned to the multiple conflicting readings that images permit in and across time, his rhetorical force continually promises the reader that *his* reading is the right one. The undeniable pleasure this evokes for the reader has to do with the sense of sharing in the author's revelations, and in his insight. It is skilfully done, and relies on no small amount of charisma. Indeed, we often feel in the realm of a charismatic masculinity that bears more than a passing resemblance to the romantic anti-modernism that so fascinated D H Lawrence in *Kangaroo*: a realm of revelation, intuition, and a rhetorical force to which the reader must simply submit. 'Oh piss off',<sup>56</sup> he writes at one point, and only he could get away with it.

It does, then, seem somewhat unfair, like shooting fish in a bucket, to point out that this magnificent book privileges male artists (Bruegel, Reynolds, Turner, Bennett, Dutureau, Klimt, Cauduro); it is perhaps slightly less unfair to point out that its readings mainly concern themselves with male art historians and legal theorists (Didi Huberman, Derrida, Benjamin, Agamben, Freud). I am confident that Manderson would freely own this limitation as part of what it means to do internal critique within the Western tradition; to use the master's tools, as it were, to dismantle the master's house.<sup>57</sup> This choice of sources is part of his commitment to Derridean deconstruction, which turns the foundations of Western philosophy against themselves, suggesting their provisionality and contingency, their unstable, constitutive exclusions, their latent authoritarianism and violence.<sup>58</sup> So be it then. And yet. As

<sup>50</sup> See *Danse Macabre*, pp 104, 238. Des' fondness for this phrase always reminds me of the 1970 studio album by Harry Nilsson, which became a movie the following year, narrated by Ringo Starr.

<sup>51</sup> *Danse Macabre*, at 39

<sup>52</sup> *Danse Macabre*, at 22

<sup>53</sup> *Danse Macabre*, at 60

<sup>54</sup> *Danse Macabre*, at 59.

<sup>55</sup> See *Danse Macabre*, pp 32, 41, 62, 91, 113.

<sup>56</sup> *Danse Macabre*, at 76.

<sup>57</sup> Audre Lorde, 'The Master's Tools Will Never Dismantle the Master's House' in *Sister Outsider* (Crossing Press, 1984).

<sup>58</sup> Jacques Derrida, 'Force of Law: The Mystical Foundation of Authority' trans. Mary Quaintance (1990) 11 *Cardozo Law Review* 919. On Derrida's commitment to immanent critique, see further

Audre Lorde went on to say, the master's tools 'may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change.'<sup>59</sup> The contours of this dilemma, which is of course endemic to both art history and legal theory, are often spoken about in terms of 'the politics of citation,'<sup>60</sup> the problem whereby reflecting the selective biases of the Western tradition will necessarily reproduce them. Acknowledging this *as* a problem requires us to pay attention to how the reproduction of a corpus can then reproduce those techniques of selection, making some bodies visible, and placing others beyond the frame.

The question for this reader, though, is not so much *what* lies beyond the frame of *Danse Macabre*, but rather *how* that act of framing works to occlude itself. As Derrida famously observed, to frame is to make something visible and at the same time to connect this visibility to that which cannot be seen (the outside of the frame) and what must not be seen (the frame itself). The characteristic of the frame is 'not that it stands out but that it disappears, buries itself, effaces itself, melts away at the moment it deploys its greatest energy.'<sup>61</sup> The frame is thus a visible invisibility – it's meant to be perceived, but not *noticed*. The mechanics of framing in *Danse Macabre*, upon my reading, are locatable within Manderson's repeated appeals to, and invocations of, the 'we' and 'us' who is unsettled, moved, astonished, and indeed even transformed by its encounter with the artworks he is discussing. It is obvious that such language does not merely hail a reader but interpellate one, and that asking the reader to identify with that 'us' is an invitation to form a relation of trust. By grammatical convention, 'us' and 'we' encompasses both author/critic and reader/viewer, and as the chapters progress, the characteristics of this viewer become further defined: it is a viewer like the author, a Western liberal legal subject, brought face to face with the constitutive injustices and exclusions that underwrite its experience of law (chapters 1, 2 and 5) – and even more specifically, it is an Australian settler, complicit in the bounded territorial logic of the colony, and (invited to be) outraged at its ongoing violence (chapters 3, 4 and 6). This figure – the 'us' that conjoins author and reader in their shared viewing position – is assumed to be

John P. McCormick, 'Derrida on Law; Or, Poststructuralism Gets Serious' (2001) 29:3 *Political Theory* 395.

<sup>59</sup> Lorde, n 57. Margaret Davies makes this point in an interview with Jennifer Hendry, 'Deconstruction leaves the limits in place... you haven't imagined something different.' Jennifer Hendry, 'Book Review: *Law Unlimited: Materialism, Pluralism, and Legal Theory*' (2018) *Journal of Law and Society* 169.

<sup>60</sup> See, among other texts, Sara Ahmed, 'Making Feminist Points' (2013) <https://feministkilljoys.com/2013/09/11/making-feminist-points/> and *Living a Feminist Life* (Duke University Press, 2017), Carrie Mott and Daniel Cockayne, 'Citation Matters: mobilising the politics of citation towards a practice of "conscientious engagement"' (2017) 24 *Gender, Place and Culture: A Journal of Feminist Geography* 954.

<sup>61</sup> Jacques Derrida, *The Truth in Painting*, trans. by Geoff Bennington and Ian McLeod (University of Chicago Press, 1987) 61. This book appears in the bibliography of *Danse Macabre*, but not in the text itself.

internally coherent. Yet as Manderson writes so compellingly, every act of viewing has ‘a blind spot,’<sup>62</sup> things that are not seen, or not attended to, because of the position we are standing in. The colonial ruler in Duterrau’s painting, we are told, ‘desires to see everything and to fix it in its place, but never to be seen himself.’<sup>63</sup> And here, I suggest, lies the blind spot that undoes the coherence of that shared viewing position: the necessarily unstable footing of a white settler on stolen land, called upon to grapple with what fellow settler Fiona Nicolls calls ‘falling out of perspective’ into an embodied awareness of ‘being in indigenous sovereignty,’ ‘being within my skin.’<sup>64</sup> The chapters of *Danse Macabre* on Governor Arthur’s Proclamation (chapter 3) and the work of Gordon Bennett (chapter 6) are damning in their condemnation of Australian Indigenous policy in the past and present; noteworthy, however, is their lack of engagement with writers on indigenous sovereignty and epistemology.<sup>65</sup>

Indeed, Manderson’s view of law is not, in fact, a pluralist one. While he situates law in a history grounded in institutions, practices, cultures, and the imperfections of human agents, he is quite comfortable invoking a sort of transhistorical and transcultural entity called ‘law’ that has as its key feature its representation, and re-presentation, through time: ‘Law’s eternal voice is anachronic, already present in the future, the future’s past, and the past’s future.’<sup>66</sup> This is not the legal pluralism of his supervisor and colleague at McGill University, the late great Roderick A. Macdonald, who famously defined law as the ‘enterprise of symbolizing human interaction as governed by rules,’<sup>67</sup> and emphasised the role of individual legal subjects actively negotiating multiple overlapping normative orders. Manderson’s view of law is darker; he takes seriously the *subjection* in the idea of legal subjects. Gone is the *nomos*, the constitutive narrative, of Cover’s ‘Nomos and Narrative,’<sup>68</sup> and here is the law of Cover’s ‘Violence and the Word.’ The law of *Danse Macabre* is a law that *reduces*: to text and to judgment and to violence and to death. It is a violent

<sup>62</sup> *Danse Macabre*, at 123.

<sup>63</sup> *Danse Macabre*, at 104.

<sup>64</sup> Fiona Nicoll, ‘Reconciliation in and out of perspective: white knowing, seeing, curating and being at home in and against Indigenous sovereignty’ in Aileen Moreton-Robinson, ed. *Whitening Race: essays in social and cultural criticism* (Aboriginal Studies Press, 2004) 17. See further Alissa Macoun and Elizabeth Strakosch, ‘The Ethical Demands of Settler Colonial Theory’ (2013) 3: 3-4 *Settler Colonial Studies* 426.

<sup>65</sup> The literature is of course vast, but includes: Larissa Behrendt, *Achieving Social Justice: Indigenous Rights and Australia’s Future* (Federation Press, 2003); Irene Watson, *Aboriginal Peoples, Colonialism and International Law* (Taylor and Francis, 2016), Gary Foley, Andrew Schaap, and Edwina Howell, *The Aboriginal Tent Embassy: Sovereignty, Black Power, Land Rights and the State* (Routledge, 2013); Irene Watson, ‘Buried Alive’ (2002) 13 *Law and Critique* 253; Aileen Moreton-Robinson, ed. *Sovereign Subjects: Indigenous Sovereignty Matters* (Allen & Unwin, 2007); Aileen Moreton-Robinson, *The White Possessive: Property, Power, and Indigenous Sovereignty* (Minnesota University Press, 2015).

<sup>66</sup> *Danse Macabre*, at 21.

<sup>67</sup> Roderick A. Macdonald and David Sandomierski, ‘Against Nomopolies’ (2006) 57:4 *Northern Ireland Legal Quarterly* 610 at 617.

<sup>68</sup> It is not cited in *Danse Macabre*.

perpetrator of murder: ‘We can close our eyes, but we cannot stop our ears. Law pours its commands into them like poison from a bottomless jug.’<sup>69</sup> This law, Manderson assures us, is ‘not just a synonym for norm.’<sup>70</sup> While he has certainly imbibed the Foucauldian insight about the diffusion of legal power through disciplinary structures and institutions and interactions, Manderson’s account of law remains focalised through the nation-state, the figure most associated with the ‘discourses that frame our thinking about structure and authority, governance, regulation, sovereignty, rights, control and punishment.’<sup>71</sup> These are primarily top-down forms of power (with rights, of course, being the traditional liberal bulwark against state authority), and hovering behind them is the image of the King, the author and originator of ‘sovereign violence,’ the all-seeing and sinister eye behind ‘the scopic regime of sovereignty.’<sup>72</sup> And why not? It is more than fitting that at the end of this century’s second decade, writing from the land of so-called Australia, Manderson should take sovereign violence squarely within his sights. Archism is not going anywhere.<sup>73</sup> State violence finds new ways to reinvent itself, to render more lives disposable and ungrievable, to mock and undermine and derogate from the liberal promise of the rule of law.<sup>74</sup> We have not yet cut off the King’s head.<sup>75</sup>

Yet Manderson remains optimistic.<sup>76</sup> Indeed, optimism has always been, to use a metaphor, ‘hard-baked’ into his method; not a question of style, but of substance. Metaphor, he wrote twenty years ago, ‘develops thought as well as explains it.’<sup>77</sup> Its full meaning and implications ‘only begin to take shape after its expression.’<sup>78</sup> It is thus an imagistic way of thinking that is also anachronistic: ‘a leap of faith and a gesture of hope in the future enhancement of understanding.’<sup>79</sup> *Danse Macabre* is nothing if not hopeful. Manderson is hopeful that we can learn from our encounter with artworks, transform our modes of witnessing, and improve our visual literacy, because we *must*. The stakes of our current historical configuration are simply too

<sup>69</sup> *Danse Macabre*, at 12.

<sup>70</sup> *Danse Macabre*, at 17.

<sup>71</sup> *Ibid.*

<sup>72</sup> Desmond Manderson, ‘Chronotopes in the scopic regime of sovereignty’ (2017) 23 *Visual Studies* 2; ‘Trench, trail, screen’ n 15.

<sup>73</sup> See James Martel, ‘Why Does the State Keep Coming Back? Neoliberalism, the State and the Archeon’ (2018) 29(3) *Law and Critique* 359.

<sup>74</sup> 2020 witnessed an unprecedented global outrage against the killings of black people by police, as protests engulfed many states in the United States and were echoed in Canada, Britain and Australia, among other places. The Black Lives Matter movement, begun in 2014, matters more than ever. Racialised policing continues to be a mainstay of social and liberal democracies.

<sup>75</sup> Foucault, ‘Truth and Power’ in Colin Gordon, ed. *Power/Knowledge: Selected Interviews and Other Writings 1972-1977* (Pantheon Books, 1978) (1977).

<sup>76</sup> *Danse Macabre*, at 244.

<sup>77</sup> *Songs Without Music*, n 10, at 99.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

high for us to carry on with business as usual. As I write in October 2020, sitting on the stolen land of the Turrbal people, Australia is about to enter another summer that will surely break heat records, having survived the worst bushfires in its history in the summer of 2019/2020. These fires are functions of the extraction and accumulation through dispossession that is a direct result of colonialism's ongoing legacy in these lands.<sup>80</sup> Likewise, COVID 19, which has changed the rhythm of our lives beyond measure, and has ended many before their time, is directly linked to the capitalist mode of production in its origins,<sup>81</sup> and runs along the fault lines of racial, gender, and economic inequality in its effects. Both of these disastrous plagues have come about because of the widespread inattention to the fundamental interdependence of human and non-human life that characterises late-capitalist society, politics, and legal thought.

Among these overlapping and intersecting crises of public health, state violence, and environmental devastation, it has become commonplace to speak of living in the end times. (Lately our emails typically begin by saying 'I hope you are surviving these unprecedented times,' or words to that effect.) Apocalypse is 'the new normal.'<sup>82</sup> And while it is a longtime staple of cultural productions,<sup>83</sup> Hollywood depictions of the apocalypse as a single disastrous event - a tsunami, a comet, a volcanic eruption, a nuclear disaster - have ill-prepared us for the 'slow violence'<sup>84</sup> of what we are really facing. Manderson is forthright in speaking of his 'deep commitment that the problems and challenges we now face will require all our senses, passions and imagination.'<sup>85</sup> He is not kidding. Yet the very spaces for the kind of critical thinking required - the space of the university, and of the humanities in particular - are under systemic attack in Australia.<sup>86</sup> Education across law and the humanities

<sup>80</sup> McKenzie Wark, 'The Schadenfreude of History' *Commune* (16 January 2020) <https://communemag.com/the-schadenfreude-of-history/>

<sup>81</sup> See 'Social Contagion: Microbiological Class War in China' *Chuǎng* (February 2020) <http://chuangcn.org/2020/02/social-contagion/> and Mike Davis, 'The Monster Enters' (March/April 2020) 122 *New Left Review*.

<sup>82</sup> Paul Krugman, 'Apocalypse Becomes the New Normal' *New York Times* (January 2, 2020) <https://www.nytimes.com/2020/01/02/opinion/climate-change-australia.html>

<sup>83</sup> Frank Kermode, *The Sense of an Ending: Studies in the Theory of Fiction* (Oxford University Press, 1967).

<sup>84</sup> Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (Harvard University Press, 2011), Thom Davies, 'Slow Violence and Toxic Geographies: Out of Sight to Whom?' (2019) *Environment and Planning C: Politics and Space*.

<sup>85</sup> *Danse Macabre*, at 243.

<sup>86</sup> Gavin Moodle, 'Why is the Australian Government Letting Universities Suffer?' *The Conversation* (May 19, 2020) <https://theconversation.com/why-is-the-australian-government-letting-universities-suffer-138514>; Anwen Crawford, 'The Attack on the University is Political' *Overland* (22 September 2020) <https://overland.org.au/2020/09/the-attack-on-the-university-is-political/>; Naaman Zhou, 'Australian universities to cut hundreds of courses as funding crisis deepens' *The Guardian* (30 September 2020) <https://www.theguardian.com/australia-news/2020/sep/30/australian-universities-to-cut-hundreds-of-courses-as-funding-crisis-deepens>; 'Humanities degrees set to double

risks being reduced to instrumental, job-ready vocational training, with degrees shorn of theoretical complexity, open-ended inquiry, deep engagement with research experts, and the unexpected encounters that stretch human capacity and imagination. The study of law and the humanities is vital to our response to the climate crisis, because the crisis demands that we engage with the interpenetration of politics and aesthetics that infuses our legal imaginaries and determines what we think of as possible.

There is much work to be done, and Manderson's focus on temporalities gives us some critical tools for thinking about the sort of politics that the time requires. The climate crisis is, above all, a temporal one; not just the intrusion of deep, planetary or geological time into human life, but the tension between the delayed impact of past emissions, the narrowness of the window for action, and slow pace of necessary social and economic change.<sup>87</sup> As Elizabeth Kolbert has observed, 'We are living in the climate of the past, but we've already determined the climate's future.'<sup>88</sup> Time is literally running out. We are hurtling ever closer to what Nicole Rogers has called 'wild time,' 'the chaotic future period in which the logic, institutions, modes of interacting and artefacts of civilisation are abruptly or gradually undone as a consequence of climatic and other disruptions.'<sup>89</sup> To intervene in this process we need a politics attuned to the interrelationship between human and natural forces, to the contingency of human culture, and to the interconnected web of gift, inheritance and legacy stretching back millions of years. We need a legal theory that contests the boundaries embedded in the Western legal imaginary (subject/object, nature/culture) and pursue radically different ideas of relationality, interconnectedness and (inter)dependence.<sup>90</sup> And we need to attend to the voices of the people who have already survived an apocalypse,<sup>91</sup> and for whom the destruction and devastation of law, land and governance is not some future threat but the ongoing present

in price as Parliament passes higher education bill' (8 October 2020) <https://www.abc.net.au/news/2020-10-08/university-changes-pass-parliament-for-more-expensive-degrees/12743916>

<sup>87</sup> James Bradley, 'Unearthed: Last Days of the Anthropocene' *Meanjin* (Spring 2019) <https://meanjin.com.au/essays/unearthed/>

<sup>88</sup> Ibid, see also Nicole Rogers, *Law, Fiction and Activism in a Time of Climate Change* (Routledge, 1<sup>st</sup> ed, 2019) at 4.

<sup>89</sup> Rogers, *Law, Fiction and Activism* at 4.

<sup>90</sup> See Margaret Davies, *Law Unlimited: Materialism, Pluralism, and Legal Theory* (Routledge, 2018)

<sup>91</sup> Claire Coleman, 'Apocalypses Are More Than the Stuff of Fiction - First Nations Australians Survived One' (2017) <http://www.abc.net.au/news/2017-12-08/first-nationsaustralians-survived-an-apocalypse-says-author/9224026>. See further Callum Clayton-Dixon, *Surviving New-England: A History of Aboriginal Resistance and Resilience Through the First Forty Years of Colonial Apocalypse* (Anaiwan Language Revival Program, 2019), Kyle P. Whyte, 'Indigenous science (fiction) for the Anthropocene: Ancestral dystopias and fantasies of climate change crises' (2018) 1(2) *Environment and Planning E: Nature and Space* 224.

of the colonial project. As William Gibson famously remarked, ‘The future is already here. It’s just not very evenly distributed.’<sup>92</sup>

As Manderson suggests, ‘art’s potential lies not so much in its explicit content, but the relationship it establishes with, and the point of view of, a spectator.’<sup>93</sup> Our encounter with artworks can provide an aesthetic shock that changes how we see ourselves in relation to other beings and to the world, ‘realigning the various ways in which we are rendered sensitive and insensitive to social, material and earthly relations and forces.’<sup>94</sup> *Danse Macabre* neatly diagnoses the politics of temporalities in the visual arts, suggesting what will propel us forward and what will hold us back. On the one hand, insisting on an unbridgeable gulf between past and present is the work of legend,<sup>95</sup> and of modernity;<sup>96</sup> leaping over that gulf and ignoring ‘the messy reality of history’<sup>97</sup> is the work of neoclassical diachrony.<sup>98</sup> On the other hand, insisting on the eruption of the past in the present, their continuity and inseparability, is Turner’s *Slave Ship*, the work of Gordon Bennett,<sup>99</sup> and the significance of ghosts.<sup>100</sup> The latter is better. There is no going back, but there is no simply leaving the past behind. The dynamics of the climate crisis is a function of a past – colonialist, imperialist, extractivist, dispossessive – that we must understand in order to intervene in. *Danse Macabre*’s investigation of utopian time also shows how appeals to an idealised future can justify the perpetuation of present injustice. The movement for climate justice is a case in point. We cannot defer issues of gender, race, or economic inequality to an imagined future while we deal with the exigencies of carbon reduction, or ask Indigenous people to wait any longer for their rights to air, land and water. Climate justice necessitates we view these struggles as interlinked and equally urgent.

In concluding, I want to draw on Manderson’s critical tools by briefly turning to street artist Isaac Cordal’s famous installation, *Follow the Leaders*, part of his ‘Waiting for Climate Change’ series.<sup>101</sup> Installed in a variety of urban locations across Europe, it consists of a group of small human figures, made of cement, partially submerged in water. The figures resemble politicians or businessmen, all male, usually old, all dressed in suits, mostly identical, sometimes with tiny variations in the colours of

<sup>92</sup> Quoted in Joshua Rothman, ‘How William Gibson Keeps His Science Fiction Real’, *New Yorker* (online, 9 December 2019) [7] <https://www.newyorker.com/magazine/2019/12/16/how-william-gibson-keeps-his-science-fiction-real>.

<sup>93</sup> *Danse Macabre*, at 107

<sup>94</sup> Daniel Matthews, ‘Law and Aesthetics in the Anthropocene: From the Rights of Nature to the Aesthesis of Obligations’ (2019) *Law, Culture and the Humanities* (online) at 4.

<sup>95</sup> *Danse Macabre*, at 242.

<sup>96</sup> *Danse Macabre*, at 193.

<sup>97</sup> *Danse Macabre*, at 78.

<sup>98</sup> *Danse Macabre*, at 72.

<sup>99</sup> *Danse Macabre*, at 242.

<sup>100</sup> *Danse Macabre*, at 240.

<sup>101</sup> Isaac Cordal, ‘Works’, *Isaac Cordal* (Web Page, 2020) <http://cementeclipses.com/portfolio/>.

their tie. They are talking, discussing, debating, with attitudes of exclamation, gesture, introspection. They are grouped or huddled around a central figure or couple of figures. The water has covered some of them completely, while only the heads and shoulders of others are visible. The scene juxtaposes the sense of urgency in the rising water with the fact that the figures are still carrying on with an interminable talk fest as though unaware they are about to be engulfed. The normal, business-as-usual scene of power brokers squabbling and doing deals is rendered absurd or surreal by the imminent peril. The result is an aesthetic shock. This installation conjoins present inaction and future oblivion, suggesting the powerful traditions we have inherited from the past – male, white, oligarchic, human-centric – will not save us from climate crisis. And where are we, the spectator, positioned? We are watching the scene, suspended in a moment when we can see what is coming but when it is not yet too late to intervene. We are, then, precisely in the time of politics: the time that must work out how to bridge the gap between the present and the future,<sup>102</sup> before the accumulated destruction of the past swallows us all.

<sup>102</sup> *Danse Macabre*, at 218.