

## WRITING ABOUT, THINKING WITH. REPLY TO CRITICS

**DESMOND MANDERSON**

*Centre for Law Arts and Humanities*

*ANU College of Law & College of Arts and Social Sciences*

*Australian National University, Canberra (Australia)*

desmond.manderson@anu.edu.au

### **ABSTRACT**

In this essay the author responds to a special journal issue devoted to his latest book, *Danse Macabre: Temporalities of Law and the Visual Arts*. Critics have drawn attention to ways in which the interdisciplinary theories and methods developed by Manderson can be extended into new lines of inquiry including in relation to gender, Indigenous, and contemporary art. The author embraces these suggestions with specific reference to the political and neo-colonial implications of his discussion of the murals of Rafael Cauduro.

### **KEYWORDS**

Danse Macabre, Manderson, Law, Art, Time, Cauduro, Mexico.

I am delighted to have the opportunity to reply to the wonderful set of engagements with *Danse Macabre* that have been assembled here. The experience of a large number of gifted scholars engaging with one's work is rare and humbling. This is particularly so given the warm-hearted and generous spirit of their essays. I want to thank all the contributors for their kind and overwhelmingly supportive comments on my work. I will not indulge myself by repeating the tenor of those remarks here. I think what I appreciated, along with the several affirmations of the value and importance of my book—a genuflection that can come sometimes feel almost compulsory—was the inimitable character of each of the contributors' voices. From Crawley's perceptive and elegantly crafted prose, to Gearey's linguistic "and spiritual" exuberance, to Romero's impassioned blend of political demand and intimate reflection, I felt I was in the presence of a pool of unique scholars, all willing and able to embrace my work, to see it in all its flawed complexity, and to carry it on in new and much-needed directions.

I will not tax my readers' patience by attempting to respond to each contributor or each point. I will be more than pleased if readers take the trouble (and, alas, the expense) of reading *Danse Macabre* themselves, along with the critical contributions

collected in this volume, and make up their own minds. Certain consistent themes, however, are worth noting. I was startled at how often the responses drew out of my work both its Derridean justice and its Levinasian ethics. The emphasis on both these philosophers in the responses, for example those of Gearey, Joy, Romero, and Crawley, displayed a familiarity with my work as a whole that caught me by surprise, although of course I am mightily pleased. The connection with Derridean approaches to law and legitimacy, for example in ‘Declarations of Independence’ and *The Gift of Death*,<sup>1</sup> and to the temporality of the provisional and the retroactive, was of course well signaled throughout *Danse Macabre*, particularly in the introductory and concluding chapters and in the discussion of the work of Gordon Bennett.<sup>2</sup>

Less obvious was the emphasis given to Levinas in many of these responses. The text is largely silent on the subject; I make no more than three glancing asides to his ideas, purely for comparative purposes. It is interesting to me how the work I did on Levinas and law over a decade ago<sup>3</sup> should continue to inform readings of which, ironically, Levinas would have been suspicious. After all, Levinas comes rather close on some occasions to treating figurative art as idolatry.<sup>4</sup> As I have argued elsewhere, I think that on this point Levinas is mistaken. Even more than a Levinasian appeal to openness towards the possibility of otherness, the trait which I think my readers here have drawn from the tradition, what has influenced the present book is a defence of the ethical imperatives of aesthetic response which grew out of my disagreement with Levinas. Yet I think there is another sense in which my engagement with the work of Levinas has unquestionably left its trace, *en filigrane*, as the French say, on *Danse Macabre*. As Crawley elaborates, my approach consists, broadly speaking, in two strategies. The first movement lies in resisting a reading of the artwork that looks back at its past, and instead imagines the artwork looking forward into its own future, which is to say, interrogatively, asking questions of the viewer rather than us asking questions of it. And the second movement, though obviously related to it, is to stage two opposed readings of the artwork before introducing a third perspective which positions the viewer themselves within the work or interpellated by it.<sup>5</sup> The first strategy is a kind of temporal anachronism; the second, a kind of spatial anachronism. Both are of course indebted to the work of contemporary art theorists like Didi-Huberman and Mieke Bal. But they are equally indebted to a Levinasian orientation—to a movement which calls our autonomy into question

<sup>1</sup> Jacques Derrida, “Declarations of independence,” *New political science* 7.1 (1986): 7-15.

<sup>2</sup> Desmond Manderson, *Danse Macabre: Temporalities of law in the visual arts*, see esp. pp. 2, 161-2, 241-3.

<sup>3</sup> Desmond Manderson, *Proximity, Levinas and the soul of law* (Montreal: McGill-Queen’s University Press, 2007).

<sup>4</sup> Emmanuel Levinas, “Reality and its Shadow,” in *Collected Philosophical Papers*, trans. Alphonso Lingis (Dordrecht: Martinus Nijhoff, 1987), pp. 1-13; Jill Robbins, “Aesthetic totality and ethical infinity: Levinas on art,” *L’esprit createur* 35.3 (1995): 66-79.

<sup>5</sup> Karen Crawley, *Reading Images in the End Times* [in this volume].

and impels us towards a greater responsibility. I think the language of blind spots, to which I frequently allude, particularly in the chapter on JMW Turner, is a way of articulating in a jurisprudential and aesthetic register the demand of Levinasian ethics: “A light is needed to see the light.”<sup>6</sup>

What struck me about the responses elicited by this special edition, then, was the consistency of the para-texts in relation to which the words I wrote were read, even though not all of them were explicitly the focus of the book. There was likewise a consistent shape to many of the criticisms or calls for further research. Crudely put, the spirit of those criticisms was that *Danse Macabre* was unconventional in its approach but conventional in its subject matter. I was taken to task for the limited range of the artworks on which I focused, which were without exception drawn from the canons of the Western fine art tradition. As Doherty and Crawley point out, my focus is largely on works by male artists, most relatively well known. These criticisms are, I think, entirely fair. In part, the highly orthodox subject matter of the book was a purposeful choice. I wanted to demonstrate the potential to rethink both legal history and legal theory from an aesthetic and cultural standpoint. The use of relatively familiar artworks or traditions was both a way of drawing my reader in and of showing just how open the field was to a radical rethinking of the relationship of law and art. My choice of mainstream – and therefore masculine and Euro-centric – art was strategic in another way too. It was enough for me to attempt to engage with fairly established historiographic material without venturing into less well-trodden territory. To be honest, the learning curve seemed quite steep enough already.

The question of how a feminist reading of the law-art dialectic might provide different insights is an entirely open one, it seems to me. Although I have increasingly become interested in the work of contemporary Indigenous artists, many of them women—Julie Gough, Judy Watson, and Fiona Foley to name but a few—it remains unclear to me exactly how a feminist reading of their works would be distinctive, specifically when it comes to their treatment of legal themes. I do not raise this in a spirit of skepticism. I only wish to invite a more sustained engagement than simply pointing out the evident lacunae in the kinds of works I have so far addressed. It is surely not really enough to observe that I do not discuss women artists except in passing, though this much is true. Rather, we want to know what a feminist *analysis* of the works of artists both female and male would contribute to the broader questions or insights. I know that Doherty, amongst others, has been pursuing this question and I look forward very much to reading this work in the years to come.

While questions of colonialism and Indigenous peoples are prominent throughout the book, particularly in the chapters on Governor Arthur’s Proclamation and Gordon Bennett, the selection of Bennett keeps the discussion steadfastly within

<sup>6</sup> Emmanuel Levinas, *Totality & Infinity*, trans. Alphonso Lingis (The Hague: Martinus Nijhoff, 1969), p. 192.

the confines of Western art, as does the work of several other Indigenous artists I refer to in that chapter. Crawley and Branco note that the gaze I deploy, even when deploring the colonialism of the Australian legal imaginary, is a thoroughly Western one. I show little familiarity with either Indigenous art or Indigenous law as a living legal tradition. Branco, I think, makes the point with considerable force: “And so, perhaps, he falls into the same ‘perspective grid’ through which the Aboriginal peoples’ laws became (un)seen... There is thus a tension in Manderson’s analysis in regards to the viewpoint of what laws are in question, related, possibly, to his use of western art tradition and its rules on perspective – from which, it seems, we cannot seem to escape.”<sup>7</sup> This seems about right. As Crawley observes, I am writing from within a cultural position and I see my responsibility in relation to it. In a way, this seems the only ethically honest position to adopt given my own history and background. A more constructive engagement with Indigenous sources, not just in relation to art but law, would significantly expand the frontiers of this work. Joy’s elaboration of my argument in relation to Governor Arthur’s Proclamation, for example, already begins to thicken the aesthetic reference points which I included in *Danse Macabre*. Her discussion of the work of contemporary Indigenous artists highlights a range of work with which I am only glancingly familiar, and certainly suggested new and potentially fruitful lines of inquiry.<sup>8</sup> Furthermore, a better understanding of the literature of Indigenous law and of colonial law from a specifically Indigenous perspective, would yield wholly new insights and responses to both the art and the law.<sup>9</sup> Once again, this certainly indicates important directions my methods and theories can and should travel, and I hope it opens new avenues for research for future scholars.

Luis Gómez Romero’s response to *Danse Macabre* takes a different tack and requires, I think, a more detailed response. In a far-reaching and complex discussion, Romero contributes mightily to how we approach Rafael Cauduro’s *Crimes of Justice* in the Supreme Court of Mexico. In a particularly important passage, Romero rejects the comparison I draw between Cauduro’s work and the Mexican festival of the *Día de Muertos*, including its treatment in a mural by Diego Rivera. I think it is worth emphasizing that it is not, in fact, my interpretation of Cauduro to which Romero takes exception, but the way I contrast it with Rivera. In fact, my chapter on *7 Crímenes* engages very deeply and critically with the work of *los tres grandes*, Rivera in particular, but on very different grounds from those raised by Romero. At times, my friend and colleague seems to imply that in drawing attention to what distinguishes Cauduro’s mural from Rivera’s, I am suggesting that the Day

<sup>7</sup> Patricia Branco, *Time, Art, and the Law: a matter of perspective. A Comment On Desmond Manderson’s Danse Macabre: Temporalities of Law in the Visual Arts* [in this volume].

<sup>8</sup> Rachel Joy, Response to *Danse Macabre: Temporalities of Law in the Visual Arts* by Desmond Manderson [in this volume].

<sup>9</sup> See Irene Watson, *Aboriginal peoples, colonialism and International law: Raw Law* (London: Routledge, 2014).

of the Dead was actually one of Cauduro's "creative incentives."<sup>10</sup> In fact, by contrasting them, as I do, I meant to imply exactly the opposite. Romero emphasizes that Cauduro's ghosts are "not concerned with the festive melancholy of the Day of the Dead, but with the necropolitics of *death-worlds* wrought by the Mexican Drug War."<sup>11</sup> I can only agree, and Romero adds considerably to our appreciation of the importance of this shocking war, imposed on Mexico and enforced by the United States for a century now, in the legacy of corruption and violence that has so damaged Mexico's justice system and civil society.

Nevertheless, Romero rightly rejects my characterization of the *Día de Muertos* as a Mexican Hallowe'en, a "macabre festival" of "ghoulish violence" as I put it.<sup>12</sup> He insists that it is nothing of the sort, and that on the contrary it represents a "defiant response to successive and relentless forms of colonial violence in Mexico."<sup>13</sup> As a way of commemorating "the living memories of loved ones who departed too soon,"<sup>14</sup> the festival bears little relationship to my description of it. It is instead both a form of protest and an act of resilience in the face of a colonial onslaught that has continued for fully five hundred years. In a moving coda, Luis further shows the ways in which the Day of the Dead honours the memory of those closest and dearest to us, including his mother. Luis' analysis offers new and compelling insights, for me at least.

I initially thought that the insufficiency of my understanding of the Day of the Dead made little difference to my analysis of Cauduro, against which it is explicitly contrasted. But Romero pushes the argument further than that. He believes that by lazily echoing familiar tropes of Mexico as a land in thrall to death, I risk confirming a set of age-old prejudices which he describes as "the Atlantic gaze."<sup>15</sup> Former President Donald Trump's reference to Mexican people as drug dealers, criminals and rapists, and his cry to build the wall to keep them out did not—repeat not—come out of nowhere. Anglo-Saxon jurisprudence and North American imperialism have long trafficked the convenient libel that Mexican law and the state are irredeemably tainted by a "cultural flaw" which glorifies violence and death and shows little respect for the sanctity of human life.

Romero's criticisms cut deep for two reasons. First, because it was Luis himself who first introduced me to Cauduro's remarkable work and, moreover, to Mexican muralism, setting in train a research project that has taken me several years to complete. He went so far as to interview a judge of the Supreme Court and the artist

<sup>10</sup> Luis Gómez Romero, *Beyond the Atlantic Gaze, or, a Mexican View on Art, Death, Time and Law* [in this volume].

<sup>11</sup> Luis Gómez Romero, *Beyond the Atlantic Gaze* [in this volume].

<sup>12</sup> Desmond Manderson, *Danse Macabre* (Cambridge: Cambridge University Press, 2019), p. 226.

<sup>13</sup> Luis Gómez Romero, *Beyond the Atlantic Gaze*.

<sup>14</sup> Luis Gómez Romero, *Beyond the Atlantic Gaze*.

<sup>15</sup> Luis Gómez Romero, *Beyond the Atlantic Gaze*.

himself in order to assist my research. When I travelled to Mexico City to further my analysis of the art of the mural movement, particularly in the Supreme Court, I was looked after as if I were a member of the family. For all this, I am eternally grateful. Secondly, because Romero is himself Mexican and knows, with extraordinary depth, the history and the lived experience of law and justice there. There is no doubt that there is much of the story that I tell in my book that Romero knows better than I do, and I am therefore obliged to take these criticisms with the utmost seriousness. The risk of interdisciplinarity is this: missing the point.

As Romero knows, I do not for a minute place any credence in the narratives that, he suggests, have explained “as a cultural trait the contingent institutional arrangements”<sup>16</sup> in many cases forced on Mexico in the name of the horrendous US-sponsored drug wars, a subject on which I have written extensively.<sup>17</sup> I go out of my way to explicitly insist that the problems of legal violence and complicity that Cauduro so graphically illustrates are not in any way ‘Mexican’ problems at all. I specifically argue that Cauduro is speaking about the endemic power of the state, the police and the law not just in Mexico but “elsewhere” and “around the world”. Moreover, I specifically connect Cauduro’s critiques of law and injustice both to US practices in the so-called war on terror, to Australian security laws, and to the mandatory detention centres that form Australia’s very own gulag archipelago.<sup>18</sup> So I do not think that any fair reading could conclude that my discussion of Cauduro implies an “inbred cultural flaw” that is somehow to blame for the injustices which the mural excoriates.

I do not think, however, that that gets me entirely off the hook. Romero argues that “connecting the dreadful social and legal violence denounced by Cauduro to Mexican ideas and practices around death...has had serious political consequences in the history of Mexico.”<sup>19</sup> Luis has grown up under the glare of the Atlantic gaze. The racist assumptions and stereotypes that he refers to have both affected him personally and shaped the discourse of law and justice in Mexico for generations. I have seen the kinds of on-line comments that Romero’s own writings about the drug war and US-Mexican relations have attracted. Some of those remarks are arrogant, offensive, and dismissive in exactly the ways that Romero indicates have a very long and vicious history. I have not grown up with that sort of discrimination; Luis has. It has rendered him rightly sensitive to the enduring power of colonialist discourses. In this, I think, I showed a lack of appreciation for the cultural and political context of my analysis. I think he is right to draw attention to what I missed. A fuller appreciation of the virulence and reach of those discourses may and should lead to a

<sup>16</sup> Luis Gómez Romero, *Beyond the Atlantic Gaze*.

<sup>17</sup> Desmond Manderson, *From Mr Sin to Mr Big: A history of Australian drug laws* (Melbourne: Oxford University Press, 1993).

<sup>18</sup> Manderson, *Danse Macabre*, pp. 232-35.

<sup>19</sup> Luis Gómez Romero, *Beyond the Atlantic Gaze*.

better reading of the Day of the Dead, certainly, but more importantly it can contribute to a more politically detailed reading of Cauduro, too.

The depth of his engagement with the history not just of Mexican law but of global and imperial discourses *about* Mexican law allows Romero to introduce new elements to further intensify our engagement with *The Crimes of Justice*. He brings home the colonial and imperial origins of the drug war, as these forces weigh not just on the legal system, but on the daily lives of all Mexicans. Romero offers us a way of seeing Cauduro's ghosts as something more than mere metaphor—as a way of giving visceral expression to the heartfelt experience of the people of Mexico themselves who live, not “easily” in death's presence, but all too close to it. Romero's approach enriches and develops the interpretation my chapter introduced. And by combining the intimacy of personal memoir with the rigour of political history, in a way that only he could manage, he opens new methods in law and the humanities, too.

Both Romero's essay and this response have benefited from a sustained conversation about previous drafts. As I have indicated above, we are close friends and colleagues, and we have worked together on both scholarly and creative collaborations, including in relation to the Mexican drug wars, for years. The dialogue around Luis' response to my chapter has not always been easy, and both his text and mine have changed in the process. I think Luis has come to recognize that some of what he originally read into my text was a function of his own personal and political history. But I have also had to acknowledge that colonial discourses are sometimes reproduced not simply out of innocence—always the excuse of white privilege—but out of an ignorance that we are all responsible for continually striving to remedy. In learning more about the perils of an interdisciplinary approach to cultural traditions and histories with which I was previously unfamiliar, the conversation between the two of us has, I think, raised my consciousness of the demands of that responsibility. Ultimately, that is the appeal of Levinas—a command that we pay attention to the lives of others and keep learning from their insights and perspectives.

Above all, however, the difficult and challenging conversations that lie behind the never quite final versions of the exchange you are reading here, testify to the rigours and rewards of interdisciplinary scholarship. These texts are intended to manifest our shared commitment: not simply to sacrifice either our friendship or our disagreement, but to improve the one by clarifying and distilling the other, and thereby to learn from one another, to change and grow, for the sake of a scholarship that ultimately belongs to neither of us. These texts evidence—I hope—the potential of the field to enliven a real and constructive conversation between disciplines, histories, and experiences. The current issue of *Ethics & Politics* and, indeed, the journal's whole *raison d'être*, surely stands for the necessity, now more than ever, of persevering with such conversations.