

“extraordinarily precarious” legal framework that certainly did not provide the same “legal security” for a child as adoption.

Davey concludes the book *inter alia* by emphasising that the state is required to “use financial and practical resources to attempt to reunite children and parents, where this is possible”, even if it is difficult to ascertain precisely when a state might breach an international obligation to do so (p. 188). She advocates greater investment in, and attention to, alternatives to adoption and concurrent planning. She makes a strong case for the view that “the existence of good reasons for removing children from the family home and for deciding that they should not be returned into the care of their parents, does not mean that a non-consensual adoption can necessarily be regarded as a proportionate measure” (p. 194).

Some of Davey’s assertions and assumptions may well be open to challenge. For example, while she at times implies that consideration of proportionality is effectively limited to the appellate level in England and Wales, such that it is retrospective, it is certainly possible to find apparent counter-examples where proportionality is given explicit attention before an adoption order is made at first instance. This is particularly true in the aftermath of the seminal decisions in *Re B (Care Proceedings: Appeal)* [2013] UKSC 33, [2013] 1 W.L.R. 1911 and *Re B-S*, and Davey concedes that it is “difficult to gain reliable evidence and form a clear picture of the scale of the problem” she has identified (p. 115). In *Re N (Adoption Order)* [2014] EWFC 1491, at [46], for example, Moor J. specifically held in the context of a detailed analysis that, “[n]otwithstanding the draconian nature of the order, adoption is necessary and proportionate given the huge advantages that it provides to [the child concerned] for the rest of her life”. While Davey apparently regards the frequency and/or extent of such consideration to be inadequate, such that only lip-service is paid, some readers may find themselves alleging exaggeration in parts of the book.

To be clear, however, the fact that Davey’s work is at odds with relatively recent Government policy on adoption, and in some instances judicial approaches to it, is by no means *per se* a problem. On the contrary, this well-researched volume is an important corrective to the dominance of adoption as a solution for children in need in some policy circles. As a book-length analysis of adoption in the context of both domestic and international human rights law, Davey’s monograph is very valuable.

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Danse Macabre: Temporalities of Law in the Visual Arts. By DESMOND MANDERSON.
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978-1-107-15866-5.]

Should we, and how can, we theorise law visually? How can we do so in ways that is sensitive not only to the history of law, and its many contexts, but also to the history of both visual form and practices of seeing? With his new book, Desmond Manderson shows that this can be done, and there is much to learn from it being done. This is not the first time he has tackled the topic – recently, for instance, he edited *Law and the Visual: Representations, Technologies, Critique* (Toronto 2018), which explored relations between law and everything from Brueghel to the Abu Ghraib photographs. Hot on the heels of that collection comes this new monograph.

The range in Manderson's monograph is equally impressive: well-known classics, by Pieter Brueghel, J.M.W. Turner and Gustav Klimt, are examined, as are works that have received little attention by legal scholars, such as those by Gordon Bennett and Rafael Cauduro. Manderson's interests are also broad: he is especially interested in relations between law and time, and how the visual can help us understand the many different ways that law and time are entangled. But he is also interested in the ethical and political life of images, how these intersect with legal and social histories, and what they can help us understand, though also challenge and change, about the representation, power and ideology of law.

Covering so much ground requires fancy footwork – a dance, even a *danse macabre*, as Manderson calls it – and it is probably best savoured in the company of concrete examples. Of which there are plenty. One of my favourites is Manderson's reading of Turner's *Slave Ship* (1840), and in what follows below I focus on it, just to give a sense of Manderson's visual jurisprudence.

First, though, a word about the overall theme and structure of the book. Each chapter fastens onto one kind of temporality, and its entanglement, in specific times and places, with law. Theorising time contextually, and especially by reference to its politics, is the theme that holds the book together. This includes the “anachronic” time of the Renaissance (as evinced in Brueghel's *Justicia* (1560)), and thus the juxtaposition of past and present; the “diachronic” time of neoclassical aesthetics, embodying a clear separation between past and present, but also seeking to bring it back to life in the present (as depicted in Joshua Reynolds's *Justice* (1777)), and as linked, in Manderson's reading, to Blackstone's *Commentaries* (1765–70); the “utopian” time of nineteenth century colonialism, and its practices of deferral, also enabling the genocide of Aboriginal people in Tasmania (as per *Governor Arthur's Proclamation* (1830)); the “now-time”, the *jetzeit*, an urgent, revolutionary time (as Manderson finds in Turner's *Slave Ship*; on which more in a moment); “suspended” time, a dream-like time (in Klimt's *Jurisprudenz* (1903–07)), which connects to the sovereign's power of exception; the future anterior, and a traumatic time (as in Bennett's paintings, such as *Possession Island* (1991)), which is also one kind of temporality of colonial legality; and a kind of “ghostly” time, which blurs the relationship between past and present (as it blurs also the distinction between reality and representation), critiquing mythical time, and replacing it with memories that haunt us (as in Cauduro's murals for the Mexican Supreme Court, *7 Crimenes* (2007–09)).

Time, then, is certainly a key thread running through the book. In that respect, the book can be read not only as a contribution to visual jurisprudence, but also to the growing literature on theorising relations between law and time. What Manderson adds to this literature is how insightful it can be to theorise that relation via visual forms, appropriately situated in certain historical contexts. There are no universal relations between law and time: rather, particular kinds of relations become significant, if not dominant, in certain times and places, and in ways that are always imbricated with power. Manderson demonstrates this superbly in various ways, though perhaps most evocatively in the context of colonial legal history, as in his treatment of *Governor Arthur's Proclamation*. The point, in that chapter, is to show, via visual forms, how deferred time is an integral feature of the exercise of power in nineteenth century Tasmania. This analysis will be of interest not only to legal scholars examining law's multiple temporalities in theory and history, but also to scholars of relations between politics and time more generally (see e.g. D. Edelstein et al. (eds.), *Power and Time: Temporalities of Conflict and the Making of History* (Chicago 2020)).

As I mentioned above, one of my favourite chapters is Manderson's reading of Turner's *The Slave Ship (Slaves Throwing Overboard the Dead and Dying – Typhoon Coming Out)* (1840). In November 1781, a slave ship, *Zong*, was travelling from West Africa to the Caribbean. As Manderson tells us, the ship was overcrowded and running late. Over three days, the ship's captain ordered the throwing overboard of men, women and children. At least 132 died from drowning. The captain was never tried – he died soon after the ship reached port. But there was both a case and its appeal, though the central issue was not the responsibility of the captain and others, but instead a contested insurance claim: the owners of the ship sought compensation for the “goods” “jettisoned” at sea. The trial judge agreed with the owners: “Blacks are goods and property The case is the same as if horses had been thrown overboard” (quoted at p. 110). The case went on appeal, and Lord Mansfield ordered a retrial (which never took place).

Turner's painting was exhibited in the Royal Academy show of 1840. That is almost 60 years later, and of course Turner did not just have the *Zong* incident – as emblematic as it became in the abolitionist movement in Britain – in mind. Although the *Slave Trade Act* had been passed in 1807, slavery, including the practice of “jettison”, was by no means a relic of the past. Indeed, it continued to be the subject of heated debate, including in Parliament, where Lord Brougham had argued in 1838 that the Government was encouraging the throwing overboard of slaves.

The painting was, at first, not well received. It was saved, so to speak, by John Ruskin, whose father bought the painting for him as a wedding gift. Seeing the painting as a painter, Ruskin noted in particular its study of light on the sea, awash as it was, he said, with “intense and lurid splendor which burns like gold and bathes like blood” (quoted at p. 112). Manderson makes short shrift of the early critics, and to some extent too, Ruskin's response to it. The painting cannot be approached, and evaluated, via the standard of realism. Its power lies, in part, in its “diagnosis of slavery as a feeling not a fact, as present not as past, and as British not as foreign” (p. 107). The presentness of the painting is key: it grabs us by the throat in what Walter Benjamin called *jetzeit*, or now-time, and it shakes us, making itself immediate, urgent and revolutionary in our midst, calling on us to act.

Manderson is especially interested in how the painting constructs and transforms us as spectators. At one level, Turner's swirling, mud-like colours and brushstrokes, “create an effect of confusion, terror and disorientation” (p. 114). On the other hand, the drowning persons depicted in the painting have no faces: “They are represented as objects for whom we feel an abstract and lofty pity, not as subjects with whom we feel sympathy” (p. 115). In other words, what is depicted in Turner's painting is the point of view of colonial pity, in all its ugly self-righteousness. Yes, suffering is depicted and that is one perspective the painting affords, but that suffering is also presented from the point of view of the colonial gaze, and this is the other perspective. On the one hand, there is a critique of the practice of jettisoning, of the victims of imperial ambitions and capitalist greed; but on the other, there is the manner in which these victims are seen, namely from the point of view of an aloof and privileged spectator.

In this way, the painting has the capacity to tap us on the shoulder: “us” being the viewers now, seeing it also in light of the continued colonial and imperial violence being done to refugees on contemporary seas. “We” are addressed by the painting: do “we” see as the colonial gaze sees? Do “we” pity the drowned in the same abstract, statistical manner, mindlessly absorbing yet another news item about overcrowded, capsized vessels? As Manderson argues, “the colonial gaze that troubles Turner's painting remains as pertinent as ever” (p. 118). Contemporary depictions of refugees in the media continue to often portray “them” as “passive objects”, as

“generic and abstracted others”, and in narratives in which “the West appears almost exclusively as bystanders or rescuers” (p. 119). “We”, Manderson is saying, via Turner, perpetuate the colonial gaze. “We”, as a result, are just as responsible and complicit as those who looked upon the painting in the Academy in the 1840s.

Indeed, it is not just that Turner’s painting presents multiple perspectives at once: it is also that the perspective that it privileges, the gaze which looks upon the drowning slaves, is also the perspective that we are, simply as viewers of the painting, forced to embody. And this gaze, as Manderson notes, drawing also on Mieke Bal’s reading of the painting, is the gaze of those who did the throwing. After all, the ship depicted in the painting is too far away: the iron chains have not yet sunk, so they must have just been thrown. The painting is not a painting of a slave ship in the distance; that is another ship. *The slave ship* is behind us. *We* are the slave owners, the ones who throw these “goods” overboard.

The visual, in Manderson’s treatment, emerges as this rather uncompromising self-critique, enabled as that is by both the material and pictorial elements of the painting, but also by its framing and point of view, including how it facilitates switching between perspectives. The visual has this power to make us into spectators of a certain kind (though which kind needs to be, and is by Manderson, historicised), and then to show us, to us, who we have become, including what we see, what we don’t and how we see what we do. The claim is not that the visual – for instance, painting – is the only form and medium to have this capacity. But it is to suggest that the visual has its own ways of enabling this kind of experience, which is simultaneously aesthetic, ethical and political. The visual, on this view, has its own powers of affording self-reflexivity. We thought we could be comfortable in our aloof pity; instead, the painting is our prosecutor, and we, now, are on trial for murder.

Murder, death, violence. One of the virtues of Manderson’s book is that it shows how intimately connected these are to law. Manderson literally makes these relations visible (in wonderful readings also of work by Bennett and Cauduro, amongst others). The visual artefacts examined show how the law deals in, and is deeply embedded in, violence, mourning and death – by spearing, shooting, hanging or drowning. And it shows us these connections across time, folding the past into the present, and the present into the past. It is a book that, like the visual artefacts it engages with, taps us on the shoulder, and asks us who we are.

Manderson’s book is an impressive contribution to visual jurisprudence. It shows us just how much we miss out on if we neglect to relate law to the visual, and especially in ways that are historically sensitive. One can only hope more legal theorists and legal historians look to visual traditions, and historicise legal concepts and methods. When they do so, it will be instructive to go beyond the focus on visual forms tagged as “art”, especially paintings and murals. To be fair, Manderson does venture beyond, for instance by examining *Governor Arthur’s Proclamation*, but his overall focus remains on “great art”. In future work, we may wish to consider more “minor” forms, such as the visual design of the legal page, or drawings in the margins of manuscripts. As James Elkins argued in a number of books (e.g. *The Domain of Images* (Ithaca 1999)), there are a great many different kinds of visual forms and genres, which a framing around “art history” often misses. In this respect, it would be interesting to see more work done on the visual at the intersection of legal history and the history of knowledge (informed, for instance, by work in the history of science). Much remains to be done, but we owe a great deal to Manderson and his historically and politically sensitive visual jurisprudence.

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