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Book review

The Routledge Handbook of Cultural Legal Studies

Editors: Karen Crawley, Thomas Giddens, Timothy Peters.
Routledge, 2024.

One of the first things one encounters as a first-year student when commencing studies in law, is the question ‘what is law and where can one find it?’. In this framing of the question, ‘where’ usually refers to the established sources of law in the law library (often on a separate floor and sometimes even in a separate library). These usually include caselaw, legislation and academic writings on issues classified as legal topics. This question is not limited to the first-year level but goes on to haunt legal studies throughout all of the years and beyond. Far from providing a definitive answer to this, one of the things that the *The Routledge Handbook of Cultural Legal Studies (Handbook)* does, is to open up this question. Interestingly, the text insists that this is a ‘where question’, but problematizes a narrow conception of that ‘where’. The *Handbook* contributes to an area of study ‘characterised by an expanded or open-ended conception of what “counts” as a legal source, and that is concerned with questions of authority, legitimacy, and

interpretation across a wide range of cultural artefacts'.¹ In this short review, I present a brief overview of the central traits of cultural legal studies as presented by the editors and the contributing chapters. I try to identify some common themes, key contributions of the handbook and additional questions raised by the *Handbook*.

In the introductory chapter, the editors describe law in terms of encounters with legality. What they mean by this, is that the individual is not seen as a 'subject before the law', but is instead recast as 'sensing law with or as a cultural artefact'.² They list a variety of these possible encounters in cultural legal studies, which encompass, but is not limited to encounters with state forms, such as legislation, law reports, and courts, including the architecture and aesthetic of and state symbols, statues and flags at courts.

A conservative framing of the question of cultural legal studies, the editors show, is a 'how question', namely 'how something is recognised as law'. A more radical framing of it, one that makes the presumptions around state primacy, socio-legal and doctrinal method, and rational procedure contingent rather than fixed, shifts the 'how' question to a 'where' question, namely that law 'only exists where it is found, where it is experienced, and where it is seen, sensed or otherwise detected'.³ It is rendered contingent, because the question of how something is recognised as law is situated within the broader 'nexus of cultural questions and concerns'.⁴ It is clear how this obviates the need for a sovereign or a state, rational procedure and doctrinal or socio-legal method, because it does not predetermine any set of methods. This does however not mean that the considerations and engagements with a or the sovereign are ignored or avoided in cultural legal studies. At least two contributions in the *Handbook* point to quite the contrary. In the chapter 'The Aesthetics of Sovereignty',⁵ Daniel Matthews relies on the map of the world by the German cartographer Martin Waldseemüller *Universalis cosmographiae* (1507) and the picture on the cover of Thomas Hobbes's *Leviathan* by Abraham Bosse (1951) to argue that it is important to attend to the sensory processes through which the jurisdictional technologies of sovereignty produce subjects, in order to challenge

1 K Crawley, T Giddens, T Peters *The Routledge Handbook of Cultural Legal Studies 2024 (Handbook)* at ii.

2 *Handbook* at 1.

3 *Handbook* at 1.

4 *Handbook* at 1.

5 *Handbook* chapter 7, at 92 – 107.

presuppositions of Western power. Timothy Peters in 'The Use of Superheroes for Cultural Legal Studies: Batman's Two Bodies and the Political Theology of the Corporate Image',⁶ points to the importance of literary and legal fictions in how the sovereign is conceived over time. He argues that the superhero image forms part of a communal imagining of the world and shows how sovereignty and authority are constituted aesthetically. Trish Luker's chapter, 'Sovereign Signatures: Australian First Nations Petitions',⁷ looks at ways in which Australian First Nations peoples uniquely engage Indigenous knowledges and material practices to turn documents, petitions in particular, into legal actions, arguing that this creates new signs of sovereignty.

The *Handbook* also joins the push for pluralism by emphasizing that cultural legal studies do not mandate a predetermined set of methods apart from, possibly, noting that the methods will be plural and should be attuned for each particular encounter. It is on account of the 'plurality and variability of law's cultural forms', each demanding its own specific methodological choice, that law is understood as a process of attunement.⁸ I find myself intrigued by the notion of attunement and the way in which the editors use it to frame cultural legal studies. What they mean by it, is a sensitivity,⁹ a practice that recognises law's contingency in a way that does not diminish its authority, but instead heightens our awareness of how that authority is produced.¹⁰ This practice of reflexive attunement runs through all the contributions, but is particularly pronounced and explicitly engaged with in the chapters in part 1 of the *Handbook*: 'Methods and Orientations'. In this section Kirsten Anker and Mark Antaki in their chapter 'Imagination' problematize a view of imagination simply as a true human capacity that can be used to address defects, whether in law or in the world. Such a view, they show, could reproduce a version of law that is worrying, in that it emphasises a distinction between nature and culture which is not necessarily shared in imaginaries such as Indigenous ecology. Their chapter wishes to expand the understanding of 'culture' by being sensitive to lived worlds of meaning and community. Daniel Hourigan's chapter on 'Law and the Unconscious' draws attention to the importance of cultural legal studies for thinking about the psychoanalytic relation of law to the unconscious. Karin

6 *Handbook* Chapter 11 at 162 – 178.

7 *Handbook* at 333 – 351.

8 *Handbook* at 2.

9 *Handbook* at 3.

10 *Handbook* at 11–12.

Van Marle in "'It Is Not a Question of Drawing the Contours, but What Escapes the Contour": Aesthetics, Provisionally, Finitude' engages the work of legal scholars in South Africa who draw on literature, art, music, and other symbols and forms in order to think through the shift from parliamentary sovereignty to constitutional supremacy in the 1990s. She explores what this use of cultural theory and aesthetic tropes in engagements with transformation and memory can do to bring about much-needed changes in the present and future South Africa. Rebecca Johnson, in her chapter 'Testify! Reflections on Cultural Legal Studies and Indigenous Legal Orders' draws from her own involvement in a collective called 'Testify! A Project of the Indigenous Laws + The Arts Collective'. The project was based on an understanding of the close relationship between law and art, as found in Indigenous legal orders, as opposed to the more distant relationship in the Canadian legal order. Ann Genovese and Shaun McVeigh end the section with their chapter 'Jurisography (A report on Cutlural Legal Study, Australia). They look at the various links between cultural study and law writing as developed in and since the 1990s. They envision jurisography as a manner of practice that provides public form to arts of disciplinary association. The ethos and method of writing are of equal concern to jurisography.

Through its contributions the *Handbook* itself becomes a cultural artefact. The editors describe the contributions as examples of encounters with law as artefact. While not attempting to be all-encompassing the *Handbook* does capture a broad variety of contributions and perspectives. Contributors to the *Handbook* are mostly from Australia, but there are also contributors from South Africa, Canada, the Netherlands, the UK, and Hong Kong. Despite this geographic diversity, and what struck me during the launch of the *Handbook* at the *RULCI Colloquium on Law, Literature, Interpretation*, hosted by The Research Unit of Legal and Constitutional Interpretation and Theory (RULCI) and the Research Chair Gender, Transformation, Worldmaking in July 2024, where I first encountered the *Handbook*, is that they are all scholars of law. This, the editors explained at the launch, was intentional. Their remarks resonated with anyone who has worked in an interdisciplinary (and for that matter also transdisciplinary or cross-disciplinary) context. The issue of working in these spaces, they proposed, is that scholars who are not in the field of law, tend to shy away from critically engaging with law. It is along these lines that they also clearly distinguish cultural legal studies from another 'law and' field.¹¹ In this regard, Dale Mitchell's chapter is aptly entitled 'It's Law' with the

11 *Handbook* at 9–11.

subtitle 'Towards a Form of the Cultural Legal'. The contribution is a critical consideration of the cultural legal method as an inherently legal practice and insists on analogy as the form of law and the cultural legal.¹²

Cultural legal studies 'takes seriously and centrally the representational nature of law and legality – and the encounter with it'.¹³ In this sense, instead of law and culture or law in culture, cultural legal studies perceive a reciprocal equivalence of law as culture and culture as law, but not a stable or static idea of culture, instead, an understanding of culture as contingent, produced and reproduced. Let us therefore return to the first-year question of what counts as a legal text. The contributions of the *Handbook* suggest that social media can be seen as a jurisprudential discourse on the nature of law, justice and legitimate authority.¹⁴ Comics are presented to reveal the inability of the legal subject to move outside of law's boundaries in the legal imaginary of the modern colony.¹⁵

Interestingly, a number of chapters in the *Handbook*, read texts that would traditionally 'count' as legal texts (judgments, legislation, policy) on the same level as texts that would usually not 'count' as such. This can be seen in the contributions by Mariëlle Matthee 'Law, Poetry, and the Voice of Nature',¹⁶ and Susan Bird and Jo Bird 'Alien Nation: Redefining the Alien in Law and Science Fiction'.¹⁷ In the Matthee chapter, Section 13 of the Te Awa Tupua Act¹⁸ and current eco-poetry are read together and in the Bird and Bird chapter, science

12 *Handbook* at 36 – 48.

13 *Handbook* at 11.

14 C Sharp's chapter 'Cultural Legalities of Social Media' *Handbook* at 179 – 192. She shows how the hashtag is a device through which law's meaning is interpreted and transformed within social media platforms.

15 T Giddens's chapter 'Scribbling on the Moon: The Melancholia of *Lunar Nullius*' *Handbook* at 193 – 208.

16 *Handbook* at 209 – 223.

17 *Handbook* at 238 – 251.

18 The 2017 Te Awa Tupua Act is the first legal instrument that recognises a riverbed's legal personhood. The chapter reads this Act, often referred to as an example of the new legal philosophy of Earth Jurisprudence, critically to show that the Act's overall legal language contradicts several of the eco-centric Maori provisions included in the Act. The Act remains anthropocentric. Using Mikhail Bakhtin's notion of dialogic imagination, the author reflects on the discourse between the anthropocentric language and eco-centric socio-ideological language of the Act. Another chapter that relies on Bakhtin, is that by Etxabe 'Pluralising Judicial Authority: The Double-Voiced Opinion' at 285 – 299 of the *Handbook*. The author traces an internally dialogised alternative model, co-created by the different voices coming together. With examples from the European Court of Human Rights the author illustrates the phenomenon of 'double-voiced judicial opinions'.

fiction by a First Nations author and legal judgments are viewed on an equal plane in considering the narratives of colonial invasion in both.¹⁹

In the chapter by Marett Leiboff, 'Doing Theatrical Jurisprudence',²⁰ a judgment, usually considered a source of law, is not read, but watched. The author watches the judges as captured by in-court cameras. One contribution in the *Handbook* draws on opera. Ryan Kernaghan, 'Staging the Judicial Figure: The Parallels Between Legal and Operatic Interpreters', presents a novel interaction between law and opera in different times and places by bringing a production of Richard Wagner's *Der Ring des Nibelungen* together with a dissenting judgment in the Australian case of *McInnis v The Queen* (1979) 143 CLR 575. In doing this, the author highlights the dissenting judgment's critique of the prevailing assumptions and attending injustices when it comes to the rights of an accused.²¹

There are chapters that specifically look at the horror genre, such as those of Penny Crofts, 'Law and Horror',²² and Justine Poone, 'Can I Have Your Hands? The Use of Bodies in the Horror Genre and Refugee Law'.²³ Popular series²⁴ and

19 The authors illustrate that themes of the alien other are ubiquitous in law and science fiction texts. They look at the recurrence of these themes in the first Australian pre-federation alien invasion novel *The Germ Growers* as well as the Australian High Court decision in *Love v Commonwealth; Thoms v Commonwealth*.

20 *Handbook* at 352 – 365.

21 *Handbook* at 269 – 284.

22 *Handbook* at 125 – 140. The premise of this chapter is that horror is a central justification for the presence of law. It explores how the horror genre engages models of culpability and the ways in which justice could be imagined or made possible. The concluding argument of the chapter entails that while the horror genre a site of repression on the one hand, it is also an attempt to challenge the unthinkable.

23 *Handbook* at 438 – 450. This essay engages with the importance of cultural (and critical) legal studies for thinking thorough the forces of law that are tricky to articulate. Reading cultural texts legally, the author argues, gives us the opportunity to become aware of and to play with law's processes. The way in which the horror genre features, is as a site where the legal relations that characters enter into shape their subjectivity. The 2018 horror film *Suspiria* is relied on to explore the power of law through its desire and terror in the transfer of bodily capacities. This aspect of the film is then compared with the use of bodies in Australian refugee law.

24 See K Tranter's chapter 'Prohibition, Contract, and *Nomoi* for the Future in *Star Trek: Picard*.' The author investigates contract and prohibition through a popular jurisprudential reading of the first season of *Star Trek: Picard* and shows how this 'text' presents a serious engagement with key issues of law and legality. *Handbook* at 141 – 161.

a graphic novel²⁵ are also used and several authors, grouped under Part III Performance and Performative Legalities and Part IV Cinematic Legalities, rely on films,²⁶ film techniques,²⁷ and documentaries²⁸ to expand what 'counts' as law texts, while also critically engaging with these sources.²⁹ The final chapter, by Karen Crawley and Kim D Weinert, '*Terror Nullius* (2018): Queering the Australian Colonial Imaginary',³⁰ for example critiques the film's limited economy of enjoyment and shows that the film's queering of an Australian colonial imaginary still remains trapped in the very colonial mytho-logic that it aims to bring into question.

There is no doubt that the *Handbook* makes a valuable contribution to scholarship in law. My sincere wish is that the way in which it expands what 'counts' as sources of law would be taken up in legal education and, who knows, perhaps someday even in how judges adjudicate cases before them.

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- 25 See T Giddens's chapter 'Scribbling on the Moon: The Melancholia of *Lunar Nullius*.' In seeking to present an escape from a legality that has translated the Moon into the symbolic order of law's jurisdiction, pushing the frontier of civilisation out into space, Mooncop encounters complex normative dynamics of drawing colonial lines of power into an imagined beyond, and ultimately confronts the (im)possibility of escaping the law.
 - 26 Films by filmmaker Rithy Panh are used in the chapter by Maria Elander, "'The working of time": Transitional Justice and Body Memory in Rithy Panh's Cinema', to problematise a linear conception of time where trials are seen as transformative events. *Handbook* at 255 – 268. Leslie H Abarahamson, 'A legal Frame-work of Urban Modernity: The Court of Criminal Appeals, *Chicago* (1927) Style', relies on silent cinema and López Lerma, 'The Evidence of Juridical Documentaries', on documentaries. *Handbook* at 300 – 332. In the chapter by Emma Patchett, 'Tanya's last Resort: On Law, Disorientation, and Enclosure', the cinematic jurisprudence of *Last Resort*, a 2000 film by Pawel Pawlikowski's, presents a counter-epistemology of law's imaginary.
 - 27 Susan Bouclin, 'Cinelegal Techniques', *Handbook* at 369 – 389 uses film techniques to consider the resistance by street-involved people.
 - 28 Agnes S Schick-Chen, 'Picturing the Judiciary: The Discursivity and Narrativity of Judicial and Legal Culture in 21st Century Chinese Film', combines a feature film, a TV series and a documentary. *Handbook* at 380 – 389.
 - 29 See for example Luis Gómez Romero, 'The Myth of the Big, Bad Narco Cinematic Jurisprudence and US- Mexican Drug Wars, which challenges how certain myths shape our ideas of law and justice, as well as Marco Wan, 'Film and the Reimagination of Kinship: Graham Kolbein's *Queer Japan*' who concludes that problems of representation in film needs to be approached with caution.
 - 30 *Handbook* at 451 – 469.