Television, Pleasure and the Empire of Force: Interrogating Law and Affect in Deadwood*

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… derided as simple, dismissed as inferior to film, famously characterized as a vast wasteland, television nonetheless exerts an undeniable, apparently inescapable power in our culture.¹

I love television. I really do. I rarely say that so boldly. I have spent many years teaching a seminar in legal theory using film as the primary text, and when asked, I will truthfully respond that, ‘I love film’. Yet if pressed, my confession would be that my deep affections are not tied to the big screen, but to the small one. Many of the powerful affect-laden memories of my childhood circulate around television. The sounds and music of television are deeply imprinted in my psyche. In less than four notes, I can be pulled back in time and space, and situate myself in front of an episode of Sesame Street, Bugs Bunny/Roadrunner, Gilligan’s Island, Bonanza, or The Twilight Zone. It is not just a question of the particular programmes watched (or the ones forbidden, the ones which became objects of desire), but also of the times and places where I watched—at home or a friend’s house. Friendships were built around TV programmes shared, and I continue to feel a deep affection not only for the friends with whom I watched, but also with the TV characters we came to know so intimately. Because TV was both a matter of weekly programming, and of Friday night movies,

* I am deeply grateful to Jessica Silbey and Peter Robson for first encouraging and then enabling me to return to Deadwood, which I had first talked about in R Johnson, ‘Living Deadwood: Imagination, Affect, and the Persistence of the Past’ (2009) Suffolk University Law Review 62(4): 809–22. I have benefited from their insights and suggestions. I have also been the beneficiary of supportive provocations from colleagues and fellow TV addicts at the University of Victoria and elsewhere, and particularly John Borrows, Ruth Buchanan, Gillian Calder, Stacy Chappel, Arta Johnson, Orit Kamir, Freya Kodar, Maxine Matilpi, Jim Tully, and Jeremy Webber. Many thanks.

¹ Kristin Thompson, Storytelling in Film and Television (Boston, Harvard University Press, 2003) back cover.
my experiences of television have always been driven by questions of adaptation, transformation and the echoes across genres.² It is impossible to disaggregate even my love of film from my affection for the small screen, for even my lingering love affair with movies took shape not in the darkened space of the local cinema, but at home in front of the TV screen, snuggled on the sofa beside parents, siblings and friends. However I look at it, I find the end-point is the same: I love television.

In this chapter, I want to take those complicated emotions and resonances as a point of entry for a discussion of the place of affection—or rather, of ‘affect’—in the study of law on the small screen. Attention to affect can help us understand more about the politics of pleasure, and the relationship of television to what Simone Weil calls ‘the empire of force’.³ In identifying and understanding television’s affect-based tools of persuasion, we are in a better position to explore how those tools, un-interrogated, may work to rationalise and sustain the underlying ways of thinking, talking and imagining law that make the empire of force possible.

To particularise this discussion of affect and law in television, I want to spend some time in the imaginative world of the HBO series, Deadwood. The series is set in the 1870s, in the shadow of the Black Hills of what is now South Dakota. The territory was to be protected through a treaty with the Lakota,⁴ but the hills held the lure of gold, and so an outlaw town sprang up to support the prospectors and settlers who illegally flooded into the area despite the treaty. The illegal settler camp of Deadwood is captured as a place supposedly beyond law, outside of law. The series is filmed in a mode of gritty realism, in the palette of dirt, blood, sweat, and mud. The dialogue balances on the thinnest edge between the exquisitely poetic and the discomfitingly profane (rather like Shakespeare meets The Sopranos). Each episode is loaded with explicit scenes of physical, racial, gendered and semiotic violence.

I love Deadwood, and want to keep that affection squarely centred while thinking about what there is to learn from (and with) the series. For even as I love Deadwood, I find myself unsettled by that very affection. A great deal of my research and affective energies are currently invested in projects that have de-colonisation at their centre. In response, I find myself wondering how I take so much pleasure in a television series which explicitly traffics in colonial/racial/gendered violence and oppression. It is a puzzle. Thus, in what follows, I ask myself what might be learned by exploring the

² Ibid ch 1. One might note, when one is talking about television, that it is not uncommon for discussions to blur the various ways of thinking about television: as the physical object on which we view things (where, if the sales people at Futureshop are to be believed, size may well matter to the viewing experience); as programmes produced specifically for television (though there may be differences between shows designed with attention to advertising breaks, and those designed for markets like HBO, where shows can run without advertising); as the totality of programming made available for home viewers (which includes programming made-for-TV, as well as movies released theatrically and shown in reruns on TV with commercials inserted into the flow). Discussion of TV can certainly take up subjects such as objects, products, production, technology, advertising, reception and more. Here, I agree with Thompson that the study of television is undoubtedly enriched by attention to each of these sites of TV’s power. In the context of this discussion, my focus is largely on storytelling in television, and its relation to culturally proliferated ‘structures of feeling’. More on this will follow below.


⁴ Fort Laramie Treaty of 1868, 15 Stat 635 (1868).
ways Deadwood offers its critique of the colonial past, while simultaneously inviting the viewer to feel so affectively bound to the violence of that very past.

I. Preliminary Comments on Theory

I begin with a few comments on the tools one might use for exploring law on the small screen. In this exploration of Deadwood, I draw on two different traditions of scholarship: first, postcolonial scholarship on imperialism, and second, scholarship on law and film. Through the first of these, I share concerns raised by postcolonial scholars about persistent inequities of power and wealth in the world we currently inhabit. While it has been many years since the former Great Empires participated in the processes of formal decolonisation, postcolonial scholars have long noted that this formal divesting of colonial power has seemingly left the patterns of economic and political power that marked the period of high empire untouched. In light of this consideration, the question is this: given what we know, how is it that these patterns of colonial inequality persist?

In Imperialism and Civic Freedom, Jim Tully discusses various strategies of colonial rule including ‘replication imperialism’ (the implantation of European settler colonies in the Americas, Australia and New Zealand), ‘indirect colonial rule’ (where small colonial administrations or trading companies rule along/over local legal systems, as in India) and ‘free trade imperialism’ (where imperial power permits self-rule within a zone in which resources, markets and labour are kept fully open to the outside). This last form, most commonly referred to as ‘informal and interactive’ imperialism, is paradoxical: it involves a complex form of rule (informal and indirect); but this form of rule is simultaneously rendered invisible, as the imperial powers treat the former colonies as equal sovereigns.

Through his exploration of how this modern form of imperialism has been woven into contemporary understandings and practices of modern constitutional democracy, Tully points to the importance of discursive formations. That is, he points to the ways in which language works to suggest that this state of affairs is natural and inevitable; that it is the culmination of anonymous world historical processes of which there is ‘no one…in control’, and that, in short, ‘life is just like this’. These formulations suggest that there is nothing to do but ‘get on board’ (so to speak), and such language of inevitability, Tully reminds us, is itself a neo-imperialistic achievement,

9 Ibid 196.
10 Ibid 208.
playing its part in the maintenance of relations of force. In this, Tully's approach echoes that of Simone Weil. In speaking of 'the empire of force', Weil was concerned not only with brute force of the kind that might be applied by police or soldiers, but also with the ways that such relations of force were sustained by certain ways of thinking, talking and imagining the world.11

Edward Said, similarly interested in the persistence of imperial patterns of rule, suggested it was crucial to consider not only politics and economics, but also the cultural realm. In *Culture and Imperialism*, Said turned to the nineteenth century novel to explore the ways in which British novels, in telling stories about the past, participated in creating particular ‘structures of feeling’ that supported, elaborated and consolidated the practice of empire.12 Literature, he argued, and particularly stories about our past, may tell us less about that past than they do about cultural attitudes in the present. Cultural attitudes, he argued, play a crucial role in any society’s social and legal structuring, sometimes predisposing a society for domination of another, or preparing it to relinquish that domination. Said does not stand alone in taking such a view of the power of stories, though his articulation certainly asks us to consider the persuasive power of contemporary stories about imperial forms of order. Said’s argument about affect and colonialism was sketched out against the context of the nineteenth century novel. Yet one can profitably take his argument about structures of feeling, and explore it in the context of television, one of the twenty-first century’s most powerful locations for storytelling.

Given this matrix of interpretation, I ask what might be revealed about empire if *Deadwood* is taken as the point of entry. To explore this question, one can draw on and adapt the methodological tools of a second body of scholarship, that of ‘law and film’. Over the past 10 years, I have been teaching a seminar in legal theory using film as the primary text. In that context, discussion of the filmic texts has occurred on three axes.13 The first axis focuses on the narrative structure of the text. That is, one can focus on ‘the story’ and its structure. Here, all the tools of law, literature and narrative analysis can be brought to bear, asking about the story, the characters, the implied narrator, the point of view, the setting, the genre and its expectations, the implied trouble, and more.14 Second, we explore questions of ‘reader response’/spectatorship.

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12 The term ‘structures of feeling’ comes from Raymond Williams in *Marxism and Literature* (Oxford, Oxford University Press, 1977) 131–32. Williams argued the material structures of our world condition our culture-phenomenon and used the notion of ‘structures of feeling’ to try to capture the ‘meaning-giving’ side of culture. Said drew on Williams’ use of the term, arguing that stories of the past can tell us much about cultural attitudes of the present. See Edward Said, *Culture and Imperialism* (New York, Vintage Books, 1994) 14.


14 There is a wealth of literature here. In classes where students first encounter narrative and storytelling theory, they often find Bruner’s series of lectures on stories provides a helpful map of categories and concepts. See Jerome Bruner, *Making Stories: Law, Literature, Life* (Cambridge, Harvard University Press, 2002).
This involves questions about the constitution of audience, questions that can be approached with different levels of empirical rigor. In class, there are protracted discussions between the students about their experience of watching, discussion that generally helps to make the ways that meaning is inevitably constructed in the spaces between a text and its many readers visible, and the ways stories are understood as running with or against the grain. The final axis is one that focuses attention on the ‘cinematic’ medium in which these stories are told. On this axis, questions of ‘affect’ stand front-and-centre, as the place of ‘brute perception’ in the constitution of our visions of justice, and the affective resonance of those visions, is considered. Put another way, we come to ‘know’ not only through what we read (through the narrative structure of the story), but also through what we see, hear, smell, and feel. Or, as Augusto Boal might put it, ‘the whole body thinks’.

Seeing a film is not just an exercise in imagining alternatives; it is an unfolding experience in time, an event shaded with embodied dimensions that are particular. The body experiences an affect-laden auditory, visual and tactile encounter. As such, that experience is another way to understand how film and TV not only represent the world, but participate in the making of that world. Thus, on the third axis of discussion, there is room for an exploration of the cinematic nature of film as medium. The technical details (lighting, filters, camera angles, sound) can provide useful vocabulary for discussing particular moments, but the concern is not simply with the details of film production. The cinematic text, like any other text, enters into a relationship with the spectator. Part of the pleasure lies in a closer study of that relationship, an exploration of the ways that spectators can make sense of these affect-laden encounters of cinematic tactility, these invitations to understand and experience our encounters in certain ways.

My sense is that, in law, we are generally much more comfortable with the first and second than with this third axis. Part of the challenge is that discussions of affect slide

15 See (for classic law and literature scholarship exploring the ways that communities of readers are constituted through practices of reading) White, *When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character and Community* (Chicago, University of Chicago Press, 1985).

16 See David Morley, *The Nationwide Audience: Structure and Decoding* (London, British Film Institute, 1980). One can take approaches that look more specifically at who is or is not watching what, or interview them on how they have understood things differently.

17 Ranciere's work is very helpful in disrupting assumptions that a given work ‘has’ meaning completely independent of practices of interpretation and use. There are approaches that look exclusively at texts, and those that study texts ‘taken up’ (ie, the life of the text in the world beyond the screen). See Jacques Rancière, *The Emancipated Spectator* (London, Verso, 2009). See also (on resistant practices of reading against the grain and the work of the reader in constituting the story) Ross Chambers, *Story and Situation: Narrative Seduction and the Power of Fiction* (Minneapolis, University of Minnesota Press, 1984), and Jacqueline Bobo, *Black Women as Cultural Readers* (New York, Columbia University Press, 1995).


easily into discussions of feeling and emotion, and law has long attempted to police the boundary between reason and emotion.20 It is useful here to distinguish questions of ‘emotion’ from those of ‘affect’. While affects may well obviously generate emotions in viewers, the preliminary registration of sensation in the body in the scale of affect and intensity, movement and change, is worthy of exploration. As Alison Young articulates it, in the act of viewing, one has an experience of cinematic tactility; one’s body registers sensations relating to what one is seeing without undergoing or having undergone what is depicted.21 The challenge is to return to the encounter with a cinematographic approach. That is, 

[interrogating both the image’s cinematographic dimensions (a dimension that includes not only its content and context, but also its formal choreography through cinematography, lighting, camera angle, music, and editing) and its affective engagement with the spectator (which means addressing the pleasures and anxieties generated by our relation to the image as image).22

It is important to note that those studying television may find themselves drawing more or less heavily on film theory in their consideration of the visual structures of particular television programmes. For even if both film and TV involve the deployment of sight and sound, they do not always do so in the same way. Some TV programmes have drawn very heavily on the traditions of cinema (for example, Deadwood, or the Miami Vice series of the 1990s), and others have steered in different directions: the visual conventions for news broadcasts, reality TV, daytime soaps, comedy programmes, and crime series may differ significantly. Still, while TV programmes are not always cinematic ‘in the same way’ as traditional film, attention to the cinematic side of television can nonetheless be helpful in exploring the ways that TV’s stories participate in the production and maintenance of structures of feeling, in both the story world and the world beyond the living room doors. Thus, these theoretical approaches in their aggregate seemingly ask us to consider the ways in which TV, like film, works through the harnessing of ‘image, sound, affect, memory, plot episode, character, story, and event’.23

The challenge is to explore the place of affect—of how we come to feel—in the filmic and televi...
In what follows, drawing on the theoretical resources sketched out above, I want to delve into the series to explore three ways in which *Deadwood* invites the viewer to be pulled in this affective direction. It is a direction which suggests that economic forces are beyond the power of law and justice to stop, and which further suggests that colonial appropriation of lands and resources (even the genocidal erasure of first peoples) is inevitable, even if morally wrong. Further, it affectively positions its viewers on the side of colonial appropriation. There are three places to explore how these structures of feeling are embedded and performed in the series. First, I consider *Deadwood*'s place in the Western genre, and how its narrative arc implicates law, economy and ‘Indian’ lands. Second, focusing on the place of ‘seriality’ in the television series, I will explore how the episodic nature of the show positions viewers to both see and not see the violence performed against indigenous peoples. Third, I will turn to the more cinematographic aspects of the series to see how one particular scene of violence is structured to again allow viewers to participate in erasures that position the violence as, if not justified, at least understood.

Let us then turn to *Deadwood*.

II. ‘No Law at all in Deadwood?’: *Deadwood*, the Western and the Drivers below the Surface

*Deadwood* draws on and disrupts the genre of the American Western. Created with a contemporary audience in mind, it positions itself in a dialogue with the sedimentary traces of the (typically) North-American frontier myth. The ‘moral truth’ of this line of stories of the Wild West, Slotkin would assert, was the principle that ‘violence and savage war were the necessary instruments of American progress’. Yet, writer David Milch, in reimagining this myth, takes us somewhat away from any explicit focus on cattle drives and ‘Indian’ wars. We see very few cowboys, and even fewer

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24 See (on the centrality of the frontier myth) Frederick Jackson Turner, *The Significance of the Frontier in American History* (Indianapolis, Bobbs-Merrill, 1893). There are arguably some interesting differences in Canadian appropriations and elaborations of this myth, captured in, for example, RCMP films with M Pickford. See Ed Morgan, ‘The Mild, Mild West: Living By a Code in Canadian Law and Film’ (2006) 2 *JLC&H* 115–35.


26 In reading drafts of this paper, some have suggested that the word ‘Indian’ should be removed, or at least placed in quotation marks. I find myself pulled in two directions on this issue, and thought it worthwhile to articulate the reasons why. First, there are many pressing questions about naming practices, and their relationship to histories of exclusion and dispossession. As Linda Tuhiwai Smith reminds us, ‘they came, they saw, they named, they claimed’. See LT Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (London, Zed Books, 1999) 80. There is a worry that, in using the word ‘Indian’ in the present, one is sustaining an ongoing practice of injury and erasure. In some contexts, one can argue that it is better to shift to contemporary labels like ‘native’, ‘Native American’, ‘First Nations’ or ‘Indigenous Peoples’. And yet, those are not the words used in *Deadwood*, and so the shift to what are seen by some as more politically acceptable terms could serve to take attention away from the ways that the older (racialising) terms are central to the story that *Deadwood* tells and the way it tells it. Further, while a term like ‘Native American’ may have a less negative history, it similarly hides the specificity of particular tribes/nations (ie Lakota, Anishnabe, Sioux, Cree) behind a single label. Of course, what we see in the world of *Deadwood* is precisely this effacing of the specificity of the particular people onto whose territory the
Native Americans. Attention is not on what grows on the land (be it cattle or crops), but on the extraction of resources that lie below, and on the ways gold is pulled into the larger economy through a service economy providing goods, food, drink, gambling and prostitution. Viewers are positioned to re-inhabit the camp of Deadwood in this time of change, to consider how it might have been that order was built from chaos, that law flowed into the space of lawlessness. The town is populated by a range of compelling characters, some of whom are fictional, others historic (Calamity Jane, Wild Bill Hickok, and George Hurst). The story, David Milch asserts, is less about the people than about the camp itself. It is, he says, ‘about something larger, about drivers below the surface, moving the characters and the action forward’.27

In this context I find Deadwood, and Milch’s comments about it, important locators in thinking about our cultural imaginings, and how they effectively participate in building structures of feeling that support, elaborate and consolidate practices of empire. What I am particularly interested in are the ways by which the series invites us to imagine the relationship between law and economy, between first nations and settlers. For Deadwood is the performance of an imaginative return to one particular moment in the American colonial experience. Though ‘the government’ is ostensibly absent in the outlaw camp of Deadwood, we see the implantation of American/European settlers in territory that is not ‘theirs’. Many of the settlers are immigrants: Seth is from Canada, Al from England and Sol from Austria. Yet, they bring with them common ideas about law and economy, ideas that are the product of ‘western’ ideals. They lay their own version of ‘law’ on top of the law of the indigenous peoples on whose territory they stand, and wait them out, wait for them to be bargained with through unequal (and broken) treaties, or put on reservations, or for them to be gradually exterminated.28

Indeed, Deadwood is a town illegally built in Lakota territory, the town’s very existence evidencing a ‘western’ rape of the land, a rape that constitutes the town’s very existence. Without the moment of illegal foundations, there would be no town. The series thus echoes one of the primary themes of the Western, that of the violent and illegal founding of the society.29 Taking Milch at his word, it is the life of this illegally

colonists illegally came. While it would be historically more accurate to use the term Lakota, in the diegetic world of Deadwood, the Lakota are not named or recognised as a particular nation, but only as generic ‘Indians’. It is against this backdrop that the placing of quotes around the word ‘Indian’ might be seen as an effort to disrupt the way the word functions. While sympathetic to that view, I am also conscious that the impulse to soften the harshness of the term may be part of a desire to soften (or deny) the harshness of the past, or indeed to make it less real. I hope the readers will see in the various word choices used an echo of concern with the implications of our practices naming, both in the past and in the present.

27 Deadwood (season one bonus features).
28 This is a case of what Tully would identify as ‘replication imperialism’. See Tully (n 7) 211. There is an argument to be made that this can also be seen as inflected by ‘informal or free trade imperialism’. Here, the imperial power permits self-rule to induce the people to open their resources, labour and markets to free trade. This might be a better explanation of the logic that eventually brings the town of Deadwood back under the control of the sovereign US (as we move to season three, and annexation to the Dakotas. Of course, by this time, the indigenous peoples are completely out of the frame of the series, and the imagination of the viewers).
29 This question of founding violence is taken up in Peter Fitzpatrick, The Mythology of Modern Law (New York, Routledge, 1992). See also (the classic work on the place of violence in the sacrifice of the scapegoat) René Girard, Violence and the Sacred (Baltimore, Johns Hopkins University Press, 1977). See also (for more on this moment of founding violence in the context of the Western genre in the film Unforgiven) Buchanan and Johnson (n 19).
founded community that is the object of our attention. This is a tale of community building, of nation building, and provides a structure of feeling that allows us to erase that initial act of colonial violence, to accept the inevitable logic of the myth of progress and economic development.30

This series is designed for ‘sophisticated modern viewers’. It does not seek to conceal this moment of originary violence, but is up front with the colonising, racialising and gendering themes of its time. Milch makes no attempt to hide the flaws of the characters. Instead, we are able to return to that past with the more politically correct eyes of the present, to live in it in a way that allows us the pleasures of vicarious identification, indulged in at a suitable distance. Deadwood, like the nineteenth century novels of which Said speaks, adopts a realistic format: the streets of Deadwood are full of mud, shit, piss, and vomit. Throats are cut, and blood is spilled; the language is coarse but coupled with a sense of the poetic that invites one to hold the coarseness in a new esteem. Further, as already noted, the show skates the line between fact and fiction. The series plays at the margins of an explicitly re-imagined vision of how things might have been, giving the series both the ‘authenticating’ power of ‘the real’, but also the power to utilise truth-telling valences that can sometimes be better delivered through fiction.31 Yet, it also produces a structure of feeling that justifies and legitimates certain views of progress, colonisation and imperialism.

Taking all this into account, it seems essential that we ask how the story, through its truths and its pleasures, in its narrative and affective modes, participates in creating this ‘structure of feeling’. This is particularly so given that this structure of feeling directly addresses the place of settler/indigenous relations in North America. Of course, the genre of the Western is not comprehensible without its imagined native inhabitants.32 It requires a back-story about the relationship between indigenous and settler orders. The story situates itself as beginning in a place of ‘non-law’ subject to particular sets of relations between the settlers and the land on which they settle.

The first episode begins by making the colonial character of the past explicit, opening not in the Black Hills, but in Montana, focusing on a brief interchange between Sheriff Seth Bullock and his prisoner, Clell Watson:

Cvell: No law at all in Deadwood? Is that true?

Seth: Bein’ on Indian land.

Cvell: So then you won’t be a marshal?

Seth: Takin’ goods there to open a hardware business. Me and my partner.

Cvell: If I’d a got there, I’d a been prospectin’. Jesus Christ Almighty. No law at all. Gold you can scoop from the streams with your bare hands.

30 See (for an exploration of the ways that American’s interpretations of themselves and their past has often been the result of a paradoxical blending of a powerful imperial desire with an equally powerful anticolonial temperament) John Carlos Rowe, Literary Culture and U.S. Imperialism: From the Revolution to World War II (Oxford, Oxford University Press, 2000).
Here, the colonial ground is laid. There is no law in Deadwood—because Deadwood is on native land. In such a place there is ‘no law’, but what that means within this narrative is not so readily obvious. For Clell, the notion of a place with no law is the stuff of fantasy: in the absence of law, all a man need do is reach out and scoop wealth from the land. Seth, who will be one of our moral compasses in the series, is introduced to us as a man about to remove his badge and become a settler in ‘Indian Territory’. He is but a step removed from the direct exploitation of the land. His dream is to be part of the service economy, providing goods to others. He is leaving law for business. Still, justice there will be in the new community he is preparing to join, although that justice will be tethered to an economic rather than a judicial order. We do get some sense of what ‘law’ means in this context as Seth performs his last job as Sheriff, hanging Clell himself rather than letting the job be done by the lynch mob at the door. There is an unavoidable contradiction at work in his supposed commitment to the law at the very moment he is preparing to remove his badge to pursue his fortune on illegally occupied land where he knows he has no legal authority. However, in asserting the absence of ‘law’ on ‘Indian’ land, the show invites us to forget the fact of colonial encounter that structures the town as existing in a legal void, rather than existing in a space of active illegality.

Within the next few minutes of the episode, we also see that the description of Deadwood as a place with ‘no law at all’ requires elaboration. In quick succession, we see a number of transactions that bear all the hallmarks of a legal order: Seth and Sol enter into a rental agreement for land; Trixie authorises Jewel (in an agency arrangement) to sell jewellery to purchase a gun; Brom negotiates the sale of a claim with spit and a handshake (‘Done, witnessed’). No law in Deadwood? It appears this is not quite the case. Law rules in Deadwood, but it is not juridical law. It is the law of power, economy and the market. Deadwood may be an illegal camp on native land, but the people of Deadwood clearly function in the shadow of a binding economic order in which their settlers’ societal understandings of exchange, property and contract continue to operate. That is, there are at least two ways of focusing on the presence of ‘law’ in the world of Deadwood. One could attend to law in the juridical sense of the word, exploring the constitutional structures and capacities of law. This would be the law of jurisdiction, of legislators, police, judges and bureaucrats. This is the law of morality, sheriffs, courtrooms, rules, regulations and procedural fairness. However, one can equally focus on law in a more ‘natural law’ way: a pre-constitutional world of private ordering and contract, of markets and agreements, and reciprocity. This is the law of Locke and Hobbes, a legal order rooted in nature, or natural law, the law of a sort of ‘pre-founding’ moment.33

It is into this space of (natural) market law that we as viewers are flung. While we, like Seth, arrive in the town ahead of the juridical order that will follow, we do not arrive in a space outside of law. There may be no sheriff, but there is law, and it is enforced. Al Swerengen, the owner of the Gem Saloon, decides whether or not space on the street will be rented. He decides whether violators of (his) law will receive mercy

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33 In both cases, these legal orders are constituted not only through written texts, but also through mythic tales of origin. See (for exploration of narrative foundations and supports to origin stories of law and legal ordering) Jessica M Silbey, ‘The Mythical Beginnings of Intellectual Property’ (2008) GMLR 15, 319–79.
or a trip to Mr Wu’s pig farm. It is Al, the man of business, who is effectively ‘the law’. Far from there being ‘no law in Deadwood’, questions of law run everywhere, directly impacting our two central characters (each of whom functions as a foil to the other). Seth, formerly a man of law, is now a man of business. Al Swerengen, formally a man of business, is informally a man of law. We have, as Tully might note, a performance of replication imperialism, a system where the great powers govern through freedom—the freedom of the settlers who carry with them very particular understandings of law and economy as they displace the local populations. Certainly, in Al and in Seth, we see the ways these two legal orders (moral and economic, if you will) interact with, and indeed sustain, each other. Thus, here represented we find two primary strands in our mytho-constitutional social ordering.

Because of the ways these legal orders are shown in relation to each other, the series suggests that economic development and ‘progress’ are inevitable, even if they have been constructed on acts of colonial appropriation.35 Merrick, the editor of the town’s newspaper, articulates it in the following way:

Paradoxes, the massacre at Little Big Horn signalled the Indians’ death throes, Mr. Utter. History has overtaken the treaty which gave them this land. Well, the gold we found has overtaken it. I believe within a year, Congress will rescind the Fort Laramie Treaty, Deadwood and these hills will be annexed to the Dakota Territory, and we, who have pursued our destiny outside law or statute, will be restored to the bosom of the nation. And, that’s what I believe.

Merrick acknowledges the fact of the violent illegality of the colonial settlement, but frames it in the language of ‘paradox’. In his language, Merrick shows no linguistic disrespect to the Native Americans. He acknowledges the violence done to them, but situates it in the flow of a paradoxical history that eventually legitimates those violent actions, that sees them as inevitable to the founding of a new state. Here, we see the weight of Tully’s arguments about the languages supporting colonialism. History overtakes them all; the fact of the gold overtakes the treaty, and makes the passing of an indigenous way of life inevitable.

Merrick discusses the colonial violence done to the Native Americans in language capable of reproduction in the mainstream press. Beyond him, the series sees other characters describing the original inhabitants in explicitly racist ways, projecting the savagery of settler appropriation of the land onto a mythic ‘red man’, speaking of them as savage, lawless and heathen. This semiotic violence is enacted not only in obviously racist characters, but also in characters that viewers will become strongly attached to over the seasons.36 Of course, the series also shows us clearly

34 See Tully (n 7) 211–12.
35 In this respect, Deadwood follows in the tradition of Westerns like The Man Who Shot Liberty Valance. Deadwood makes ‘the myth’ visible, but leaves us feeling that we are better off going forward with a myth to paper over the reality of the violence that, at some level, we know. See (for more on this) Cheyney Ryan, ‘Print the Legend: Violence and Recognition in The Man Who Shot Liberty Valance’ in J Denvir (ed), Legal Reelism: Movies as Legal Texts (Urbana, University of Illinois Press, 1996) 23.
36 Even Ellesworth, for example, in episode one of season one, speaking of his desire to succeed by the labour of his own hands, describes the ‘Indians’ as savage: ‘I may have fucked my life up flatter than hammered shit, but I stand here before you today beholden to no human cocksucker. And workin’ a payin’ fuckin’ old claim. And not the US government sayin’ I’m trespassin’ or the savage fuckin’ red man himself or any of these limber dick cocksuckers passin’ themselves off as prospectors had better try and stop me’.
that the savagery of the indigenous peoples is at least as much ‘constructed’ as ‘real’. In episode one, though Al is perfectly aware that it was road agents rather than ‘Indians’ who were responsible for the brutal murder and scalping of a settler family, he participates in the collective attribution of the act to ‘them heathens, bloodthirsty savages’. Indeed, Al, worried that people will spend the evening hunting down those responsible (rather than spending their gold on drink and women), gives a rousing speech in which he offers a bounty of $50 for ‘the decapitated head of as many of these godless heathen cocksuckers anyone can bring in. Tomorrow. With no upper limit!’

Deadwood not only describes the erasure of indigenous peoples, it also performs it. For, although the town of Deadwood is on native land, the viewer only gets a glimpse of two ‘Indians’ during the entirety of the series’ three seasons, both of whom end up dead. In neither case are we given a fully fleshed out character that carries a name or a history, in neither case are we given the chance to hear the character speak words in ways that would enable us to identify with the character. Nor are we given the conditions for cross-cultural empathy. I explore these deaths, each of which is linked to one of the show’s two main characters: Al, and Seth. In the first context, the focus will be on ‘seriality’, in the second context, on ‘cinematic technique’.

III. Seriality: Getting in Al’s (‘Indian’) Head Space

It seems trite to observe that Deadwood is a serial drama. Yet, for those who take television seriously, it is useful to draw its seriality to the foreground. Stedman argues that it is in the broadcast serial that ‘the crafts of playwright and novelist come together with some distinction’. In short, television serial dramas offer something that regular cinema does not. It enables the production of a story with a dense and layered narrative arc, indeed, a narrative arc closer to that of a novel (the initial publication of many of Dickens’ novels in a serial mode here comes to mind). A series can offer multiple narrative arcs, some resolving within particular episodes, some over several episodes, others over one season, some continuing through to the end of a series. The series offers time for the more robust delineation of character, and for exploring the minutiae of life since it does not have to press forward the dramatic action at the same speed that film must.

Certainly, because of this slower reiterative return, viewers also have the opportunity to live deeply with one of the pleasures of serial television: getting to know the characters, and watching them grow and change. TV in this respect is much more like

39 See also Thompson (n 1).
‘life’. Audiences develop much stronger relationships with the characters. As Stedman puts it:

> With each episode watched, the viewer invests more deeply in the undertaking. The continuing characters, expanded by the illusion of reality that accompanies the extended action, become as real as neighbours. More real, perhaps because the viewer knows every secret... this detailed knowledge adds nuance to each piece of action.40

In response to this, we must ask how the seriality of *Deadwood* works to support a structure of feeling that sustains colonial orderings. For at least a partial answer to the question, let us return to Al and his relationship to the natives on whose land he operates the Gem Saloon.

In episode one, we hear Al offer a bounty of $50 per ‘Indian’ head. This foreshadowing becomes real at the end of episode four: there we are shown a Mexican riding through the town on horseback, waving a severed head.41 The man whose head we are presented with in the episode’s closing has no name and no history, but his death and decapitation were called for in Al’s earlier offer. This visual image of the severed head, presented immediately after the scene in which an unsuspecting Wild Bill Hickok is shot in the back of the head by Jack McCall, seems to link these two deaths: the un-heroic passing of the old at the hands of a new order, motivated not by honour, but by a mix of cowardice and greed.

At this point in the series, Al’s complicity in the death of the native is unavoidable. For the benefit of viewers who might have missed the link, episode five makes the connection explicit: it opens with Seth passing a man on the street selling ‘tufts...[of hair from the head of] a recently decapitated Indian’.42 Later in the episode, Al calls his bar hand Johnny in to deal with the head:

Al: Come here (Holds out the Indian head wrapped in burlap—Johnny takes it) Get this outta here.

Johnny: Get rid of it?

Al: Did you hear me announce the other night that I’d pay a $50 bounty for every fuckin’ Indian head?

Johnny: I was right next to ya, Al.

Al: That’s the first head. Some chili chomper’s out there somewhere spendin’ my 50. You get rid of that head, you’d better know of another place with a position open for an idiot.

Johnny: Alright. Got a couple places I can keep it, I guess.

Al: Yeah, ‘til after the trial.

Johnny: Well, what do ya do with it then? Put it somewhere in the bar? It’s a nice conversation piece. I mean if it’s handled the right way.

40 Stedman (n 38) 490.
41 *Deadwood*, season one, ‘Here was a Man’: the script states that it is a Mexican who brings in the head, displacing the violence called for onto a racialised character.
42 The point is also emphasised in a conversation between Cy and Al. Cy says, ‘didn’t some Mexican bring the head in for bounty?’ Al responds, saying, ‘If it’s important to ya, I’ll look it up in my yesterday’s diary’.
This is the last we see of the head for a while, but our episodic encounter with the characters of *Deadwood* continues, and works to create an increasing attachment on the part of the viewers to the characters. This attachment happens not simply through time spent, but also through active work done by viewers to make sense of the characters and events.

In his work on Dickens, Sean O’Sullivan points out that there are three important terms in seriality: the new, the old, and the gap between. These three terms give serial fiction much of its compelling power. As he puts it:

*[T]he serial, by its nature, exists at the crossroads of the old and the new. Unlike the standalone novel, or a feature film, which present itself to us in toto, the serial offers constantly the promise of the new...the serial also draws us into the past, as old characters appear and disappear, as old green covers pile up by our nightstand, or old episodes of a program burrow into our memory, creating a history commensurate with our lifespan, unlike the merely posited past and present of a text we can consume in a few hours or day. Every reading, or every watching, requires a reconnection of old and new, an iteration of past and present.*

Viewers work at connecting the new in subsequent episodes, with the old in those which have past. Sullivan emphasises a third term in seriality: it is not simply ‘the old’ and ‘the new’, but ‘the gap’ between them. It is in the gap that viewers spend much of their time, wondering how to link together the old and the new. It is in the gap, ‘swaying between the ignorance of the new and the knowledge of the old, [that] we are most active, most enmeshed in the narrative’.

The ‘Indian head’ takes us through the old, the new and the gap between. The head, handed by Al to Johnny, acts as a reminder of the illegitimate violence done to the natives on whose territory this illegal town has been built. The head is gone, but not fully forgotten. Before the head returns, the episodic nature of the series relentlessly draws the viewer closer to Al Swerengen. As the series unfolds, we see Al actively working to establish an informal government to deal with the plague running through the camp. We are increasingly drawn toward him, seeing him suffer (both from the loss of Trixie’s affections, and in a series of episodes featuring his bout with kidney stones), and seeing him do the hard work that others are not sufficiently brave enough to do (like mercifully suffocating the reverend who is dying of a brain tumour). We are drawn to Al not only through what we see him do, but also by what we hear him say. In many ways Al is an unappealing character, violent, and murderous. Yet, he is a man of words, and it is through his tongue we hear articulated the ‘drivers below the surface’, the tensions and paradoxes moving within the narrative. He is from elsewhere, but has made himself in Deadwood. At his centre is a will to stabilise, to democratise, to tolerate, to do what is ugly but necessary in the interests of stability. He is also honest (when not lying) and loyal (to those who deserve it). The series shows Al as the dark underbelly of the inevitable. It is Al who can do what is ugly but necessary, who

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44 Ibid 123. This gap is the interpellative space of literature and film, the gap into which subjects are hailed. See also Louis Althusser, ‘Ideology and Ideological State Apparatuses’ in Ben Brewster (trans) *Lenin and Philosophy and Other Essays* (New York, Monthly Review Press, 1972) 121–76.
knows when the innocent must be sacrificed in the interest of saving others. He is, in short, at the heart of America.

The semiotic value of the ‘Indian head’ is next evoked in episode nine (‘No Other Sons or Daughters’), where Johnny, getting a promotion at work, says ‘Al, I have hoped for this conversation ever since you give me that Indian head to hide’. Its mention might be expected to remind us of the violence of the native’s death, but it is brought back to our attention immediately after the episode in which Al’s competitor, Cy, enacted a moment of violence against two young would-be thieves, violence sufficiently upsetting to displace Al as our ‘bad guy’. So, even as we are reminded of the head, our sense of the violence involved in its former owner’s murder has already paled against the backdrop of our increasing attachment to Al, and our discomfort over the more recently witnessed violence. Although we are invited to remember Al’s incitement to genocide, it does not seem as laden with malice, and our response to the head is partially drained of its once potent emotional effect.

Certainly, by the mid-point of season one, our orientations as viewers change with respect to Al’s character. What is significant is the way that this happens: through powerful monologues involving moments of profound exposure, where he speaks of truth, suffering and the past. We hear the pain of the abandoned child, of love lost, of sorrow and sickness. In these moments of truthful disclosure, we draw close to Al in understanding and affiliation. While he is certainly a rough character, he is also the one whose psyche and internal world we most deeply penetrate. What is striking is that these moments of proximity occur in two (upsetting) contexts.

The first site for one of Al’s intimate monologues occurs when he is in the midst of having a prostitute perform fellatio on him; she does so as he discourses on his contemporary travails. His recitation of his thoughts is only interrupted when he stops to correct her on issues of technique, or to barrage her with insults, which foregrounds troubling gaps between what we see and what we hear. Further, to the extent that much of the monologue draws us closer to Al, we are also made to grapple with our response to his immediate behaviour. At the same moment that we are invited to peer deeper into Al’s ‘soul’, we are made witnesses to his sexual exploitation of the prostitute. This technique, blending the base and sublime, has a hypnotic effect. Sexual violence is played out before us at the same moment we experience the pleasures of drawing closer to the man out of whose mouth the show’s particular set of ‘the drivers below’ are articulated.

The second site that compels examination of Al’s monologues involves the ‘Indian head’. Remember, in keeping with the power of the serial form, the viewer must wait before the old returns to be re-woven with the new. In season two, episode 19, the audience is treated to a monologue in which Al, addressing a brown paper wrapped box tied with twine, articulates his strategy in an ongoing struggle for power and control in Deadwood. Here, viewers must make sense for themselves of Al’s seemingly bizarre attachment to the box, a box he refers to as ‘Chief’.

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45 (Al is in his room, staring at a shot glass, leaning against his bed facing his office.) ‘A man, as it happens a rival of mine, learning the secret of a great man’s lieutenant, would make that lieutenant his slave. My rival knows that expanding the circle of the informed, diluting his power, will confound his intention, so he takes precaution to be sole sharer of his secret’. (chuckles) ‘Then the world being the world...’ (drinks) ‘along comes a half-assed knight-errant, Utter, Hickok’s ex-partner, to put all my rival’s plans at risk. I’d seek audience with Utter, verify my thinking. He earns his bread shipping packages. And as the dimwit
On the fan sites this episode generated dialogue, as viewers tried to make sense of this package, of Al’s expressed attachment to it, and of his addressing it as ‘Chief’. What, viewers asked, was in the box? With fair speed, people began suggesting a connection to the ‘Indian head’ from the first season. This connection was confirmed in episode 20, in an exchange between Al and his right-hand-man, Dan Dority:

Dan: Sometimes I hear you speakin’ in here when I know there’s nobody in here but you.

Al: You have not yet reached the age, Dan, have you, where you’re moved to utterance of thoughts properly kept silent?

Dan: Been known to mutter.

Al: Not the odd mutter. Habitual fuckin’ vocalizing of thoughts best kept to yourself. I will confide further. Lately... I talk to this package: the severed rotting head I paid bounty on last year of that murdered fuckin’ Indian.

Weaving the new with the old, something interesting happens. The head, appearing at this juncture, does not operate as a reminder of genocide that distances us from Al. Now, it functions to draw us closer to him. The head no longer ‘bears witness’ to past crimes. The ‘Chief’ has moved from the role of victim to the role of confidant, a shift made possible by television’s seriality.

With each return to the head, we return to the memory of the violence, but it is positioned and repositioned against shifts in our understanding of Al’s character. We have seen other dimensions of his self, and we have become affectively attached to him through layered experiences. The reality of his violence is remembered, but its present sense is altered. This early act of violence has become a much smaller part of how we understand him. We have shared in the narration of his history as an abandoned and abused child, know of his pain in relation to Trixie’s love for Sol, and have watched his hidden acts of kindness to the crippled Jewel. While he is a pimp, his treatment of women is exemplary compared to the more brutal Tolliver and the murderous Wolcott. With each episode, we see and feel the loyalty that Al commands even from those he seems, on the surface, to treat harshly. We come to appreciate the gap between his surface presentation, and his deeper self. As viewers, we thus come to see the severed head as a ghostly presence marking past violence, but now facilitating Al’s efforts to bring health, stability, prosperity and democracy to Deadwood.

The head returns again in season three, a season in which ruthless robber baron George Hurst comes to town, bringing a new vision of big business and capitalist nobility that made him intercede may now make him reticent, you, Chief, will be my prop and ploy. Whilst I seek to draw him out. (He walks over to the chair in front of his desk where there is a package on it. He sets his shot glass down on the desk and sits in a neighbouring chair.) I congratulate myself on having kept you around. Why make a show of disposing of you was my fucking thinking'. (Pours another shot.) ‘It’s not like we need the storage space. And if there’s a chance in a thousand you people have been praying right’ (looks up), ‘why get your boss’s attention?’ (Drinks.) ‘Anyways, I’ve no plans of us partin’ company’. (He gets up, takes the package by a rope handle.) ‘As you will note...I have inscribed—’ (opens door) ‘no address’. (He leaves.)

46 On the fan sites (18 October 2005), one can follow the discussions as people try to figure out what was in the box. See www.quartertothree.com.

empire. With Hurst, we have the heralding of the end of one age, and the beginning of another; the town, now legitimate, seems pressed inexorably toward a future where ordinary people will have even less control over their own destiny, and will be ruled by larger (and more implacable) corporate capitalist forces. One of the prostitutes, Trixie, taking matters into her own hands, makes an unsuccessful attempt on Hurst’s life. In episode 36, to save Trixie from retaliation, Al must sacrifice the life of a different prostitute, one innocent of any crime. Working through what needs to be done, Al speaks to the box; it is the ‘Chief’ who enables Al to articulate his grief at the actions he must take, actions we are positioned, similarly, to understand as both grievous and inevitable.48

In this particular monologue, it is not simply that we enter into Al’s psyche, as in the other instances of his asides to the head. Here, we listen as he articulates the tensions that we too feel. We agree with him, that he must kill one woman to save another. We are complicit in what he is about to do, acknowledging the injustice and yet providing justifications for the act. Addressing the head, Al’s monologue (and indeed his monologues in general) draws up echoes of Hamlet speaking to the skull of Yorick. Unlike Hamlet, however, Al is responsible for the death of the man to whose head he now speaks. His indictment of the ‘Chief’, his assertion that the head’s former owner was responsible for his own demise, links us to the struggles of the third season and to the acts of colonial violence on which the town was built.49

Season three is certainly about adaptation (and the penalties attendant on those who fail to adapt): the illegal settlement adapted to its status as town, and the informal settler economy of the town is being made to adapt to the implacable forward movement of globalising capital. The adaptation may require a certain kind of loss, and thus grieving, but in Deadwood (as elsewhere) life on both the individual and communal scale is an ‘adapt or die’ proposition. The monologue works to construct not just the ‘Chief’, but the entire ‘Indian Nation’, as responsible for his/its own demise. We see the violence that must be done, but are narratively positioned to understand it as unavoidable, as inevitable. The episodic monologues, with the prostitutes and the head, enable us to enter Al’s psyche, but at the cost of being asked to remember (and forget) the violence that is part of the setting. His soliloquies resonate with the discursive formulations of colonial inevitability, enabling us to see selectively. While we know the head is present, we are not required to see it as it is: we are not made to

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48 Fetishising the dead is certainly a timeless tradition. Here, we have Al making a talisman of those he has conquered. While this is perhaps emblematic of warrior culture, what we seem to have in Al is not a warrior, but a businessman. Yet maybe this is in part the point. The series traces the beginnings of white collar corporate empires. As J Silbey nicely pointed out to me, the relationship Al has with the head serves as a comment on the ways these totemic fetishes persist into the present, doing so in ways that evacuate the power of the violence they supposedly ‘remember’. For surely Al's relationship to the head does serve as a comment on the erasure of violence through business norms enacted by businessmen. The head is idolised (like the crucifix), and it is internalised as an individual totem rather than something through which one might empathise to rebuild community.

49 Al Swearengen: [talking to the Indian head in the box] ‘This fuckin’ place is gonna be a fuckin’ misery. Every fuckin’ one of them, every fuckin’ time I walk by, “Ooh, how could you? How could you?” With their big fuckin’ cow eyes. The entire fuckin’ gaggle of ‘em is gonna have to bleed and quit before we can even hope for peace. What’s the fuckin’ alternative? I ain’t fuckin’ killing her that sat nights with me sick and takin’ slaps to her mug that were some less than fuckin’ fair. I should have fuckin’ learned to use a gun, but I’m too fuckin’ entrenched in my ways. And you ain’t exactly the one to be levelin’ criticisms on the score of being slow to adapt. You fuckin’ people are the original slow fuckin’ learners!’
confront the violence of the decapitation. Instead, we see the head ‘as Al sees it’: we see it as an occasion for reflection, an opportunity for entering Al’s mind. In sum, this attachment through seriality enables us to see not through our own eyes, but through Al’s mind, and as a result we become complicit in his way of seeing.

IV. Cinematic Technique and Visual Violence: Affect and the (in)Visibilisation of Law

Let us then turn to the questions of cinematic technique as we consider the second of the two ‘Indians’ that appear in Deadwood. Although Al is involved in many moments of violence throughout the series, we do not physically see him being violent to the Native American whose head becomes his close companion. While Al is in part responsible for the death, the actual killing is done by someone else, and is done off screen: we are never shown the murder. Rather, the act is left to our imaginations. Compellingly, although the seriality of the narrative enables the ‘Chief’ to function as a character, his character can be captured through a box on a desk. This is yet another example of selective seeing afforded by the narrative. This ‘Indian’ is portrayed as a present absence—before our eyes, but beyond our sight—with the box itself functioning as both the character and a symbol for the native people in general, summed up in the form of an undeliverable package, a makeshift coffin.

Although we are located in tribal lands in the entirety of the three seasons of Deadwood, there is only one appearance of a living, speaking native character. In the opening minutes of episode six, a lone ‘Indian’ appears and attacks Seth. The two men fight, and Seth beats the man to death. The series thus gives us two killings of natives: our ‘bad guy’ is responsible for the death of one, and our ‘good guy’ is responsible for the death of the other. That the only living ‘Indian’ we see is violently killed by Seth, our representative of law and the narrative’s supposed moral compass, is a point of significance, as is the fact that the scene is one of the more visually violent in the series.

Violence as portrayed in film and on television, far from involving a homogenised category of aesthetic approaches, can function in very different ways, raising different questions about affect. Here, I do not mean simply that different people react to scenes of violence in different ways, though this is of course true. Rather, I share

50 The ‘Indian’ is played by JK Linn. There is a note of irony here. I had a very difficult time trying to credit an actor for the role. On IMBD site (the Internet Movie Data Base site, found at www.imdb.com), the list of credits for the ‘Plague’ episode makes no reference to the character of the ‘Indian’. I finally tracked down David Midr thunder, credited as the ‘Consultant: Native American Sioux’, who told me the role had been played by Linn. Linn is credited in the episode cast list, not as the ‘Indian’, but in the role of ‘Milliner’. There seemed to be something strange in the difficulties I had in attempting to simply credit the actor who played the role of an unnamed ‘Indian’.


52 In our own collaborative work, R Buchanan and I have worked with and around this issue. My own tolerance for filmic violence is quite high. Hers is quite low. Thus, we are constantly pressed to discussions around our quite different affective responses to the same scenes of violence. As well, this question is a live one for those who teach criminal law, where bloodiness and violence become a background feature of the
Alison Young’s view that the ‘scenographic’ set up of different kinds of violence can work to establish different moments of desire for the spectator. In terms of the encounter between Seth and the ‘Indian’, the scene of violence is set up to enable a multi-layered space of judgement, resonating with dissonant affective pulls. Certainly, my own response to the scene went in a number of directions: confusion, fear, anxiety, horror, revulsion, relief, shame. With that in mind, let me briefly walk us through the first three minutes of this episode in order to reveal the structures of feeling which support persisting colonial relations that this scene of violence makes visible.

Viewers of the series would recall that, at the end of episode five, Seth, our hero, was riding out to capture Jack McCall, who had escaped after shooting Wild Bill Hickok in the back of the head. The establishing shot of episode six is that of a desolate hillside, deadwood littering the ground, a rock-lined trail on the right, pine-covered mountains in the distance. The wind is audible, and we hear the long lonely cry of a bird. We cut to a medium shot which positions the viewer behind a twisted tree trunk, its leafless branches obscuring the view of the mountains beyond. A low foreboding wind whistles. We look up through the dead branches of a tree at a man-made structure of some sort, a platform with something attached and blowing in the wind, a shot not held long enough for us to be certain what we see, but long enough for us to become unsettled. There is an ominous creaking sound, as if someone is moving in the branches of the tree beside us.

Fifteen seconds into the segment, we see Seth approaching from a distance on horseback. The clop of hoof-beats competes with the sound of wind, a chipmunk, and the long, hollow call of another bird. The next shot positions us downhill to the left of the rocky trail, behind a bank of trees, watching from a low angle as Seth passes by, the view of him obstructed by trees. We seem as if to be sharing the visual space with an unknown spectator, but there have been no reverse shots to let us see who it is that is doing ‘the watching’. The camera angles, scenes and sound combine to create a feeling of foreboding and uncertainty.

The camera moves ahead of Seth again for another long shot of him passing us (this time from the opposite side of the trail), and then moves into a medium close-up. Seth seems suddenly attentive to a sound. His head swings to the side, we hear an arrow whizzing through the air, then see it bury itself in the side of Seth’s horse. What follows is an explosion of rapid shots with possibly 20 different framings, some lasting a quarter of a second or less. This rolls the viewer through a series of angles, allowing the viewer to experience the shock and surprise of the attack from multiple positions. The horse rears up on the screen, and the camera positions us immediately below the horse, as if its hooves are about to come down on our heads. The horse falls to the earth, pinning Seth beneath him. We hear Seth’s hyper-intensified breathing as audible gasps. The shots swing us wildly from side to side as Seth struggles to see his attacker. Up to this point, as viewers, we have no sense of who the attacker might be or why terrain, rather than anything to be commented on. For a lovely articulation of the challenges this poses for those teaching criminal law, see Martha Duncan, ‘Beauty in the Dark of Night: The Pleasures of Form in Criminal Law’ (2010) 59 ELJ 1203–44.

53 See Young (n 21) ch 2.
54 Season one, episode six ‘Plague’. The first three minutes of the episode is (at the time of writing) available on youtube at www.youtube.com.
they are attacking. The scene is one of inexplicable and sudden violence, exploding like a force of nature rather than an orchestrated response to anything we have seen happen. The rapid succession of jump-cuts forces the viewer’s pupils to dilate and contract rapidly in an effort to find a point of focus on the screen, supporting an embodied and generalised feeling of anxiety and panic.

As Seth struggles to pull himself out from under the dead horse, we hear the sound of galloping, and then see an ‘Indian’ approach on horseback. He hits Seth on the head with a club of some sort, knocking him back to the ground. The man then dismounts and approaches Seth. He wears an eagle feather in his hair, an elaborate collar at his throat, and a fringed buckskin shirt decorated with beads from which shanks of hair hang. The man crouches close and low, places his foot on Seth’s back, and gives him a shove. He brings his own face down close to Seth, saying (in Lakota) ‘wasicu sica’ (‘wasicu’ generally translates as ‘non-“Indian”’, ‘Frenchman’ or ‘white man’ and ‘sica’ is generally translated as ‘someone or something that is “no good” or “bad”’). He grabs Seth’s head, now bleeding from the forehead, tilting it sideways to ensure direct eye contact as he repeats the phrase ‘wasicu sica’, and then headbutts Seth in the head.

The Lakota then dances back again, repeating his sentence in between the cries of some song, continually approaching, jabbing Seth with his foot, and then backing up again, inviting him to conflict. Seth makes a tentative grab at the Lakota’s foot, and is dragged forwards as the man shakes him loose, knocking him back to the ground with his knee, continuing to dance around him, repeating his sentence, the war cry, and saying to Seth, ‘hoka hey’ (translated often as ‘Today is a good day to die’, but also alternately given as ‘Welcome to the soul’, but can also be translated as ‘charge’, ‘get moving’ or ‘get animated’). While the roughly 40 shots over this 60-second segment position us to see the fight from a number of angles, many of them position us to experience the violence of the encounter from Seth’s point of view. In one particular shot, we find ourselves as if on the ground with Seth, and half of the other man’s foot fills the foreground of the screen, seeming to come directly towards us. In another shot, a close up of the other man’s face, mouth open in a war cry, fills the frame.

Seth finally crawls onto his hands and knees, and rises to his feet, seeming to respond to the Lakota’s words ‘hoka hey’ by saying, ‘Ok, Ok’. Seth then rushes forward, catching the man around the midsection, driving him backwards until he pins him with his back against a tree. Over the next 15 seconds, through a series of shots and reverse shots, we see the two men grapple with each other, hands to throats, as they choke each other. Seth then makes a fist and knocks the man in the jaw, throwing him sideways, and both men fall panting to the ground. For four seconds (which seems a long sustained moment after the rapid cuts we have been following), we are positioned away from the two men, bystanders witnessing a beautifully framed long shot, the wind still blowing, the men audibly panting in the shadowy foreground, a triangle of light illuminating the background.

55 See (for detailed discussion of Minority Report and the relationship between visual structure and affective responses) Buchanan and Johnson (n 19).

56 For a non-Lakota speaker such as myself, the phrase sounds phonetically like ‘Wa-shee-chu-shee-cha’. Thanks to Carly Bad Heart Bull (JD Candidate 2011, University of Minnesota Law School) and Neil McKay for their help with translation.
The camera then cuts to a close-up of a jagged rock on the forest floor. Seth’s hands reach out to grab it, and he drags it towards himself. He raises it high in the air, then brings the rock down in a crushing blow on the Lakota’s head. While the man’s head is below our field of view in this shot, so that we do not quite ‘see’ what happens, the violence of the moment is visceral; the downward swing of the rock is amplified by a grunt of exertion from Seth, a gasp from the other man, and the unpleasant sound of something begin smashed. Any relief at not having actually seen the rock make contact with the head is quickly ripped away; Seth repeats the action, smashing the rock on the other man’s head an additional 15 times. The violence is further amplified by the grunts of exertion that escape Seth with each blow. Finally, he drops the rock, and falls across the body of the supine Lakota with a big grunt of exhaustion.

While the killing takes up only 14 seconds of screen time, it is comprised of a virtual visual storm. There are 11 shots in the scene depicting the violence between Seth and the Lakota man, each framed with care, taken from different angles and views: from the left, the right, below, above, long shot, medium close-up. One might imagine, from what is written here, that we are being made to linger in a moment of violence through an elongation of the ‘real time’ experience through a slow motion technique. We do not have that here. Rather, we operate in ‘real time’, but are drenched with images of the killing shot from different vantage points. The impact of the encounter is extended through a layering of multiple images, which leaves us with a much denser experience of the encounter and resulting recall of the moment of violence. Heavily panting, Seth lifts himself off the body as the handheld camera tracks him from behind. With the camera situated behind Seth, our view of the dead Lakota is initially obscured by the back of Seth’s own head. As he pulls away and to the side, still panting, we see the dead man’s bloodied head, a head that has been obliterated by the violence. We get a close-up reverse shot of Seth’s face, a face which seems to indicate a desire to turn away from what he is looking at, yet his eyes remain fixed, seeming to pull him back to the corpse over and again. He, like us as viewers, seems simultaneously repulsed and hypnotised by the sight. He then struggles to his feet, takes a few steps away and collapses to the ground.

Less than three minutes into the episode, Seth is left unconscious on the forest floor; he will not return to the storyline until much later in the episode. As viewers, we are left swimming in a whirlpool of confusion and shock produced by three minutes of scenographic techniques designed to swing the viewers through a number of affective states. We have seen our hero riding across unknown territory, seeking to bring a murderer to justice, suddenly attacked for unknown reasons by an unknown character, speaking an unknown language. We are relieved that Seth has survived the encounter, but are also shocked and repulsed by the violence we have been made to experience in such a visceral way. There is also an uncomfortable politics at work: we do not wish to have our hero responsible for the death of an ‘Indian’, especially because we know Native Americans have been wrongly blamed and killed as a response to a number of murders committed by the settlers themselves. Still, as viewers, we have been given an affective experience that supports a narrative of self-defence: we were shown Seth minding his own business, subjected to an unprovoked act of aggression. Indeed, the encounter bursts upon us like a wave, leaving us shaken and confused. While the camera’s point of view is not limited to that of Seth or the Lakota, it frequently places us in Seth’s position, causing us to visually and aurally share the dislocation
and panic Seth experiences. We are at no time positioned to identify with his assailant. Affectively, the flood of images and angles also works to deny us the space or time to consider alternatives. Rather, we are pressed into a space of shock and dislocation in which the ferocity of an unprovoked attack situates us in the middle of a life-or-death struggle.

A viewer might nonetheless experience a nagging doubt about the magnitude of force visited on the Lakota by Seth. Within the common law system, the law of self-defence has always required that the force used be no more than is necessary to defend oneself, and that there must have been a reasonable apprehension of death for one to have a right to counter with deadly force. Seth’s use of force is extreme, and indeed the 15 blows he delivers might seem to suggest a metaphor for the savagery exercised by the colonial society against the indigenous peoples. Yet, even if this question lingers in the background, the scene presses us in the direction of feeling that Seth’s response is justified, in both juridical and natural law realms. For beyond the common-law’s articulation of self-defence there exists a more primordial law, one that aptly applies to the seemingly barren terrain the narrative occupies, the law of nature that dictates that one must ‘kill or be killed’. So, visually, the scene invites us to feel the violence of Seth’s response as justified and indeed necessary.

Finally, I want to circle back to the question that motivated this exploration of Deadwood. Here we turn to the question of how TV, with its narrative arcs, seriality, and tools of visual persuasion, affectively invites the viewer to share a structure of feeling that sustains the colonial empire of force even while seeming to critique those very structures. Let us close by exploring how the visually powerful three-minute segment above is woven into the critique that follows in the remainder of episode six.

V. ‘No law at all in Deadwood? Is that true?’: Interrogating Structures of Feeling and re-Visualising Law

Halfway through episode six, Charlie Utter, (close companion to Wild Bill Hickock) travelling the trail earlier taken by Seth, comes across a dead horse. Dismounting from his horse and pulling out his rifle, he moves cautiously through the area, eyes roving expertly across the scene to cull clues from the traces of the incident left behind. His eyes sweep across the body of the Lakota’s horse, alive and still standing by. The camera, taking Charlie’s point of view, focuses our attention on the body of the heavily painted and decorated horse, holding us in Charlie’s space as he ‘reads’ the particular markings there. He then moves through the trees, finding first the dead Lakota, and then Seth lying bloodied and still on the forest floor some distance away.

Minutes later, we return to the scene, where Charlie is now tending to the still unconscious Seth. Close-up shot/reverse-shot techniques place us alternately in

57 In the Canadian context, this is captured in §§ 34–36 of the Criminal Code.
Charlie’s and Seth’s positions. Occupying Charlie’s field of vision, we wipe the blood from Seth’s face as he lies on the forest floor below us. Switching to Seth’s perspective, we are flat on our backs looking up at Charlie’s looming face, the sun immediately behind, blurring the scene. Held in this space, we (as both Seth and audience) listen to Charlie interpret the signs inscribed on the horse’s body:

Charlie: The three red hands on the pony’s flank, was three men killed, hand to hand. The red circle was one killed on horseback. The white lines on the pony’s legs was times that he had counted coup. Hmm, with them whether they mean to kill your man after or you’re just showin’ off you hit ‘em with a gun butt or a stick or a club. That’s counting coup. That’s why he come for you instead of pickin’ you off with an arrow, like he did your horse.

Seth: Charlie.

Charlie: Ah, there you are. That was one bad hombre you got by, Bullock.

In reading the violent scene, Charlie reminds us that native territory is not devoid of law. Through years spent travelling with Wild Bill and Calamity Jane in the last of the Great Wild West shows, Charlie is able to identify and name some elements of native law. One of these elements is the practice of counting coup, which explains why the Lakota did not simply shoot Seth in the first place. As Charlie describes it, counting coup appears as a way of showing off by hitting an enemy in close contact, before, presumably, finishing him off. Beyond Charlie’s brief discourse on the matter, there are richer accounts of the various practices of counting coup, ones that position it as a more deeply elaborated practice of ‘doing law’. Counting coup is in part a practice of establishing one’s position in the tribal honour system, where honour does not inevitably involve the death of either party. For the Cheyenne, for example, one of the bravest acts was to count coup on (to touch or strike) a living and unhurt (ie, battle-capable) man, and to leave him alive. The practice of counting coup, according to Arthur Jacob, served to change the enemy’s energy, letting him know you were not frightened and could have hurt him if you wanted to:

[T]his act of physically touching your enemy without seriously hurting him can take away or disarm the enemies’ anger. It creates an opportunity for the enemy to think about, and consider what he is doing and gives him a chance to remember that all life is sacred.

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58 See (for another exploration of the affects produced by the blurring of the boundary between screen and audience through such techniques) Jessica Silbey’s discussion of Hitchcock’s The Paradine Case in The Subjects of Trial Films (unpublished dissertation, UMI 1999) 193–212.
60 Charlie’s account of course raises all the questions that circulate around the articulation of Indian law by non-Indians, myself included. For the issue here is not simply ‘who’ has the right to offer authoritative statements about the nature of indigenous law, but is also the question of how people from differing legal traditions understand, live with, and give voice to the traditions of the other.
61 See (for a lovely autobiographical account of counting coup, articulated in the context of one Chief’s journey from childhood to becoming a warrior—a book written for middle school readers) Joseph Medicine Crow and Herman Viola, Counting Coup: Becoming a Crow Chief of the Reservation and Beyond (National Geographic Children’s Books, 2006).
62 mr_sedivy.tripod.com.
63 www.sonic.net.
That is, counting coup is not only about gaining personal honour. It is also a practice of teaching and reminding the other about responsibility, obligation and law.

One might object that such a practice is not generally theorised as ‘law’. Western legal traditions have often characterised indigenous law as ‘moral’ rather than ‘legal’ principles; but such characterisations make the operations of an imperial impulse visible that tends to either idealise or flatten indigenous law and its sources. In indigenous terms, ‘law’ is not simply a set of obligations or strictures, but captures a range of practices, protocols, ceremonies, stories, relations, obligations and traditions. In reading the markings on the horse, and speaking of the practice of counting coup, Charlie unsettles Seth’s earlier articulation of the classic colonial doctrine of terra nullius, the notion that there is ‘no law in Deadwood’, on account of it being ‘on Indian land’. On the contrary, the fact of Charlie’s knowledge makes a competing account of North American history visible, one in which newcomers acknowledged and learned about indigenous societies and their laws.

If we accept Charlie’s account of counting coup, there is room for a different explanation of what happened between Seth and the Lakota. We can make some sense of the man’s decision not to shoot Seth, but rather to strike him with a coup stick. We can also make sense of the way that the man approached Seth without weapons, dancing around and poking at him with his foot, but not striking him. The words used by the Lakota also make sense. He had shouted ‘hoka hey’ at Seth, calling on Seth to engage with him, to participate in this moment of counting coup, but we are not invited to view the encounter in this way until it is already over. Thus, if we as viewers did not understand the Lakota’s words or protocols, we must then ask ourselves whether Seth understood them. Herein resides a certain ambiguity. In episode one we are told Seth is a sheriff in Montana, and that he had lived in the Dakota Territory from the age of 17. Dakota and Lakota languages are related, so there is every possibility that Seth understood. Indeed, he responded to the line ‘hoka hey’, by holding out one hand, saying ‘OK, OK’, and getting up off his knees. Still, even if Seth understands the practice of counting coup, he does not leave his enemy alive to contemplate the implications. He responds with vicious blows—not with his hand or a stick, but with a stone—blows meant not to teach, but to obliterate.

64 See (for a rich discussion of sources of indigenous law, living indigenous legal traditions, and the challenges of keeping these discussions open across communities) John Borrows, Canada’s Indigenous Constitution (Toronto, University of Toronto Press, 2010) and Borrows, Drawing out Law: A Spirit’s Guide (Toronto, University of Toronto Press, 2011). The first of these explores the sources and scope of indigenous legal traditions in the language of Canadian legal and political theory (particularly in ch 2). The second, combining both fictional and non-fictional elements, juxtaposes Canadian legal policy and practice with more broadly defined Anishinabek perceptions of law, as evidenced through different Anishinabek ways of engaging with the world.


66 See (on these alternative histories of encounter): Jeremy Webber, ‘Relations of Force and Relations of Justice: The Emergence of Normative Community between Colonists and Aboriginal Peoples’ (1995) OHLJ 33, 4, 623–60. See also (for an extended exploration of encounters, and particularly the ways stories of settler/indigenous ‘contact’ have sat alongside stories of citizen/immigrant ‘arrival’): Lessard, Johnson and Webber (n 65). In Deadwood, one sees elements of both ‘contact’ and ‘arrival’ narratives struggling for dominance.
Of course, even if the practice of counting coup is foregrounded, the scene is visually rendered with enough detail and complexity to make it difficult for the viewer to be confident that the Lakota sought only to count coup and not to take Seth’s life. Charlie tells us also that the ‘Indian’ was dangerous, that he had killed three men in hand-to-hand combat, and one on a horse. Of course, we know that Seth too has killed, and indeed he killed two men in episode one. Then again, he is a former sheriff. His killings have thus been conducted under the imprimatur of law. As a counterpoint, we know nothing about the contexts for the killings of the four men whose deaths have been ceremonially inscribed on the horse: was it in war, against known enemies, in defence of others or self? While the markings on the horse constitute additional traces of native law, we as viewers do not have the resources to make sense of this law. We are left only with Charlie’s assessment that the man was one ‘bad hombre’, coupled with our sense that there was no reason for the attack on Seth.

As he regains consciousness, Seth himself shows little interest in the question of why he was attacked. Still the lawman, he remains focused on finding Jack McCall. First, he grabs a shovel to dig a grave for the dead Lakota. Charlie tries to dissuade him, and in the text that follows, we are given not only details about the protocols for a proper burial in indigenous law, but also information that suddenly links this episode to the ones that have preceded it:

Charlie: You ain’t doin’ him no favor. I mean his way to heaven’s above ground and lookin’ west.

Seth: Well, let’s do that, then. (Tosses the shovel aside.)

Charlie: Don’t you want to take him over the ridge? This fuckin’ hole in the ground and put him up there with his headless buddy? I mean, that’s what you nearly got killed for? Interfering with his big fuckin’ medicine, burying his fuckin’ buddy, over the fuckin’ ridge!

Charlie’s comment helps us make sense of the unexplained manmade structure we saw in the opening seconds of the episode: it was the raised platform of a funeral pyre. The unseen watcher was not simply a random ‘Indian’ positioned to ambush the unwary traveller, but was rather a warrior interrupted in a burial ceremony for his dead friend. Seth had unwittingly entered or violated a sacred space. Still, even as we begin to understand why Seth was attacked, we remain able to see him as legitimately acting in self-defence. For even as Charlie points in the direction of indigenous law, in describing this law as ‘big medicine’, he characterises it as a form of primitive or savage law, enabling us to judge that law as wanting, to see something disproportionate in the Lakota’s response to an unwitting passerby. Even more powerfully, the news that

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67 The episode opens with Seth hanging Clell, and ends with Seth and Wild Bill Hickok simultaneously firing on (and killing) Ned Mason. Seth tells Ned, ‘Get down off your horse or face the consequences’. Ned draws, but Seth and Bill are faster, and Ned is killed. We do not know which man is responsible. Bill asks ‘Was that you are me, Montana?’ and Seth responds with ‘My money’d be on you’.

68 Battle markings on the horses also point us in the direction of indigenous laws dealing with conflict between various nations. Questions of inter-nation conflicts between indigenous communities have their own long tradition of legality. As is the case for Western societies, indigenous peoples have legal histories of conflict, dispute resolution, and treaty. See (for a discussion of indigenous mechanisms and laws around such conflicts) Val Napoleon, ‘Living Together: Gitksan Legal Reasoning as a Foundation for Consent’ in Webber and MacLeod (eds), Between Consenting Peoples (Vancouver, UBC Press, 2010) 45–76. See also Napoleon, Ayook: Gitksan Legal Order, Law, and Legal Theory, (PhD thesis, University of Victoria, 2009).
the dead friend is headless draws everything into relief. We remember Al’s offer of a bounty for the head of an ‘Indian’, and realise that the body of the ‘Chief’ lies on the funeral pyre. This second encounter with a native inhabitant has been tightly linked to our first. This enables us to see Al as ultimately responsible for both their deaths, and suggests that we can legitimately absolve Seth of any complicity in the killing.

Yet, that would be too simple. It matters that it is Seth who does the killing, and it matters who he kills. Charlie describes the Lakota to Seth as ‘one bad hombre’. David Midthunder, however, the Native American Sioux consultant who worked on the episode, takes us in a different direction, in his description of the character as a Lakota akicita.69 The word ‘akicita’ is a complicated term that can be translated in a number of ways, meaning slightly different things in different contexts, but here, the meaning seems clear. Consider James Walker’s explanation:

If I speak of an Oglala in camp and say he is akicita I mean he is an officer appointed by the council of the camp. This kind of an akicita is the highest officer of a camp. Everyone in the camp is subordinate to the akicita. He is like a policeman and a judge and a jailer and an executioner. All must do as he says, and he can punish anyone, he may even destroy all the property of anyone, or strike anyone, and he may kill anyone. But if he does anything that is not according to the laws of the Oglalas the other akicitapi will punish him, and the council may depose him.70

That the Lakota is akicita is made visible in what we are shown of his outfit, hair, markings and actions. He is not only a warrior, wearing an eagle feather in his hair, he has the definitive black streak painted down his right cheek from his eye to the lower edge of his jaw, marking him as akicita.71 Charlie was perhaps not far off the mark in calling him ‘one bad hombre’: the akicita were, after all, sometimes known for brutality in a fight. Yet to focus on the mere brutality of the warrior in battle skips over the central point: they were responsible for protecting their people, and were willing and ready to die to do so. Given that, the akicita, burying the body of another warrior decapitated by an outsider for the sake of a $50 bounty, may have been interested in something more than changing the energies of his opponent. We still must ask, however, whether this means Seth was entitled to so brutally defend himself.

This depends on how one understands the legal order of the territory. For although Seth may not have been directly responsible for killing the ‘Indian’ now laying headless on the funeral platform, it does not follow that he is ‘innocent’. Recall the indictment the akicita flung at Seth: ‘wasicu sica.’ While these words, uttered eye to eye in a close-up shot, seem generally best translated as ‘bad white person’, if one were to translate ‘wasicu sica’ more literally, it means ‘he who takes the fat’ or ‘he who takes the best part’. From the point of view of Lakota law, Seth is guilty by the very fact of his presence on the land, responsible for all the settlers’ disrespect, appropriation, excess consumption and waste. Seth’s presence on the land is neither accidental nor unintentional. For Seth, like the others in the outlaw town, has full knowledge that

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69 Email communication. Thanks here to D Midthunder, who worked as the adviser on Lakota practices for Deadwood.


71 Ibid 25 (‘The akicita painted a black streak down across the right cheek, from the eye to the lower edge of the jaw, as a badge of his office.’).
the sacred territory of the Lakota is protected by treaty, and that he is there illegally. While not directly taking gold from the land, in selling goods to other prospectors, he has actively chosen to function as a vehicle through which that gold enters into a new economy of trade and commerce. He is implicated both indirectly and directly in the violation of ‘Indian’ law, and in the death of Lakota people.

Just as the akicita is not ‘just any Indian’, Seth is not ‘just any settler’. He is the symbolic representative of Western law, riding across ‘Indian’ land to capture an escaped murderer, to force him to stand trial according to settler law. In this encounter, then, we have not just any man against any man, but a policeman against a policeman, one legal order against another. We are witness to an encounter between two representatives of ‘the law’, both seeking justice for men who have been murdered. But whose law applies in this space? If we understood the two men as soldiers for justice, we could understand the encounter as between two nations at war, and perhaps that is the way the colonial encounter should be understood. However, if we step back from the assertion that there is no law on ‘Indian’ land, we instead confront a history of the Lakota people, and those illegally on their land.

This then requires us to understand Seth not as a ‘lawman’, but as a man acting outside of law, one fully responsible for the wrongs he commits. If the series has focused our attention on the distinction between juridical law and economic/natural law, it has taken our attention away from a third form of law. Rather than seeing Seth as entitled to defend himself according to the rules of the common law, we are pressed to ask about his responsibility to bend himself to the law of the territory to which he had travelled. In this case, even if his life was threatened, it does not follow that Seth had a right of self-defence. Just as Seth was legally empowered to take Clell’s life in episode one, in the Lakota territory of episode six, the akicita had the right to take Seth’s.

Even as the episode makes these issues visible, it also provides mechanisms for forgetting them, for giving the viewer a path to move past the discomfort of our settler complicity. Seth helps the viewer respond to this moment of crisis by giving the akicita the honour of a burial done in accordance with Lakota traditions. By emphasising that the akicita was trying to bury his dead friend, the episode encourages us to now understand these five men (Charlie, Seth, the dead Wild Bill Hickock, and the two dead ‘Indians’) as symbolically linked. The akicita becomes, in a sense, a fallen com-patriot, another man seeking justice, the victim of fate, of destiny, of an inevitable, albeit tragic conflict of legal systems. Justice is to be done not through subjecting oneself to ‘Indian’ law, but only by honouring it at the moment of its passing.

As we approach the end of the episode, we follow Charlie and Seth as they carry the dead akicita to the funeral platform together. When we first caught view of this platform, we heard the haunting and hollow sounds of nature. Now, the scene is coloured by emotive extra-diegetic music that plays in the background. The camera lingers on the platform, allowing us to see all that had been withheld from us at the beginning. We see a drum, spear and bow leaning against the side, a number of eagle feathers similarly hung and blowing in the wind. We see the body of the headless warrior. We also see the body of this other warrior’s dead horse, its head, eyes and flanks painted in ways that show this warrior, as well, to have been a man of great honour. There is a swell of the music as the akicita is lifted up onto the platform. Charlie and Seth exchange a long look in which some sort of understanding seems to pass between them. Then they walk out of the frame, leaving us on the shot of the burial platform,
stark against the green of the hills beyond. The music stops, we return to the sound of
the wind, the two men walk down the hill, mount their horses, and ride off, again in
pursuit of Jack McCall. The demands of settler law are drawn back to the foreground.
It is both the ‘Indians’ and their laws, honourably buried, that we leave behind.

VI. Some Concluding Thoughts

Television is an immensely powerful site of cultural and legal storytelling. Deadwood,
like other cultural products, offers a chance for us to interrogate the pleasures and the
perils of our cultural and legal imaginings. For if Deadwood is the central character
of the series (as Milch states), it is the character of the nation in the process of being
birthed, a story of a national identity rooted in a particular vision of land, consump-
tion and economy. In the series, we are shown an inexorable drive for more, to provide
what the people need (or, as Al might say, what you want them to need). We watch as
the town shifts from outlaw space towards law, democracy and civilisation. Thereby
the series invites us to share in a structure of feeling that justifies the harms of colonial
appropriation, and which acknowledges past violence, but enables us to experience it
as tragic yet inevitable, as necessary for the foundation of our democracy and its econ-
omy. Deadwood, through its narrative arc, its seriality, its cinematic structure, works to
draw us to its characters, encouraging us to see the harms and damages done by them
as inevitable. In doing so, it makes it difficult for us to either imagine that there were
alternative paths in the past, or that alternatives are available to us in the present.

Deadwood returns us to a moment in a traumatic past, to a place of genocidal
practice, painting the violence of that moment in textures that invite us to look again,
see further, and consider how it is that we both remember and forget. Yet, as Henry
Giroux reminds us, there is a politics of forgetting; a politics that erases how disparate
social identities have been produced, legitimated, and marginalised within different
relations of power. This is an apt description of the processes at work in stories about
the foundation of the nation, with their identification of ‘insiders’ and ‘outsiders’,
with their justifications of violence and erasure. The question for those interested in
exploring law on the small screen is not whether TV’s stories do this, but is rather how
they do this, and how we as consumers of the stories can understand the affective
pulls, and push back against them. As Giroux puts it in the context of the movies,
‘we must be attentive to the processes whereby meanings are produced in these films
and how they work to secure particular forms of authority and social relations’.72
The point, he says, is not to cast off these texts, but is rather to find additional ways
to intervene in them, to help them mean more and different things. Or, as Rustom
Bharucha puts it, the challenge is ‘to think through images rather than respond to
them with a hallucinatory delight’.73

72 Giroux (n 51) 108.
73 Rustom Bharucha, ‘Around Ayodhya: Aberrations, Enigmas, and Moments of Violence’ Third Text,
TV offers us both pleasures and challenges. *Deadwood* itself offers one of many places where we can ask how our cultural stories work both to let us ‘know’ and ‘not know’ about structures of feeling which, uninterrogated, would have us unconsciously sustaining the empire of force. In *Deadwood*, we can interrogate the complicated blend of anti-colonialism and imperialism that continues to work its spell on us. Attending to television’s narratives, its seriality and its visual structures, we can find the space to explore how the stories we tell, consume and celebrate, provide us with both order-maintaining and order-transforming possibilities.\(^74\) The challenge is to take the place of pleasure seriously, to ask more about how these pleasures are constructed, and to look closely at the ways we are invited to think and to feel. As Tom King puts it, ‘you have to be careful with the stories you tell. And you have to watch out for the stories you are told’,\(^75\) for television’s stories are a matter of serious pleasure and serious business.

What else is there to say? I love television. I really do.

