

BOOK REVIEW

NATURAL PERCEPTION: ENVIRONMENTAL IMAGES AND AESTHETICS IN INTERNATIONAL LAW BY ALICE PALMER (CAMBRIDGE UNIVERSITY PRESS, 2023) 313 PAGES. PRICE AUD183.95 (HARDBACK) ISBN 9781009350129.

How legal institutions assess and apply nature's aesthetic values, especially alongside other knowledge from the physical sciences and economics, has been a longstanding governance problem. The groundbreaking Commonwealth enquiry of 1973 into the damming of Tasmania's iconic Lake Pedder, now located within the Tasmanian Wilderness World Heritage Area, was perhaps the first time an Australian official body grappled with this challenge for a place of great international significance. The enquiry established by Prime Minister Gough Whitlam received nearly 200 submissions including from many artists, from poets to painters, who readily impressed the federal commissioners of the lake's sublime beauty.¹ Numerous photographs and even a film about Lake Pedder were tendered as evidence.² However, the enquiry struggled to make headway in formulating how this scenic gem's aesthetic values, in the enquiry's own words, 'might be assessed and perhaps quantified as a basis for decision-making'.³

In both the domestic and international realms, environmental lawyers have since continued to wrestle with related difficulties for several decades despite a plethora of legislation and treaties explicitly affirming aesthetic values, most commonly 'natural beauty', for protection.⁴ Disputes over wind farms, roads through "pristine" parks and pollution eyesores are just a few of the many domains where the beauty and ugliness of our use of the natural world can end up involving lawyers. However, few legal academics have shown much interest in such matters, in contrast to the plethora of philosophers, art historians and others who have written literature on environmental aesthetics.⁵ Superficial understandings of this subject by lawmakers can undermine accountability for their decisions, and result in aesthetic values being confusingly conflated with other values, such as recreational or spiritual values, or marginalised altogether by the seemingly greater gravitas of economic and scientific knowledge bearing on environmental issues.

Alice Palmer's new work, *Natural Perception: Environmental Images and Aesthetics in International Law*, seeks to address some aspects of the foregoing, adding to contributions she is indebted to such as *The Art of Environmental Law: Governing with Aesthetics*,⁶ and *Law and the Visual: Representations*,

¹ Lake Pedder Committee of Enquiry, Parliament of Australia, *Final Report of the Lake Pedder Committee of Enquiry on the Flooding of Lake Pedder* (Report, April 1975) 171–3 ('*Final Report of the Lake Pedder Committee of Enquiry*').

² *Ibid.*

³ *Ibid.* 67.

⁴ Benjamin J Richardson, Emily Barritt and Megan Bowman, 'Beauty: A Lingua Franca for Environmental Law?' (2019) 8(1) *Transnational Environmental Law* 59, 61, 64, 71–3.

⁵ See, eg, Allen Carlson, *Aesthetics and the Environment: The Appreciation of Nature, Art and Architecture* (Routledge, 2000); Emily Brady, *Aesthetics of the Natural Environment* (Edinburgh University Press, 2003).

⁶ Benjamin J Richardson, *The Art of Environmental Law: Governing with Aesthetics* (Hart Publishing, 2019).

Technologies, and Critique.⁷ Derived from her PhD dissertation, Palmer's analysis focuses on photographic images in seeking to understand how international legal institutions have considered nature's aesthetic qualities in decision-making under treaties governing World Heritage areas, cetaceans and other biodiversity, as well as to consider how to improve the quality of their decision-making. From the proposition that 'photographs could be embraced as forms of legal argument, interpretation and judgment in international law',⁸ Palmer's interest springs from her concern that photographs are 'not acknowledged in the prosaic practice of international environmental law', a deficit she believes diminishes the integrity of international legal decisions.⁹ Palmer's advocacy for 'understandings of the environment's aesthetic worth that are sensitive to the likely plural conceptions of aesthetic value among the many nations that commit to international environmental treaties'¹⁰ appropriately acknowledges the diverse cultural and intellectual framings of aesthetic appreciation, though this observation is also pertinent to the domestic legal realm that she largely ignores, where considerable contestation over environmental aesthetic judgements and values also occurs, such as in Australia as associated with its rival Indigenous and colonial settler histories.¹¹

The notion of "aesthetics" may be unfamiliar to many legal scholars. As a noun, it often refers to the branch of philosophy concerned with appreciation of nature or art, and as an adjective concerns the qualities ascribed to experiencing such phenomena.¹² A large field of scholarship is now devoted just to *environmental* aesthetics. Whether it is auditory, tactile, olfactory or visual, sensory stimulation from the environment can generate, argue these aestheticians, valuable emotional and cognitive connections to nature that are different to other forms of cultural knowledge.¹³ As direct aesthetic appreciation of many dimensions of nature may not be possible for many, it is also vital to recognise how the arts have acquired a crucial role in mediating aesthetic appreciation of nature, and how art historians have contributed to interpreting such art.¹⁴

Photography is a plausible entry point chosen by Palmer to tackle this subject. Although landscape painting has a far longer history, it was the invention and popularisation of photography in the 19th century that has done far more to build our visual culture.¹⁵ The pictorial revolution it spawned has been influenced in particular by representations of the natural environment often being the

⁷ Desmond Manderson (ed), *Law and the Visual: Representations, Technologies, and Critique* (University of Toronto Press, 2018).

⁸ Alice Palmer, *Natural Perception: Environmental Images and Aesthetics in International Law* (Cambridge University Press, 2023) 4.

⁹ *Ibid* 3.

¹⁰ *Ibid*.

¹¹ See generally Eve Vincent and Timothy Neale (eds), *Unstable Relations: Indigenous People and Environmentalism in Contemporary Australia* (UWA Publishing, 2016); Matthew Colloff, *Landscapes of Our Hearts* (Thames and Hudson, 2020).

¹² See Bence Nanay, *Aesthetics as Philosophy of Perception* (Oxford University Press, 2016).

¹³ See, eg, Allen Carlson and Arnold Berleant (eds), *The Aesthetics of Natural Environments* (Broadview Press, 2004).

¹⁴ See, eg, Mark A Cheetham, *Landscape into Eco Art: Articulations of Nature Since the '60s* (Pennsylvania State University Press, 2018).

¹⁵ Jane Kromm and Susan Benforado Bakewell (eds), *A History of Visual Culture: Western Civilization from the 18th to the 21st Century* (Berg, 2010).

dominant way many people “see” nature, as it was for the Lake Pedder enquiry commissioners in 1973, of whom only one of the four actually visited the lake.¹⁶

In tackling this subject, Palmer’s book is organised principally into two halves. The first unpacks the conceptual terrain relating to what she terms ‘aesthetic vantages’ and the second half applies these vantages to case studies relating to decision-making associated with the *Convention concerning the Protection of the World Cultural and Natural Heritage*,¹⁷ the *International Convention for the Regulation of Whaling*¹⁸ and the *Convention on Biological Diversity*,¹⁹ followed by a concluding chapter that attempts to canvass wider application of her critique and proposals. Given the subject matter, the inclusion of over 50 photographs, many of which serve to anchor her case studies rather than be mere decoration, is a valuable aid to the reader.

In the first half of the book, in Chapters 2, 3, and 4, the author elaborates her notion of “aesthetic vantages”, whereby different knowledge disciplines and cultural traditions, including in international law, that have shaped how aesthetic values relating to nature are identified and assessed. She first takes readers on a journey through the work of aesthetic philosophers and art historians and practitioners, and although this discussion does not generate new theoretical insights it is helpful for legal researchers who are unlikely to be conversant with it, as Palmer acknowledges. The big names in this field such as Allen Carlson and Emily Brady receive generous analysis. Chapter 3 examines international law’s doctrinal methods for interpreting treaties so as to understand how international lawyers might interpret an environment’s aesthetic value, and Palmer draws heavily on Brady in arguing we should highlight aesthetic values as distinct from other environmental values considered by international law.²⁰ She then, in Chapter 4, introduces some of the visual arts that have engaged with the natural world as well as how some legal scholars have considered visual art to promote more critical thinking on environmental or international law. Much relevant work is canvassed here, although by focusing on *art* forms rather than the full suite of pictorial forms, many made without artistic intentions — such forms including utilitarian cinema or prosaic print media²¹ — some potentially valuable insights remain undeveloped for understanding how to evaluate the variety of graphic representations of nature.

The case studies in the book’s second half, in Chapters 5, 6 and 7, examine the subject matter in the context of one subfield of international environmental law: nature conservation. Here Palmer investigates the treatment of aesthetic values and photographic images associated with the nomination of properties to

¹⁶ *Final Report of the Lake Pedder Committee of Enquiry* (n 1) 66.

¹⁷ *Convention concerning the Protection of the World Cultural and Natural Heritage*, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975).

¹⁸ *International Convention for the Regulation of Whaling*, opened for signature 2 December 1946, 161 UNTS 72 (entered into force 10 November 1948).

¹⁹ *Convention on Biological Diversity*, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993).

²⁰ Palmer (n 8) 53.

²¹ See Charles R Acland and Haidee Wasson (eds), *Useful Cinema* (Duke University Press, 2011).

the World Heritage List and associated determinations,²² the Antarctic whaling litigation that pitched Australia against Japan,²³ and international decision-making relating to biodiversity, particularly in regard to the fourth edition of the *Global Biodiversity Outlook*.²⁴ The principal rationale given for these case studies is that they ‘represent an evolution spanning decades in international environmental law from the protection of species to spaces to systems’.²⁵ Whilst this approach informs readers of some salient dimensions in the evolution of international environmental law, Palmer’s focus on nature conservation leaves many older and newer dimensions of international environmental law considered only obliquely or minimally, such as those concerning fossil fuel emissions, hazardous wastes or transboundary natural resources, among many issues now subject to international environmental regulation.²⁶ Nonetheless, highlighting nature conservation likely covers quite well examples and patterns where aesthetic values are most explicitly acknowledged in international law.

The concluding chapter attempts to extrapolate some findings of broader application whilst advocating how to make international legal institutions more aesthetically literate and competent in their use of graphic images. Here Palmer draws again on Brady to frame her argument. Palmer considers better procedures and principles to govern consideration of photographs in settings that include judicial judgments, conferences of state parties to international treaties and administrative determinations of international bodies. She seeks a more critical and competent treatment of aesthetic values as related to but distinct from other environmental values such as mere ethical value or cultural value.

Palmer’s focus on and treatment of photography, which she assesses by drawing heavily on art historians and environmental aestheticians, has strengths and limitations. Though not considered by Palmer, Australian academic Jarrod Hore’s recent book offers a valuable account of the problematic role of photographers in the cultural representation of landscapes in 19th century Pacific Rim settler societies, having helped propagate colonising imagery of unpeopled “wilderness” that disguised its Indigenous history.²⁷ Likewise, my own work on corporate environmental marketing shows another questionable side of how photography and other imagery can serve to manipulate public opinion to disguise unethical or unsustainable environmental practices.²⁸ It is important to be mindful that when seeking to ascribe a legal meaning to aesthetic values that is distinct from other values relevant to decision-making in international treaties that we appreciate how some photographic representations of nature might be complicit in an undesirable agenda. Returning to the Lake Pedder example, to illustrate further,

²² See generally UNESCO World Heritage Centre, ‘World Heritage List Nominations’, *UNESCO World Heritage Convention* (Web Page) <<https://whc.unesco.org/en/nominations>>, archived at <<https://perma.cc/4WC4-2ES4>>.

²³ *Whaling in the Antarctic (Australia v Japan) (Judgment)* [2014] ICJ Rep 226.

²⁴ See Secretariat of the Convention on Biological Diversity, *Global Biodiversity Outlook 4* (Report, 2014) <<https://www.cbd.int/gbo/gbo4/publication/gbo4-en-hr.pdf>>, archived at <<https://perma.cc/U9A3-RSRK>>.

²⁵ Palmer (n 8) 12.

²⁶ See generally Pierre-Marie Dupuy and Jorge E Viñuales, *International Environmental Law* (Cambridge University Press, 2nd ed, 2018).

²⁷ Jarrod Hore, *Visions of Nature: How Landscape Photography Shaped Settler Colonialism* (University of California Press, 2022).

²⁸ Richardson (n 6) 182–208.

Tasmania's Hydro-Electric Commission tried to manipulate public opinion by circulating its own photographs of the enlarged, dammed lake with the by-line that it was more beautiful than the original.²⁹ Palmer is not unaware of some of these risks, but her professed reliance on 'aesthetic concepts and methods, developed for the arts, to describe the environment's aesthetic value from photographs'³⁰ risks losing valuable, critical insights from other disciplines such as media and cinema studies that could help challenge that risk.³¹ There are certainly some valuable perspectives from art critics and aestheticians, such as Brady and others including Alan Braddock,³² but a wider lens that taps into visual culture research yields a bigger haul.³³ Thus, Palmer's call for a more critical perspective on her subject matter by inclusion of greater 'aesthetic expertise' in international lawmaking from 'experts in aesthetic philosophy' might not be so readily attainable from the vantage of the few scholarly disciplines and techniques she relies on most.³⁴

The status of film itself is also glossed over, with the author tending to conflate still photography with film, or 'video' to use her preferred terminology.³⁵ Whilst her book discusses some interesting examples of video art, such as Julie Gough's *Observance*,³⁶ her work and the scholarly literature cited do not enable readers to properly understand how film and photography compare and contrast, and how film can contribute distinctive perspectives on the book's subject matter. We certainly cannot just assess film as an art form. Environmental cinema has become hugely influential in the modern environmental movement over the past half century as a utilitarian, pedagogical and advocacy tool for aesthetic and other values, and film has sometimes been a resource cited or acknowledged in some of the decision-making processes that Palmer considers.³⁷ For instance, in Australia's 1981 nomination of the western Tasmanian wilderness to the World Heritage List, seven films about the region were cited as supporting evidence, such as *Franklin River Journey* and *Tasmanian Wilderness*.³⁸ Whilst film and photography obviously overlap, and a still image can be extracted from a movie, a complete film such as a natural history documentary or an eco-protest campaigning film will offer far greater information and aesthetic variety than a photograph or even a collection of images. By combining narrative with visual and acoustic content, films may also problematise any effort to separate aesthetic values from other

²⁹ Ibid 146.

³⁰ Palmer (n 8) 151.

³¹ See generally Lee Artz (ed), *Global Media Dialogues: Industry, Politics, and Culture* (Routledge, 2024); Lee Grieveson, *Cinema and the Wealth of Nations: Media, Capital, and the Liberal World System* (University of California Press, 2018).

³² See, eg, Alan C Braddock, 'Ecocritical Art History' (2009) 23(2) *American Art* 24.

³³ See, eg, TJ Demos, *Against the Anthropocene* (Sternberg Press, 2017).

³⁴ Palmer (n 8) 258.

³⁵ See, eg, Palmer (n 8) 228, 230.

³⁶ Ibid 259.

³⁷ See John A Duvall, *The Environmental Documentary: Cinema Activism in the 21st Century* (Bloomsbury Academic, 2017).

³⁸ Tasmanian Government and Australian Heritage Commission, *Nomination of Western Tasmania Wilderness National Parks by the Commonwealth of Australia for Inclusion in the World Heritage List*, (Nomination, November 1981) 26. For analysis of the roots of such filmmaking in Tasmania, see Benjamin J Richardson, 'Norman Laird (1915–1978): Pioneering Tasmanian Filmmaker, Writer and Naturalist' (2023) 157 *Papers and Proceedings of the Royal Society of Tasmania* 27.

values or information relevant to the natural environment. A now large literature in film studies offers some useful ways to evaluate critically some of the most prevalent visual representations of nature of relevance to environmental decision-making domestically and globally.³⁹

Finally, it is crucial to recognise that the problem of dealing with environmental aesthetics in legal decision-making is sometimes not so much the issue Palmer focuses on but how to *compare* aesthetic and non-aesthetic values in such decisions. Improving the aesthetic literacy of decision-makers certainly matters, but we also need methodologies and processes for deciding how to *weigh* aesthetic values against competing considerations such as economic costs, poverty alleviation, etc. Sometimes trade-offs are needed. This methodological problem confounded the Lake Pedder enquiry in its ultimately unsuccessful search for a way to value the scenic charms of the lake against the ostensible benefits of hydro-power development.

Overall, despite some constraints, Palmer's substantial book helps tackle a subject gaining global attention. Already, additional legal literature is circulating,⁴⁰ and entire conferences are being devoted to the subject,⁴¹ suggesting that the necessary critical mass of interest is at last emerging. Notwithstanding a few omissions, her book's bibliography offers a useful resource to support further enquiries. Whilst I suspect the 1973 Lake Pedder enquiry would still find it challenging to assess the aesthetic values and their photographic evidence were it able to access the scholarly advances of the past 50 years, the enquiry would hopefully be closer to a satisfactory resolution were it undertaken today thanks to the work of Palmer and other scholars.

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³⁹ See, eg, Robin L Murray and Joseph K Heumann, *Ecology and Popular Film: Cinema on the Edge* (State University of New York Press, 2009); Stephen Rust, Salma Monani and Sean Cubitt (eds), *Ecocinema Theory and Practice* (Routledge, 2013); Rayson K Alex and S Susan Deborah (eds), *Ecodocumentaries: Critical Essays* (Palgrave Macmillan, 2016).

⁴⁰ See, eg, Sebastian Machado, 'Towards an Aesthetic Epistemology of International Law' (2022) 91(3) *Nordic Journal of International Law* 509; Giulia Parola, Silvano Chue Muquissai and Margherita Paola Poto, 'A Co-Created Project of Legal Design and Visual Law Applied to International Environmental Law: Transformation of the Escazú Agreement and Environmental Access Rights into Visual Materials for and with the Chiquitano People' in Eva Julia Lohse and Margherita Paolo Poto (eds), *Coproduction of Knowledge in Climate Governance* (Berliner Wissenschafts-Verlag, 2023) 57.

⁴¹ Central European University, *The Aesthetics of International Law* (Conference Program, 12–13 May 2023).

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