



BOOK FORUM

## Gray-Blue Law and Literature

Stephanie Jones

University of Southampton, Southampton, UK  
Email: [s.j.jones@soton.ac.uk](mailto:s.j.jones@soton.ac.uk)

### Abstract

This response to *Dockside Reading: Hydrocolonialism and the Custom House* reflects on the book's significant contributions to the interdisciplinary study of law and literature.

**Keywords:** Law and literature; Interdisciplinary methods; Water

It is a truism that the study of “law and literature”—understood as a current set of interdisciplinary practices within twenty-first-century universities across the world—found initial definition in debates that began in the United States about fifty years ago.<sup>1</sup> But it is also commonly recognized that while important discussions may have begun with the law and the literature of North America, that is not where endings are being reached. Work with literature—mostly novels—from across the world has significantly reshaped this interdisciplinary field, particularly through the twenty-first-century shift between a rubric of “postcolonial” and new arrangements of “world” literature.<sup>2</sup> Increasing attention is being paid to diverse forms and histories of textuality from across the globe.<sup>3</sup> And work on the relations between literary cultures and various lower-level, local legal, and paralegal archives is illuminating the structure of imperial relations and the textures of colonial and

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<sup>1</sup> Brook Thomas, “Minding Previous Steps Taken,” *New Directions in Law and Literature*, eds. Elizabeth S Anker and Bernadette Meyler (Oxford: Oxford University Press, 2017), 33–45.

<sup>2</sup> For an influential example, see Joseph Slaughter, *Human Rights Inc.: World Literature, Narrative Form, and International Law* (New York: Fordham University Press, 2007).

<sup>3</sup> For an exemplary engagement with the idea of what can constitute an archive for the purposes of interdisciplinary studies in “law and literature,” see Peter Leman, *Oral Jurisprudence and the Crisis of Modernity in East African Literatures* (Liverpool: Liverpool University Press, 2020).

postcolonial worlds.<sup>4</sup> *Dockside Reading: Hydrocolonialism and the Custom House* (2022) offers a considerable contribution to the interdisciplinary study of law and literature through its analysis of various such paralegal and diversely literary texts.<sup>5</sup> It demonstrates how in-between/mediatory/just-about forms of both law and literature can be used as methods for reading one another, and how such approaches can deepen our understanding of imperial and colonial discourses on the ground and in the water.

Hofmeyr is well known as a book historian of the long nineteenth century; as a researcher for whom “the literary” is an inclusive term and “the book” a broad and endlessly fascinating category; and for whom attending to situated acts of publication and reading is fundamental to literary critical work.<sup>6</sup> Bringing together documents from disparate colonial-era sources, *Dockside Reading* creates an archive of the Custom House. This includes novels, biographies, legislation, reports, published manuals, handwritten ledgers, much of it “gray” literature in the sense that it was not commercially published; is in-between genres; and is apparently boring and “dry.” (Across the book, Hofmeyr’s play on finding the water—sometimes literally—in apparently “dry” texts is important to identifying the furthest-reaching effect of her historical analysis.) Approaching all these books as literary forms, constituted through historical orders of reading and individual acts of interpretation, Hofmeyr vividly demonstrates how *together* they take part in—indeed at times instigate—the epidemiological, carceral, extractive, and racist discourses of later nineteenth to early twentieth century colonial southern Africa. Further, this examination of the genres of the dockside leads to the apprehension of everyday waterside Custom House practices as key producers of the conditions of knowledge—the epistemological and ontological underpinnings—of the formal and extra-legal censorship regimes of the apartheid era.<sup>7</sup>

In this response, I look specifically at how Hofmeyr handles two sorts of book in *Dockside Reading*: the paralegal handbook and the “settler handbook.” By focusing on the analysis of these two Custom House genres, I summarize and illuminate Hofmeyr’s key *methodological* contributions to the interdisciplinary study of law and literature. I end with some reflections on the place of water within the argument and method of *Dockside Reading* and with some thoughts on what future commitments to taking watery perspectives might bring to interdisciplinary work on law and literature.

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<sup>4</sup> For a particularly ranging and rigorous example of the use of paralegal and extra-literary texts, see Grace Musila, *A Death Retold in Truth and Rumour: Kenya, Britain and the Julie Ward Murder* (London: James Currey, 2015).

<sup>5</sup> Isabel Hofmeyr, *Dockside Reading: Hydrocolonialism and the Custom House* (Durham, NC, and London: Duke University Press, 2022).

<sup>6</sup> As well as many articles and book chapters evidencing this commitment, see most substantially Isabel Hofmeyr, *The Portable Bunyan: A Transnational History of the Pilgrim’s Progress* (Princeton, NJ: Princeton University Press, 1994), and Isabel Hofmeyr, *Gandhi’s Printing Press: Experiments in Slow Reading* (Cambridge, MA: Harvard University Press, 2013).

<sup>7</sup> See especially Hofmeyr, *Dockside*, 63–85.

## The Paralegal Archive

The history of modern intellectual property law can be told as four centuries of state moves toward a relatively stable—if not consistently implemented—international consensus in the late twentieth century, most prominently articulated in the 1995 *Agreement on Trade-Related Aspects of Intellectual Property*. This version of the story easily assumes the ethical imperative of patent law, normalizes copyright and—from there—finds a bounded moral validity in the language of “rights.”<sup>8</sup> This historiography tends away from fully acknowledging the imperial mania for the designation, categorisation, marking, and tracing of objects and persons as objects that also constitute the long history of this recent consensus.

One of the central impulses of *Dockside Readings* is toward what—in the introduction—is described as an “object-oriented ontology,” positioning the book in the context of previous work about “the force of things.”<sup>9</sup> This centrally means using the archive of the Custom House to reveal the “trajectory of the history of colonial object formation, which was wrought against a background of confusion between person and thing.”<sup>10</sup> While the historic and present relationship between insurance law and the “confusion of person and thing” is a prominent literature and law topic, customs tariff law has not received the same kind of sustained attention.<sup>11</sup> Focusing on the daily definition of objects occurring at the imperial waterside, *Dockside Reading* lends important detail to our understanding of the gamut of “rational” legal mechanisms that normalized the violent objectification of persons and peoples, most completely but not only through colonial slavery. However—and this is the methodological point I want to underline—in *Dockside Reading*, this “object ontology” is not worked out through an engagement with the legislative letter of the law or even with precedent-setting interpretations of that letter. It is most intensively found in the paralegal handbooks produced for everyday use by the officers and agents of the Custom House.

As Hofmeyr captures in her summary of the tariff handbook, “In the British imperial world, such handbooks hubristically promise to account for every object in the empire, if not the world, but in their very form acknowledge the impossibility of the task—tariff books were generally interleaved: every other page was blank to allow officials to write amendments.”<sup>12</sup> *Dockside Reading* is

<sup>8</sup> Rochelle Dreyfuss and Justine Pila eds., *The Oxford Handbook of Intellectual Property Law* (Oxford: Oxford University Press, 2018).

<sup>9</sup> Hofmeyr, *Dockside*, 7.

<sup>10</sup> Hofmeyr, *Dockside*, 8.

<sup>11</sup> A long history of literary and artistic responses to the infamous judgment of Lord Mansfield in *Gregson v. Gilbert* [1783] (the case of the Zong, in which an insurance claim was made against deliberated drowned enslaved persons) have been central: see for example Tim Armstrong, *The Logic of Slavery: Debt, Technology and Pain in American Literature* (Cambridge: Cambridge University Press, 2012); M. NourbeSe Philip, *Zong!* (Middletown, CT: Wesleyan University Press, 2008). For a recent and thoughtful reflection on the significance of this particular legal and literary history to a broader tendency of interdisciplinary work to presume literature as an ethical corrective to the law, see Elizabeth S. Anker, “Globalizing Law and Literature,” *New Directions in Law and Literature*, eds. Elizabeth S. Anker and Bernadette Meyler (Oxford: Oxford University Press, 2017), 210–26.

<sup>12</sup> Hofmeyr, *Dockside*, 41.

highly attuned to these books as themselves decaying visceral testament to the excessive materiality of “objects that putrefy, perish, catalyze, deceive, poison, and adulterate. No longer just an abstract legal form, copyright subsists alongside the ooze and treacle of organic matter.”<sup>13</sup> In a particularly evocative passage comparing older ports with more “developed ports with docking facilities, discharging cargo was simpler, yet nonetheless the objects still had to be redeemed, this time from the microclimate of the hold, a fetid space, especially if poorly stowed. In such circumstances, items could “injure” each other (to use a term of maritime trade). Turpentine contaminated flour; oats heated up, melting contiguous tallow and cheese; guano blackened nuts and leather; salt buckled paper; coffee berries “readily imbibe[d] exhalations from other bodies.” Examiners had to decide whether the commodity, if damaged, counted as an object at all or had to be destroyed.”<sup>14</sup>

In this context, I was particularly struck by the description and analysis of the handbooks on the “byzantine,” long-lasting, empire-wide Merchandise Marks Act of 1887. Evidencing her fascination with the ontology of the *list* as a key aspect of the ontology of the *object*, Hofmeyr notes that by the early twentieth century, subcommittees of the Board of Trade in London had issued “instructions and standing orders on the marking of anything from hair combs, to glue and gelatin, to picture and greeting cards, to metal spools for typewriters,” and explains that these handbooks “on the topic are veritable thesauri of inscription replete with instructions on how objects had variously to be impressed, embossed, die-stamped, cast, engraved, etched, printed, applied, stamped, inscribed, stencilled, painted, branded, molded, punched, or cast, along with an appropriate range of adverbs: *indelibly, visibly, conspicuously, durably*.”<sup>15</sup> Objects bear upon language; and language exerts pressure on objects—literal, actual, material pressure. This understanding is key to the production of what Hofmeyr terms the “hydrocolonialism” of the object; a phrase that captures the connections between the intricate dockside processes that lend imperial definition and agency to objects that routinely, daily, further wider discourses of colonial objectification, even as they threaten—in their insistent materiality—to exceed their containment.

### The Para-Literary Archive

What appears as literature in the field of law and literature is often a poem or a novel that seeks to correct the law. That the law is pan-historically ethically corrupt and literature is ahistorically ethically enriching is a common finding of the interdiscipline; indeed, calls for less of this kind of work are themselves a standing feature of the field.<sup>16</sup> *Dockside Reading* implicitly answers this call in a

<sup>13</sup> Hofmeyr, *Dockside*, 2.

<sup>14</sup> Hofmeyr, *Dockside*, 43.

<sup>15</sup> Hofmeyr, *Dockside*, 46; emphasis in the original.

<sup>16</sup> See Anker, “Globalizing Law and Literature,” 210–26, and Kieran Dolin, ed., *Law and Literature, Cambridge Critical Concepts* (Cambridge: Cambridge University Press, 2018).

particularly intriguing way by moving between the book as a text and the book as an object.

In the final part of *Dockside Reading*, Hofmeyr looks to “the surviving copyright records from the Cape Colony” and finds that “much local writing ... remained a matter of filling out templates from elsewhere ... apart from serial publications and textbooks, the bulk of copyrighted material comprised handbooks, manuals, and form-like publications: Christmas annuals, letter-writing guides, cookbooks, seed catalogues, horse-training manuals, fruit growers’ guides, farmers’ year-books, ostrich feather—ready reckoners, handbooks for mounted infantry, bankers’ and insurance agents’ diaries, freemasons’ directories, timetables, and tide tables.”<sup>17</sup> This archive indicates one of the ways in which the “elsewhere” books that “landed” on the wharf operated as “hydrocolonial” objects. However, Hofmeyr also attends to ways in which all books were particularly “troublesome” objects and so at least partly anti-imperial in their orientation, not simply or even because “they potentially contained objectionable content but also because they interrupted the logistic flow of goods through the port. Unsurprisingly, much anticolonial writing shaped itself around ideas of interruption (or counterlogistics, as the growing scholarship on logistics and containerization frames the issue today). To take one famous example, Mohandas Gandhi’s South African newspaper *Indian Opinion* fashioned itself as an instrument to slow down the industrial speed of empire and its logistics ... Rather than positing a mode of opposition that could supposedly upend the system from outside, Gandhi took a more oblique approach, fostering practices of syncopated reading that could slow down the machine-driven rhythms of an industrial information order.”<sup>18</sup> In contrast, Hofmeyr identifies “an obviously hydrocolonial form of authorship” in writings that functioned “to assist settler immigration” but more specifically operates as an

adjunct to port infrastructure to ensure a safe and dry landing for passengers of the right class and race. Most apparent in the settler handbook, this genre provided information on how to reach a particular colony, what to expect on arrival (often with the necessary forms included as appendices), and how to gain access to land ... Such handbooks played a prefatory part in the process of landing passengers. It can hence be considered a dockside genre, joining other texts like Customs manuals seeking to ensure the safe arrival of settlers (as well as their luggage), while acting in concert with submarine structures and wharfage mounted on reclaimed land.<sup>19</sup>

This leads into a close and exemplary reading of J. Forsyth Ingram’s *The Story of an African Seaport: Being the History of the Port and Borough of Durban, the Seaport of Natal* (1899) as a mediation between the two classic tropes of settler fiction: the shipwreck and the farm. The book eases—through practical advice and imaginative promise—the movement from the dramatic risk of the first to the settled if

<sup>17</sup> Hofmeyr, *Dockside*, 78.

<sup>18</sup> Hofmeyr, *Dockside*, 78.

<sup>19</sup> Hofmeyr, *Dockside*, 80.

toughly heroic safety of the second. This allows Hofmeyr to argue that “the farm novel” of settler colonial nationalism is also a “hydrocolonial” object in tracing back to these handbooks of “landing.” This attention to a sort of para-literary text as an adjunct to the smooth administration of dockside law—and this is the second methodological point that I want to underline—provides a model for cutting past any narrowing assumptions about the ethical value of the literary to the legal. The book in this way suggests new ways of thinking with literary form and genre that lead to a different order of value and new insights into legal histories. But this is not the only way in which *Dockside Reading* indicates the potential of the Custom House archive to provide insights into fiction as a method for reading the law.

The lawyer both in and beyond the courtroom; the criminal and victim; the legal reformer and the reactionary are—of course—the focus of most books on the topic of law and literature. And because of the prominence of nineteenth-century American classics to the formation of this interdisciplinary field, the fact that both Herman Melville and Nathaniel Hawthorne were Custom House officers and both wrote famous legally inflected novels/novellas has also brought this figure into prominent interdisciplinary purview. However, Hofmeyr takes a new approach to this figure. In her analysis of Olive Schreiner’s *Story of an African Farm* (1883), she suggests this figure as *itself* a method of postcolonial reading: that looking for characters or narrators who behave “like” a customs examiner can allow us to apprehend further links between apparently distant literary formations and the imperial law on and beside the water.<sup>20</sup>

### Side-Waters and Underwaters

Attention to maritime fiction has produced some of the most prominent work in the field of law and literature, not least because of a central, brilliant, and provocative tradition of work on Melville’s posthumously published shipboard “drum head” court novella, “Billy Budd, Sailor: An Inside Narrative” (1924).<sup>21</sup> However, although the ship as a novelistic scene and the ocean as a poetic metaphor are prominent in the field, neither maritime law, environmental marine laws, nor the ocean as a more variously material site are established interdisciplinary topics.

Like all of Hofmeyr’s work, *Dockside Reading* is a generous book. The introduction provides an excellent and careful survey of the now many ways in which the ocean—particularly the actual, material ocean—is being addressed and deployed as a method in literary studies. This provides context for Hofmeyr’s own particular expression of “water as a method for doing postcolonial literary criticism” in this book.<sup>22</sup> This method reaches beyond evoking a dockside that is shaped by imperial literary-legal conventions and paralegal practices of

<sup>20</sup> Hofmeyr, *Dockside*, 83.

<sup>21</sup> For both a summary of and expansion upon this tradition to this tradition, see Daniel J. Solove, “Melville’s Billy Budd and Security in Times of Crisis,” *Cardozo Law Review* 26.6 (2005): 2443–71.

<sup>22</sup> Hofmeyr, *Dockside*, 17.

interpretation; and even beyond an understanding of the inland ramifications of the genres of the wharf. Hofmeyr's commitment to an "object ontology" takes her underwater and to the oceans offshore the Custom House as a scene of dumping of condemned goods and incriminating documentation. Her gathering of the record and anecdote of drowned books—thrown overboard to lighten a struggling ship or because they would not be allowed past the wharf under the laws of copyright and trademark—is particularly evocative of the ocean as a dumping ground; and in being a startling form of "waste" leads to the question that needs to be asked again and over of the past and present world: what—and more importantly whom—does the law allow to be designated as "waste"?<sup>23</sup>

### Gray-Blue Literatures and Laws

In postcolonial studies, "the law" most often appears in its biggest sense: it is a national constitution or an international convention; a history of criminalization or of legally sanctioned disenfranchisement; a broadly defined right or an infamous wrong. In interdisciplinary studies of law and literature, "the law" often appears more specifically: it is the *obiter dicta* as well as the *ratio decidendi* of a case; the singular legislative article rather than the bearing of a whole legal text. Read as a postcolonial contribution to the field of law and literature, *Dockside Reading* offers a model for future literary critical mediations between the small gray everyday detail and the larger force of the law. As an oceans-oriented contribution to the field of law and literature, *Dockside Reading* suggests that "the dock" or "the customs officer" might be just as powerful a paradigm as "the ship" or "the lawyer." And most suggestively, *Dockside Reading* encourages an underwater, more than human perspective for future decolonial approaches to the ocean as a literary and legal site and scene.

**Competing interests.** None

**Author biography.** Stephanie Jones (BA and LLB Australian National University; PhD Cambridge) is Associate Professor in the School of Humanities, University of Southampton, UK. She works on East African literature and law, Indian Ocean fictions, international maritime and marine law and lore, piracy and privateering, and on literary and legal "waters," "waste," "belonging," and "commons."

<sup>23</sup> Hofmeyr, *Dockside*, 16.

**Cite this article:** Jones, Stephanie. 2023. "Gray-Blue Law and Literature." *The Cambridge Journal of Postcolonial Literary Inquiry* 10, 232–238. <https://doi.org/10.1017/pli.2023.8>