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Stone Law: immutability and legal worldbuilding

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Abstract

In N.K. Jemisin's *Broken Earth* trilogy, core laws are written on stone. But the tablets are incomplete, open to interpretation and their authorship uncertain. Nonetheless, Stone Law forms the basis of the governance system. Ultimately, the narrative reveals that the Stone Laws are recent in origin and an instrument of subjugation whose claims to common sense belie its harms. This article considers immutability in law and the ways in which particular laws become as if written in stone. Constitutional law and *jus cogens* are two examples of immutable worldbuilding laws represented as inevitable, absolute, unyielding and perpetual. Debates in law and humanities on genre, performance, interpretation and the concerns of a particular era are often reflected and refracted through both the laws and the literature of an era. In particular, the practice of worldbuilding is used to demonstrate the wariness necessary when laws are represented as immutable.

Keywords: immutability; constitutional law; *jus cogens*; law and humanities; legal worldbuilding

1 Introduction

'Stone lasts, unchanging. Never alter what is written in stone' – Tablet 3, 'Structures', Verse 1
(Jemisin 2015–2017)

Science fiction, by reflecting aspects of our existing political and legal realities, provides a unique lens through which we can explore and question deeply ingrained ideas that often go unnoticed and unchallenged (Paik 2010, 2). Such cognitive estrangement tilts our world, and N.K. Jemisin's *Broken Earth* trilogy – *The Fifth Season* (2015), *The Obelisk Gate* (2016) and *The Stone Sky* (2017) – is of particular use in thinking about legal orders and laws that can appear to have the characteristics of immutability (Suvin 1998, 71). Through the lens of the *Broken Earth* trilogy, we can investigate the concept of immutability within legal orders, focusing on both literal and figurative 'stone tablets': inscriptions on stone, monumental writings and the permanence required for a law to endure through time. The trilogy illuminates the challenges that arise when the supposed unchangeability or the *longue durée* of a law is ascribed intrinsic value, despite the fact that its immutability was never entirely accurate.

The *Broken Earth* trilogy queries modes of prejudice, gender, loss and grief, power, hierarchies, utopianism and apocalypse alongside considerations of ecology and the environment. Law, and the impact of imputed immutable laws, plays a significant role in *The Broken Earth*'s worldbuilding. Primary laws are literally written on stone and discussed and acted upon as unchangeable. Stone Law and its interpretative guides and commentaries are exhibited between

chapters, cyclically returning the reader to them and prompting the reader to (re)consider their role as they gain more knowledge of the world that Jemisin builds. Immutability means both unchangeable and unchanging over time. In holding both temporalities, immutability implies a present fixed state as well as something that endures over time. Within this article immutability describes the apparent character of certain laws within a legal order as unchangeable or unchanging over time. This is an apparent characteristic because, as will be discussed, even laws set in stone are mutable.

Law and humanities alongside jurisprudence are the tools used to understand the role of immutability within legal orders. This allows for an 'imaginative and transitionally orientated embodiment of law's material practices, its atmospheric and spatial occupations, its fictions and mutations' which include law itself as literature (Goodrich 2021, ix; Teissier-Ensminger 2013). This enables a focus on how law is transmitted, materially, orally and through text and via the imaginative underpinnings of this endeavour, both the symbolic and material consequence of when that centres on immutability. Through cognitive estrangement and defamiliarisation, science fiction maintains links to actual political and legal life and, using it, allows us to return to the processes that create and sustain apparent immutability (Paik 2010, 2; Suvin 1998, 71–72). Law often plays a key role in fiction while also possessing a narrative, literary and performative purpose of its own (Butler 2010, 147; Levinson and Mailloux 1988). Understanding law as not just text but also performance and materiality opens new spaces to think about law's creation, its interpretation, its societal role and the choices behind its form (West 1988, 154).

This article combines several conceptual frames to look at immutability within legal orders and mutability, which is defined as changeability, with a tendency towards flux as its counterpart. It examines immutability as a concept and its role in legal worldbuilding, and how these processes occur through historical origin narratives, the flattening of discourse and mythos, via temporality, materiality and invocations of geology, to consider the effect of stone law within legal orders. The article then moves to outline Stone Law as a metaphor within the *Broken Earth* trilogy and then as a tool of analysis to understand how we perceive what is changeable within our legal orders and what is not. The paper queries how perceptions of immutability shape our understanding of legal worldbuilding and whether that immutability is inherently conservative.

2 The Broken Earth: The Fifth Season, The Obelisk Gate, The Stone Sky

'[obscured] those who would take the earth too closely unto themselves. They are not masters of themselves; allow them no mastery of others' – Tablet 2, 'The Incomplete Truth', Verse 9 (Jemisin 2015–2017)

The *Broken Earth* trilogy won three Hugo Awards and the Nebula Award. Jemisin was the first Black person to win the Hugo Award and is the only person to win the award three years running. The books take place on a supercontinent, potentially a future earth, called the Stillness, that is convulsed by periodic tectonic catastrophes or Seasons. These come in a variety of forms and can be brief or last decades. The primary legal source within the Stillness's juridical and political order are laws literally written on stone tablets, including Seasonal or Emergency Laws which apply during catastrophes. Their authorship is uncertain, and some are so damaged as to be only partial accounts. Their overarching intent is also unclear.

There are several castes in the Stillness. Stills comprise multiple castes, including Guardians, Geomasts who study the Stillness, including Stone Law, Equatorials who live in the wealthy safer zones and Midlatters who live everywhere else. The Orogenes caste possesses the ability to manipulate thermal and kinetic energy and so can temper the tectonic movements. Orogenes are enslaved from childhood and suppressed by the majority population or Stills and controlled by

Guardians. Much Stone Law concerns this subjugation. A third group is the Stone Eaters. Possessing a stone appearance, they intermingle with rock and live beyond the jurisdictional and geological boundaries of the Stills and Stone Law. A fourth entity is the planet itself, which we later discover produces the periodic catastrophes in anger at attempts to tame and extract from it.

The trilogy follows the character of Essun, and in later books her daughter Nassun, both Orogenes. In the first book, as a Season begins, Essun's history is told, including her handing over to the Guardians as a child, her training as an Orogene, her escape and existence hiding among the Stills and her life in the present as the Season begins. Across the second and third books, she searches for her daughter, Nassun, who she is separated from as the first book commences. Both Essun and Nassun separately discover that this current Season is an attempt by another Orogene to bring the Seasons and Orogenes' subjugation to an end. Both Essun and Nassun hold tremendous power to manipulate thermal and kinetic energy and are locked in their separate and combined narratives in a choice either to end life on the Stillness or to heal the harm done by an earlier civilisation and end the Seasons. This earlier civilisation's attempt to gain ever more power did extreme harm to the planet, and so the planet's shaking is its anger and retribution for the injury done to it; the Seasons reflect the ecological harm and the connection of the characters to the stone of the planet. To bring the Seasons to an end, the structures of the Stillness need to be completely undone, including a setting aside of the Stone Laws and a recognition that, far from being immutable, they were part of the maintenance of the Broken Earth.

Stone Law is core to the *Broken Earth* trilogy. Jemisin's worldbuilding establishes the Stillness as a place whose social, political and legal structures emanate from these stone inscriptions and are interpreted through a variety of secondary laws and sometimes suppressed historical research. Stone Law is the basis on which the entire governance system, including its racial divisions, its emergency processes and its self-understanding, emanates. The hierarchies among the groups in the Stillness, the specific roles within the hierarchies, the enslavement of the Orogenes and the processes for Seasonal Law are contained within these laws. Presented as common sense and immutable, Stone Law establishes a naturalised hierarchy of authority. Subjugation, the othering of both peoples and the environment, whose violent shaking of the earth creates the 'broken' nature of the world, is all embedded in Stone Law.

Stone Law is not a remedy or reckoning with the broken world but a process of control and subjugation that occludes responsibility for the world's fragmented nature. Stone Law does not question what the causes of the cataclysms might be or what they represent or reflect. The enslavement of Orogenes and their othering, which is maintained via Stone Law transmuted into myths and stories and taught in school curricula, is one example of its legal content and societal impact. Stone Law gives validity to societal narratives of enslavement and subordination, presenting them as normal, necessary and not subject to change or question. Families are taught to be ashamed of and shun those born with these traits. Essun was handed over as a child to the Guardians by her parents. Her husband murdered their son Uche, Nessun's brother, upon discovering that he possessed these abilities. Orogenes often attempt to keep their abilities, and hence part of their identities, secret for fear of being killed or consensually handed over to Guardians by their families and communities (Enright and Ring 2020, 68).

From the outset, excerpts from Stone Law are critical to legal and political worldbuilding and here extracts are included before every section, just as they are in the book. Jemisin's work reflects the contingency of authorship, intention, interpretation and translation of core norms that occurs in all legal orders. Stone Law suggests an ordered system with a clear self-understanding. Yet, from the outset, the tablets are incomplete or obscured, and it becomes evident that the texts vary in content and may even be contradictory. Secondary sources include academic treatises, encyclopaedia entries, government statements, debates, and legal decisions on the status of Orogenes which interpret the meaning and history of Stone Law. Alongside these secondary sources are interpretive guides, including journal entries, letters and annotated research reports. Among these interpretative texts are the project notes and correspondence of an unnamed

academic. It is unclear when in history her research occurs, whether it was just before the core narrative or many centuries before, but her story is of one who questions Stone Law. What becomes apparent from her research is that Stone Law's lore, including the basis for Orogenes' enslavement and the othering of the Stone Eaters, is based on falsehoods, selective histories and conspicuous interpretations. Eventually, she is recalled to the academy, and another researcher warns her that if she keeps pushing, they will cut her funding and limit her access to documents, and if she continues to question she might eventually face murder. No one can contest Stone Law or its rationale. The researcher is a Still, one of the majority that benefits from the system, but being a curious academic is dangerous and she must be made to desist, or she risks ostracisation, or worse. It is dangerous to question the Stone Laws. They must remain immutable. To question them is to question the entire worldbuilding project. As the Stone Law states, '[b]eware ground on loose rock'. Instability must be met with suspicion; only Stone Law rather than loose rock will sustain (Tablet 1, 'On Survival', Verse 3).

Revisiting the stone tablets at the end of the trilogy, several things become apparent. First, the stone tablets insist on a never-ending cyclical understanding of crisis. There is no way to bring an end to catastrophe, so bare survival and an acceptance of the world as is become essential. In contrast, the narrative is about the prerequisite of ending all the past and current structures and systems. There is nothing worth preserving and only by abandoning everything can something new emerge. While a compelling narrative of immutability of Stone Law can be constructed – 'stone lasts, unchanging. Never alter what is written in stone' – it is entirely mutable (Tablet 3, 'Structures', Verse 1). Its rationality, its common-sense nature and its inevitability are all predicated on a hierarchical order and cyclical crisis, which crumbles once the potential for a new iteration of worldbuilding is undertaken.

3 Written in stone

'Father Earth thinks in ages, but he never, ever sleeps. Nor does he forget' – Tablet 2, 'The Incomplete Truth', Verse 2

(Jemisin 2015–2017)

Law possesses both a fictive and a literary form, possessing its own epistemic logic of authority and legitimacy. Before returning to *The Broken Earth*, the paper now turns to consider how law and humanities tackle the question of immutability, looking at stone law as both a literary and legal form. The process of legal worldbuilding includes creating histories, moralities and landscapes that establish the realm in which characters live, including the laws that frame their lives. Worldbuilding is the processes of constructing a world coherent across 'geographic, social, cultural' and legal features and is increasingly a point of analysis across critical literature and cultural studies as well as political geography (Harris 2020, 59; Martin and Sneegas 2020, 15; Zaidi 2019, 15). The worldbuilding of legal orders includes the norms, institutions, jurisdictions and principles contained within a system. The state is the obvious example, albeit, as Goodrich observes, the determinacy of a particular juridical order is more porous given internal and external factors at play in the contemporary global legal context (Goodrich 2010, 153).

This use of stone and law does not always tend towards immutability; for instance, the Pathalgadi movement in India erects stone slabs for a variety of reasons including to represent, to gesture to and to practise rights to land and environmental protection within post-colonial legal structures (Ranjan 2022). These stone structures were originally memorials to ancestors of the Munda tribe but have been reassigned this new role as markers of tribal autonomy (Davidsdottir 2021, 1111). Within Australian Aboriginal societies, rocks are sentient or contain spirits, much as the earth is sentient in the *Broken Earth* trilogy (Yunkaporta 2023, 120, 180). The narrative that

follows is very much a Western narrative of immutability, but one which, through imperialism, has, in places, flattened these other forms of stone law.

Within states, constitutions are intrinsically linked to processes of state building, and often contain aspects of the law purported to have the character of immutability (Doyle 2024, 259). Constituent power is both destructive and constructive, and ending one constitution to begin another is an essential exercise of that power (Wall 2013). Within UK constitutional theory, the more extreme advocates of the binary between the political and legal constitutions use both mutability and immutability to debunk the worth of the other (Gee and Webber 2010, 273). Within the USA, immutability describes characteristics in anti-discrimination law, albeit this does not refer to the law but rather to the personal characteristics of a person or group (Clarke 2015, 2); the USA also describes aspects of customary international law as being immutable (Goldsmith and Posner 1999, 1143). Alfred Verdross described *jus cogens* as having an immutable character or as *ius necessarium* (Verdross 1937, 571; Simma 1995, 33), which is also connected to the natural law (Williams 1998, 97). Each iteration is not the totality of the law within their legal orders. As Gaete suggests, fundamental values are sparingly used in law, or here in legal worldbuilding, because they determine the nature of power via foundational religious or constitutional documents, placing them beyond investigation (Gaete 1991, 149). They lose value if they become commonplace. The following section looks at materiality and invocations of geology, at temporalities and historical origin narratives and mythos, alongside discourse flattening and performance to consider the role of stone law in legal world building.

3.1 Materiality, geology and the nature of stone

In *A Billion Black Anthropocenes or None*, Yusoff argues that geology is neither an innocent nor a natural descriptor; the naming, study and use of stone is imbued with meaning (Yusoff 2018, 10, 67). Stone's materiality as a durable substance to be reshaped into structural and artistic forms and as a material to be written upon is significant to its choice as a symbol of immutability. But sitting alongside is its nature as a substance subject to erosion and destruction. In both a literal and a figurative sense, stone is both a bedrock to be built upon and a keystone that holds what is otherwise precarious together. As Yusoff states, stone is not neutral and how people invoke it as a symbol and use it is central in both real and metaphorical (legal) worldbuilding, often connecting it to its material and geological nature.

The combination of text and stone in a stele demonstrates the material robustness of stone, specifically basalt, as well as showcasing the robustness of the laws that are etched upon it. The Code of Hammurabi clearly attests to this. The Code reveals the potential for multiple meanings, over a prolonged period, to be (re)affixed to laws, even when written in stone (Slanski 2012, 97). This is linked to other examples including the Ten Commandments, the Greek Gortyn Code and Iceland's Law Rock (*Lögberg*) (Ziolkowski 2020, 2). Both the UN Headquarters in New York (United Nations 1977) and the Peace Palace in the Hague (International Court of Justice 2014) have stone replicas of the Code of Hammurabi, while the US Capitol has a relief portrait of Hammurabi among other 'lawgivers'. This cuneiform tablet contains snippets of law and legal thinking from those long dead, yet this piece of stone is presented as indicating an unbroken understanding of law and justice over thousands of years. The Code is an essential narrative of the durability of ideas of justice.

The Code of Hammurabi's meaning is debated. For instance, is it law or law reports? (Slanski 2012, 97) But snippets from its content, such as 'everyone is not equal before the law' or *les talionis* (eye for an eye) are lifted and used as providing proof of the inexorability of such maxims, even if the nature and intent of the same content is contentious (Roth et al. 1997). The abstract 'law' written here has little to do with contestation, even if they are law reports. Rather, it is their continually reaffirmed original stone sources which assume a naturalness disassociated from their political, theological or social origins. Ziolkowski uses both the Ten Commandments and the

Code, alongside other examples of law etched into stone across Greece, Rome, Iceland, Germany and England, to argue that '[t]he law, ultimately, is not simply a text confined under glass in museums or in law-school textbooks; it is a vital throbbing entity inspired by time and place yet constantly growing and being reaffirmed in response to contemporary challenges' (Ziolkowski 2020, 5).

The relationship between materiality and immutability is clear in the law-giving aspects of Abrahamic religions. The Ten Commandments or Decalogue, which were written in stone in both their iterations, exemplify the use of stone to document immutable laws (Fraade 2005, 81). Derrida points to the *aporia* that accompanies the Decalogue, attaching itself to an even more durable stone, the law of the mountain (Derrida 1991, 3). The giving of stone law by God is accompanied by a grand performance, adding a layer to the process (Peters 2008, 179, 180). Derrida points to the legal authority that constitutes those laws, making them inaccessible and, also, immutable. Within the biblical context, the durability of stone over other materials, like papyrus, is significant. The stone will last for perpetuity, though the first version was smashed into smithereens. The second set of tablets symbolises the renewal of the covenant or contract between God and Israel. The stone is replaced, but not the content. Invoking these stone commandments, the Book of Genesis and Moses, like Hammurabi, as a lawgiver, underpins their role as legal norms but also their role in shaping society (Römer 2013, 81). The Decalogue and Moses' laws remain widely invoked, even in secular settings, such as in justifications for imperialism and space exploration and to justify persisting gendered norms (Miles 1995, 317; Rubenstein 2022, 41, 79). Here, it is posited that a partial explanation for this is their relationship with the materiality of stone.

Halder sees law as emergent from geology, and strata of dirt and stone as critical to law's material imaginary (Halder 2021). Stone's three-dimensionality is likewise relevant to its materiality and the imaginary of law that regards it as both real and symbolic. Kayman centres the statuesque as a three-dimensional creation which exists as an aesthetic form like Hammurabi, the Ten Commandments and others; it sets law up and bears it 'on its face', law emanates from it, its three-dimensionality allowing it 'to intervene in its circumambient space' (Kayman 2013, 5). Kayman describes how the Athenian Law of 337BCE that granted tyrannicides immunity was written on two stone pillars on either side of the Senate House and Assembly (Kayman 2013, 2). Such displays on stone were a form of legal proclamation common in Athens. Kayman argues that while the text was there to be read, the pillars were also there to be seen. They had a monumental and memorial function utilising a statuesque form that was both a visual assertion of power and democratic 'engagement through writing' (Kayman 2013, 2). The multiplicity of copies of the Code of Hammurabi shows the continuing importance of stone's three-dimensional materiality. It is intended to continue to intervene in those places where it is displayed.

3.2 Temporalities, historicisation and myths

A congruence between temporalities and materiality is essential to understanding stone law and its place in legal worldbuilding. Goodrich suggests the origins of the word 'law' lies in *nome*, which he traces to earth/dirt (Goodrich 2021, 28). For Fitzpatrick, the common law casts its origin in time immemorial, with a 'notoriously unchanging quality', while contemporaneously it is also the origin of what is now (Fitzpatrick 2002a, 236). It has both a *longue durée* and a present unchangeability. The common law, in contrast to stone law, relies on both its unwritten character and its incorporeality. Though written in caselaw on paper and online, its appearance of incorporeality is part of its specific exceptionalism. The Code of Hammurabi also undertakes a temporal leap from the past to the present that infers both continuity and immutability. Both (un)written and (in)corporeal demonstrate that both forms of symbolism, while apparently opposite, produce similar temporal results.

The Ark of the Covenant, which housed the Ten Commandments, its preservation and veneration, is another element of this double temporality. Its original location in Jerusalem, a

location which is subject to multiple eschatological narratives as the focus of the end of the world for Christianity, Islam and Judaism, makes the stone law part of both a beginning and an end. The Ark of the Covenant is subject to much debate as to its whereabouts, with some claiming it is still in Jerusalem, on the Hill of Tara in Ireland or, following *Raiders of the Lost Ark*, a US government warehouse. The Irish location places it close to the prehistoric site at Newgrange. According to McNamee, stone-carved hieroglyphs at Newgrange were likely accompanied by 'practices recognisably "legal" in the sense of implying patterns of norms and ideas of justice' (McNamee 2013, 182). Even during periods where the stone law is 'lost' like the Ark or indecipherable like Newgrange, these are extraneous to their import because the stone's durability means it travels across legal and political time intact.

This double temporality is present in a variety of legal origin stories and the start of a specific legal order's worldbuilding processes. Constitutions and treaty preambles sanitise successful revolutionary moments of rupture or wars of destruction to produce legitimacy and stability, imbuing them with more liberally palatable constitutional/international legal moments. Revolutionary ruptures – tamed as constitutional moments – re-lay the foundations of stone law, producing law at that moment but also law that is often, at least partially, a continuation. The French revolutionary model of calendar clean slates and attempts to move on from bad pasts or monstrous moments through constitutions such as in South Africa are examples of attempts to break stone law into smithereens – yet, while still upholding core liberal constitutional norms.

Post-colonial constitutions, often in the same moments, are acts of retrieval or the finding of a utopian legal past to resurrect other forms of stone law lost to colonialism, while also continuing colonisers' constitutional norms to attain legitimacy (Roux, 2021), for example the partial and unsuccessful attempt by members of the Irish judiciary after independence to reinstate Brehon law (Mohr 2007, 247; Muvangua and Cornell 2012; Nkosi 2018, 625). But, in Ireland at least, they found they could not overturn the 'ancientness' and embeddedness of the colonial common law or inherited constitutional norms. The UN Charter is yet another example of a restart which restates many of the pre-World War II power structures, failing to alter forms of domination within international law even if some substantive laws, for example on the use of force, shifted. Unchangeability and *longue durée* exist together, producing these continuities.

The historicisation of law and the necessity of fictional or mythic narratives to locate law as older than it is, to spend vast energy 'finding' (inventing/writing) its sources and dismissing any contestation of its content, is common (Wilkinson 2024, 1). The significance of stone as symbolic is also important here, as it enables an ancient history not possible on manuscript or paper. This is true in constitutional discourse, with England's ancient constitution (Pocock 1967; Ward 1999, 37), continental European ideas of Roman or Germanic roots (Wauters and de Benito 2017, 6, 31) and in US Originalist discourse, or common good constitutionalism (Barrett 2016, 1921; Scalia 1988, 849). But there is no independent reality as regards the 'truth' of what counts as canonical legal roots. Sometimes, as in England, the constitution is depicted as ancient, or at least as a medieval nationalist shield, keeping the state safe from revolution, ignoring the many revolts that took place (Sobecki 2017, 1). English stone law mythmaking is also a bias against civil law – or simply writing the law down on paper as foreigners do – in favour of the ancient common law which, in turn, vernacularises it and places it as part of geological permanence (Sobecki 2017, 5), a vernacular that relies on ancientness to separate it from popular contamination. Anyone who has attempted to teach 'a use upon a use upon a use' is acquainted with just how vernacular the common law is (Jones 2002, 67). The extensive use of Latin in international law, such as *erga omnes*, *opinio juris*, *jus cogens*, *pacta sunt servanda*, *jus ad bellum*, *terra nullius*, directly connects it to a civilisation that is long dead but whose stone structures remain visible throughout much of Europe: as Lazar suggests, making the past omnipresent (Lazar 2019, 185).

Fitzpatrick proposes that even though the mythos associated with a god(s) is no longer explicitly evoked it still forms part of modern law through a process of 'domestication of the deity' (Fitzpatrick 2002b, 52–54). Stone's durability, its role as core law and its use as a renewal of a pact

originally with a god – now, as Fitzpatrick argues, domesticated and situated as with a people – is important in understanding it as formational in civilisational discourses, and from here as significant to legal worldbuilding. The continued re-representation of the ancient, for instance in the Code of Hammurabi, connects modern domestication to an ancient lineage, enhancing its immutability. Goodrich dismisses the ‘ancient’ claims of the common-law tradition, arguing that they are ‘a site of disappearance, the figures of Hobbes’ decaying sense that evaporate into an image, a maxim, a dogma, that almost entirely relies on unsubstantiated myth’ (Goodrich 2021, 30). Whether the founding of the common law is grounded in myth is less essential than the overarching argument that all traditions in law are formed of myth and materiality. The invocation of the ancient relegates present constituents and their relationships with societal legal co-constitution in favour of temporal pasts which grip the present. But this is not unintentional or haphazard.

Fitzpatrick points to a narrative of futility in seeking the undiscoverable, but as Fitzpatrick also argues, the ‘historical derivation, of this authority as emplaced can be discovered, and that authority is thence revealed as partial and contingent’ (Fitzpatrick 2002a, 234). It is the narrative of undiscoverability that stone law serves. Fitzpatrick describes modern law and modernity as shared white mythologies full of contradictions (Fitzpatrick 2002b, 6). Those contradictions are apparent across stone law, law that is ancient but contemporary, that is without author but authoritative, that ought to lead to some dispute as to illegitimacy but instead creates a cohesive order. Since its mythic elevation of law creates a positive impression, the possibility of questioning diminishes, including, as will be discussed, democratic or feminist queries (Fitzpatrick 2002b, 6).

3.3 Flattening discourse and performance

Stone law’s three-dimensional quality links to its performativity and law’s ‘kinetic’ qualities that include law as spectacle where the audience, here for stone law, plays a specific role in producing immutability (Sarat et al. 2018, 1). The spectacle in the production and display of law in stone – even if it is only heard of and never physically seen – alongside the (un)intended responses of the (un)intended audiences becomes essential to how discourse unfolds. The durability and materiality of stone law enables the performance to be repeated and the site to be venerated and the law to be beyond challenge as ‘good’. As Goodrich writes, ‘materiality precedes classification and normative iteration, however age old they may claim to be. It is for this reason that law claims [...] to have the permanence of stone, to be built, like the Church upon rock’ (Goodrich 2021, 28–29). There are multiple examples of such laws across documents, architectural features, tablets or even events that while their continuing legal relevance is doubtful, their role in public imagination is large. Magna Carta is a prime example in Anglo-American legal consciousness that crosses into literary fiction and performance such as productions of Shakespeare’s *King John* or recent film versions of Robin Hood, a process of co-constituting totemic legal/political core law (Houghton 2024, 1).

Williams describes how law flattens and confines complexities; it also creates a false sterility and stone law is particularly proficient at that process in legal worldbuilding (Williams 1991, 4). For instance, in the grander moments found in treaty and constitutional preambles, under a weight that intimates reasonableness and wisdom both in composition and in affect, even where neither is accurate, flattening occurs (Dayan, 2011). These hortatory introductions often intimate unreasonableness among those that oppose or those who find the content oppressive. As forms of core law, these instil ideas of what citizenship connotes, who are citizens, who are semi-citizens and who are not. They point to what moments and histories to prize or where their origins lie and where they do not. Law’s affects also impose identities upon individuals and groups, as a gender, as a race, as a labourer, as a constituent or constituted power holder, as able bodied or as (un)reasonable, and infuse broader political and private spaces as operationalising those identities as natural and pre-ordained. Law, and especially stone law, is often proffered as sterile and

reasonable but its affect is an assortment of sentiment. The performative nature of stone law is essential to its import. Stone Peters argues that 'law is the ultimate performative institution' and a continual 'site of origin' (Peters 2008, 179, 180, 187). Law's performativity constitutes the stone law as well as its perpetual incontestable authority as its performance turns into its own justification (Butler, 1990).

Yusoff argues geology and its use determines the geographies and genealogies of colonial extraction; as settler colonialism it is a 'category of the inhuman that transformed persons into things' and immutable law is firmly embedded in that practice (De Lucia 2020, 329; Yusoff 2018, 10, 67). Within critical race theory, law is instrumental to white supremacy, and much of it, including constitutionalism, flattens inequalities and harms rendering them invisible (Crenshaw 2011, 1253; López 2006, 27). For example, in the Americas, Lockean constitutionalism is centred on the proper use of land, its transformation from dirt into a constitutional foundation, a process that indigenous sovereignty could not aspire to (Tully 1995, 71–73). Here stone forms part of turning 'wilderness' into property, with the erection of stone walls creating an immutable permanence and performance of ownership (di Bonaventura 2007, 115): a worldbuilding that flattens the existing legal world of indigenous sovereignty. By virtue of their embeddedness through colonial worldbuilding, other competing values are labelled 'heretical, unconstitutional' and corrupt (Gaete 1991, 153–66).

Derrick Bell's work intermixes fiction with legal academic intervention and shows how domination operates within US law. He writes a counter-factual of the US Constitutional Convention where a time traveller from the future travels to 1787 to alter the contradictions of slavery and equality in its core law (Bell 1985, 4). Such processes of reclamation from core law, in Afrofuturist, Africanfuturist and Afrojucism, repossess identities and complexities smothered beneath imperialism, the slave trade and domination (Capers 2019, 116). A critical aspect of that reclamation is the recognition of stone law for what it is, a flattening and confining law which must be fractured to facilitate new ways of being whose effect will not be to harm and to oppress. It also means, as with the *Broken Earth* trilogy or Jemisin's other writing including *The Ones that Stand and Fight*, a response to Ursula K Le Guin's *The Ones Who Walk Away from Omelas*, that rupture and radical change are required, that neither giving up and walking away from the harms nor incremental reform to alter such apparently unassailable origins is possible (Jemisin 2018, 1; Le Guin 1975). The flattening must be undone through a new performance.

Keith Jenkins argues there is no way of attaining an objective truth free of prejudice and bias, and that history, and we should add law, is an aesthetic genre (Jenkins 1991, 34–35). Literature, law and history have a shared reliance on narrative for meaning and none can be objective or purely scientific (White 1974, 274). Legal history, and in particular the narrative we establish around those histories, has core aesthetic, narrative, literary and material components that contribute to worldbuilding within legal orders. There is also a history/story/narrative to discover about origins that is not in opposition to the purely scientific positioning of law, especially if we understand that positioning as an aesthetic choice rather than objective truth. Both the positivist and the natural law history of law or that of the (legal/political) heroic or naturalist (scientific) origins of constitutions use narrative for meaning and produce forms of mythmaking akin to the attribution of origins written in stone.

Goodrich suggests that foundational texts create fictions of origins and contribute to notions of beginnings (Goodrich 2021, 10). But the ability of constitutions, treaties or doctrines to do this, to become the new stone law, is reliant on letting the older stone law fall to smithereens, and even then, as with the Decalogue, this does not mean that the law itself cannot be re-inscribed on to new stone, newly displayed and (re)performed, signifying a continuity with that past that rehardens its immutability. Jemisin in the *Broken Earth* trilogy attempts to show the rupture truly needed to end the immutability of stone law. The article now moves to show the specific use of stone law within worldbuilding in *The Broken Earth* and what is needed to dismantle it.

3.4 Legal worldbuilding in *The Broken Earth*

‘[obscured] the ice white eyes, the ashblow hair, the filtering nose, the sharpened teeth, the salt-split tongue’ – Tablet 2, ‘The Incomplete Truth’, Verse 8

(Jemisin 2015–2017)

The *Broken Earth* trilogy’s name and three book titles each possess geological rootedness. Stone is everywhere, from what is broken and breaks, to the sky, to at least two of the sentient beings, the earth and the Stone Eaters. Stone is durable and, in a world continuously going through civilisation-ending events, stone is lasting and more likely than technology to endure cataclysm. Much like constitutional law it is intended to endure. Neither the Stone Law nor the secondary interpretative documents reveal the cause of the catastrophes or how to resolve them. Rather they maintain perpetual crises and subjugation.

Stone’s connection to materiality and geology is central to the trilogy. The entire worldbuilding of *The Broken Earth* relies heavily on the connection to Stone Law, encompassing three entities: the Orogenes, Stone Eaters and the planet. The Orogenes and the Stone Eaters are both presented as unnatural, standing in contrast to the natural Stills. The Orogenes are ‘folly made flesh’, particularly their kinetic link to the planet, but, as the epilogues reveal, it was attempts to conquer nature and to use the Orogenes’ power that caused the Seasons and created the Stone Eaters. But they, the Stills, obscure that folly. The real ‘folly’, and folly it is, that causes the planet to tumult only emerges from its veiling when the protagonists reject the immutability of their ways of being as set down in the Stills’ Stone Law.

Becoming a Stone Eater is an active choice, one of the few open to Orogenes. In choosing to become stone, an Orogene transforms themselves, over a protracted period, setting themselves apart and living on the peripheral jurisdiction of Stone Law, and often also undertaking acts of revolution. They are unattached to any solemnity or importance which Stone Law possesses. Rather, according to Stone Law, Stills should ‘[l]earn the lesson of its [Stone Eaters’] creation and beware its gifts’ (Tablet 2, ‘The Incomplete Truth’, Verse 7): a clear warning about both the knowledge they might impart and their non-specific recklessness. Stone Law refers to them as ‘it’, as inanimate objects. But, as with the earth itself in the trilogy, Stone Eaters are sentient and have their own existences. The Stone Eaters, by taking stone form, are not objects like the stone tablets. They do not undergo inscription and are not subject to its code, nor are they immutable. Rather, their sentience and their knowledge are dangerous, as is their ability to evolve. The Stone Eaters resemble the geological reality of stone more closely than what is inscribed as natural on the stone tablets.

The trilogy has two co-existing temporalities, that of the Stone Eaters and the earth and that of the Stills and the Orogenes. The latter two rely on the collating and accepting of unarguable truths inscribed on stone, which is also the basis on which they understand why the world is as it is, whereas the former remember why the present order is mutable, because some were present at its creation and know what went before. This raises questions of memory, of harm and processes of remembering that are often key motifs in feminist science fiction worldbuilding but also sometimes contained in constitutional preambles (Houghton and O’Donoghue 2020, 38). By becoming a Stone Eater, Orogenes increase their lifespan, maintaining their sense of self across geological temporalities. Their very evolution is antagonistic to the notion of immutability set in stone. Stone Eaters are durable but not immortal, living outside civilisational time and possessing otherwise suppressed knowledge. The Stone Eaters remember their lived experiences across geological time, whereas the Stills attempt to replace memory with an official history of crises which Stone Law memorialises. This choice by the Stills bleeds into the future.

The Stone Laws portend towards the same oldness as the Stone Eaters and the earth. Yet their origins are unclear, but more recent, and their content is often coercive, descriptive or

exclusionary (Yusoff 2018, 22). Inscribing on stone gives an impression of ancientness. But it is civilisational destruction and myth creation that imbues Stone Law with an existence beyond quotidian law-making. Much as constitutions have a place apart from normal legislation because they are core to the legal worldbuilding necessary to juridical orders, the Stone Law serves a similar function. In the trilogy, Lorists, like legal academics, add to Stone Law's interpretation by collecting myths or delving into origin stories, but these too become calcified, with any narratives that contest accepted history dismissed and trivialised as 'pop' and of little substance. The official origin myth, even if shrouded in authorial and other mysteries, remains intact (from Lorist tale 'Ice Kisses', recorded in Bebbec Quartent, Msida Theater, by Whoz Lorist Bebbec).

The Stills' Lore Council states that slavery is intrinsic to the Stillness's ways of being: '[m]aintenance of this land is peculiarly dependent upon seismic equilibrium, and by an imperious law of nature, none but the orogenic can establish such. A blow at their bondage is a blow at the very planet'. Orogenes' enslavement is intricately connected to the planet and the natural order. But further than this, it is not just their kinetic power they are subjugated for; they are also not full persons:

'[w]e rule, therefore, that though they bear some resemblance to we of good and wholesome lineage, and though they must be managed with kind hand to the benefit of both bond and free, any degree of orogenic ability must be assumed to negate its corresponding personhood. They are an inferior and dependent species.' (The Second Yumenescene Lore Council's Declaration on the Rights of the Orogenically Afflicted, Jemisin 2015–2017)

Stone Law reflects their immutable inferiority by constructing it as such, and constructing it in a way that flattens any possibility that the absence of equality may be contested.

The forces that produce gender identities, as deftly outlined by Judith Butler, are very much at play in the Stone Law (Butler 1990). Various characters' realisation, embracing, hiding and self-constitution of identities is a confrontation with Stone Law. The trilogy challenges identity as an immutable, Stone Law classification, reminiscent perhaps of the immutable characteristics of US anti-discrimination law. This extends to the planet and its moon, which rejects an identity as a non-sentient collection of resources to be exploited, very much in line with the emergence of posthuman law and the notion that the planetary and extra-territorial life is ours to do with as we choose or, as discussed earlier, some indigenous legal traditions (Jones 2021, 76). All performances, as Butler argues, are acts of creative constitution (Butler 1990). The fractured relationship of the two central characters, Essun and Nassun, occurs because of Stone Law and their reconciliation can only occur after they have (re)constructed themselves as they truly wish to be. Only at that point can they create a new understanding between themselves and bring an end to the immutability of Stone Law.

3.5 The affect of Stone Law in The Broken Earth

Jemisin calls attention to Stone Law's affect across every aspect of the Stillness. As is often the case within constitutional origin stories, there is no strict delineation between legal text and performance, but rather the materiality and historicisation of law affect its performance and affect. '[L]aw ensnares us in a net of affects, from fear to dread, anticipation to guilt, relief to devastation' and this explicitly occurs in her narrative (Reichman 2017, 109). Stone Law, or any core law, operates beyond the immediate stone edifice or the constitution into private spaces where law's affect is at times felt by one person alone, by a group or by everyone within Stone Law's 'terrain' (Reichman 2017, 109–10). These are key to understanding the necessity of producing some laws as Stone Law. Its imperative, the emotionality of its terrain within the trilogy and its affect ties its materiality, its geological character and its temporality to immutability. The Stone Law represents a covenant or pact among the Stills; if they abide by these rules, some will survive the apocalyptic events and not have to entirely begin again: a tangible social contract put into practice and at the centre of the Stills' worldbuilding. While they may lose material possessions and even their lives

during a cataclysm, their ways of being, which includes domination of others, endure. It is the immutability represented by Stone Law which is key.

Jemisin reveals the politics of Stone Law and the lived experience of that law, the traumas that it brings alongside the narrow benefits accrued to the Stills (Nussbaum 1995). Jemisin brings 'law's excluded Others' to the fore (Anker and Meyler 2017, 10). Critical race theory foregrounds the scholarly voice in the 'material, aesthetic, emotional, and spiritual experiences of people of color' alongside storytelling to interrogate law (Capers 2019, 101, 104–105, 125). These suffuse Jemisin's *Broken Earth* trilogy, where race alongside class, hierarchy and sexuality are thematic and Stone Law maintains those hierarchies. Stone Law delineates both directly and obliquely three paths for Orogenes; death, enslavement or obliteration of self. Those who refuse to submit are murdered or kill themselves and their children to avoid (re)enslavement (Morrison 2007). Those enslaved are trained, ranked and branded via rings, an outward projection of their kinetic power, rank and utility. The number of rings signifies increased independence. The more useful you are, the more power you have within the confines of the enslavement. This has resonances with the operation of slavery in the Americas, the house/field slave and the overseer, though, as with racialised slavery, in the *Broken Earth* trilogy the ranking does not overcome the ties that othering and enslavement produce. Law is essential to this process. It underpins and naturalises how this occurs (as does geology) (Arvind 2012, 113; Camus 2006, 647; Gross 2008, 283; Oakes 1995, 2023; Rana 2010; Saito 2000, 1135). No matter their privileges gained, those enslaved understand their position and Stone Law presents this as the natural order from which there is no deviation. Challenging the natural order places you outside the law and beyond the community.

The affect of law in the Stillness includes infanticide, self-loathing and kinship alongside moments of trauma. Infanticide is a reminder of other African-American feminist authors like Toni Morrison, who placed the terrible choice confronted by women between slavery or death for their children at the centre of her novel *Beloved* (Morrison 2007): a choice that directs you to consider the full horrors of an enslaved life and the choices that haunt it (Dawkins 2004, 223). The affect of this Stone Law is to produce choices that appear fated but are in reality constructed. This includes infanticide but also the apparently voluntary handing over of orogenes as soon as they manifest their abilities. Parental fear, revulsion and accepting of Stone Law as the natural order furthers the othering processes. Unnatural things, killing your child, eagerly giving them to enslavement or forcing them to hide their identity appears natural. Some Orogenes, often as children, are lobotomised and attached to machines, taking away the vestiges of their selves to waylay crises: the opposite of choosing to become a Stone Eater, which while fundamentally altering your body maintains your sense of self. Such use of children to produce a partial utopia is reminiscent of Ursula K Le Guin's *The Ones Who Walk Away from Omelas* and the horrors deemed tolerable to those that reap its benefits (Le Guin 1975). It is also reminiscent of neoliberal governance and law, where the inevitability of suffering of some, often the weakest in society, is axiomatic to its existence (Whyte 2019, 178).

The *Broken Earth* trilogy raises our consciousness of the 'power and historical patterns of oppression, exploitation, and marginalization' manifest in laws implicitly written in stone (Sarat et al. 2010, 7). The books contour the processes of creating the apparent nature of law's immutability and its role in creating and sustaining harm so naturalised that we no longer see it because it has become 'illegible' to law (Sarat et al. 2010, 7; Epstein 2021, 263). The specificity of Stone Law is such that, as Gaete suggests, it is sparingly used (Gaete 1991, 166). It is not the entirety of the legal worldbuilding, but it is its core.

4 Immutability in legal worldbuilding

'[obscured] those who would take the earth too closely unto themselves. They are not masters of themselves; allow them no mastery of others' – Tablet 2, 'The Incomplete Truth', Verse 9

This section considers where legal worldbuilding relies, partially at least, on immutability. As mentioned earlier, worldbuilding constructs a coherent polity that is at first imagined, and through social, cultural and legal processes, made reality. *Jus cogens* is core to contemporary international law's understanding of itself that goes beyond strict positivist accounts that were deemed unable to respond to humanity's horrors, even if *jus cogens* falls well short in achieving that. The very existence of a state is innately connected to constitutional law, and constitutions project what kind of state they claim to be. Each serves differing purposes, yet it is in their differences that the variety of uses, modes and applicability of ostensible immutability becomes apparent. Constitutional law and *jus cogens* play small, but significant, parts in their overarching juridical orders; they are not intended to encompass everything. Likewise, this discussion focuses on the characteristics that may be like Stone Law. The article does not, nor can it, explain them in their entirety. Looking at two distinct forms of legal order, international and domestic, also enables us to consider the multiplicity of ways in which immutability operates across different scales (de Mars and O'Donoghue 2024).

The array of constitutions creates a rich canvas to consider immutability. Constitutions define the parameters of who the people are and who they are not, who belong within the community, and who possess the attributes necessary to obtain full citizenship and exercise constituent power (O'Donoghue 2014, 84). Constitutional amendability varies, but, beyond a few examples, is more difficult than other quotidian law (Doyle 2020, 45). Thomas Paine argued that each generation is as capable as any other to amend and/or create constitutions and the dead should not control the living, but this is rarely embraced (Paine 1894, 312). Meanwhile, *jus cogens*, or in direct translation 'compelling law', resembles the *Broken Earth's* Stone Laws' alternative moniker, peremptory norms. *Jus cogens* is vital to contemporary international legal worldbuilding. Its origins are debatable, and as with much of international law, there is a fascination with its 'authoritative' content. These concerns sustain each other, as the debate about its nature strengthens its authority, while those who question its origins, value or content may be dismissed as 'pop', though not to the extreme of Yaetr Innovator Dibars, who faced ostracism from her academy. A plurality of techniques co-exists, reflecting their contexts, but with each possessing similar worldbuilding roles within their legal orders.

4.1 Materiality, geology and the nature of stone

In naming, renaming and substantive claim-making, materiality is significant to *jus cogens*. *Jus cogens*, in contrast to most constitutional law, however, has an inherent intangibility that enables its immutability to be repurposed and expanded as more of its substantive content is 'found'. Thus, while it may be difficult to locate, it still serves as a bedrock for much of international law. Historically, the International Court of Justice was reticent to invoke *jus cogens* and this may partially be due to the 'mega-politics' of some of the questions at hand, including sovereignty, the prohibition of slavery and genocide, each of which are particularly significant to the process of decolonisation and so the possibility of a new form of international legal worldbuilding from beyond the West (Ruiz Fabri and Stoppioni 2021, 153). When the International Court of Justice does invoke them, according to Fabri and Stoppioni it is often to place the question before the court beyond mega-politics into the realm of the peremptory (Ruiz Fabri and Stoppioni 2021, 153). This step, however, halts any dismantling or rebuilding of the international legal order as the solution is found in debating the substance and procedure of a long-existing entity, not something created in a new global legal order.

At least some of *jus cogens'* substantive content, most particularly claims of self-determination, are, in places, represented in stone, for instance the boundary markers of Western Sahara (Smith 2018, 529). *Jus cogens'* materialism is also apparent in its inscription in a dead European language and its identification, and its authorship via the International Law Commission (ILC). Peremptory as a moniker reflects *jus cogens'* status as belonging to a distinct form beyond the rank of usual law.

It holds several names all at once. The non-direct translations into English or French as peremptory norms forms part of that process of reinscribing in the vernacular. Their Latin moniker, a common linguistic technology of international law, the use of dead language, also suggests an ancientness: as old as Latin or a continuity of justice from Rome. Using Latin is a Eurocentric choice, one that brings with it the broader ramifications of the history of European international law and its role in imperialism, slavery and domination.

Constitutional law has an essential materiality. Whether the documents in museums behind glass or the pocketbooks or longer texts with specific fonts and covers carried by law students, the definite ways in which constitutional law is tangible and imbued with significance is important. As Kayman outlines, the three-dimensionality forms part of law's proclamation, suggesting that the law should be read, but it should also be seen (Kayman 2013, 2). These documents are memorialised and engaged with through the materiality. The grand performances, aligning constitutions with kinetic energy, or as Derrida describes, an *aporia* that accompanies the foundation of the law of the mountain, are essential. In Ireland, this included a Catholic mass and issuing a stamp when the 1937 Constitution came into operation (Godson forthcoming, https://po.stalmuseum.si.edu/object/npm_2011.2005.224). Fifty states have 'constitution days', which includes, for some states like Brazil, Poland, Norway and Mexico, public holidays. Durability is created through such practices. The materiality of the documents themselves, the forms of proclamation they take and the performances which accompany them set them apart from other laws. It is through these processes that they become stone law.

Constituent power plays a specific role in creating immutability within constitutionalism, especially versions of constituent power calcified in the past or given over to a specific body. Authors of constitutions can be very well-known figures, and their status, as in the USA, as founding fathers such that only a re-founding could displace them. Constitutions whose drafting include religious oversight or preambles, as with South Africa, invoking 'god', create an additional infallible authorship (Orgad 2010, 714). Constituent power's special character puts it beyond everyday law-making, making it almost magical, untouchable and romanticised. Feminist constitutional theory, often in response, is about de-romanticising those moments and making them every day to undo their apparent immutability (Houghton and O'Donoghue 2023, 412). In doing so, feminist articulations centre constituent power's destructive and constitutive power. It is necessary to undo the legal worldbuilding undertaken in women's absence and the harms produced, and, much like the conclusion of *The Broken Earth*, reveal their mutability, turning Stone Law, and the legal order it constructed, into smithereens.

4.2 Temporalities, historicisation and mythos in law

Dating *jus cogens* and constitutions can be a complicated exercise. *Jus cogens* is both historicised as ever present or as a post-World War II practice, albeit with few tangible exemplifiers of either. The English Constitution is ancient Anglo Saxon, is Magna Carta, is steeped in a very bloody, but apparently bloodless, Glorious Revolution. Its authorial voice is at once the world's oldest parliament or the writings of AV Dicey. This seems challenging to reconcile with immutability, yet this mutability is central. It always existed. It was just that it was occluded, much like the Code of Hammurabi was 'missing' and is now found, or the Decalogue that remains lost. These temporalities are also part of the legal worldbuilding; for instance, preambles often reflect a previous trauma of revolution or colonisation, while a new constitution aims to prevent their re-occurrence, worldbuilding that looks both forwards and backwards.

Under calendar time, some constitutions are very recent in origin, while others may stretch a few hundred years. But several temporalities often co-exist. Some take on an air of immutability that suggests that they are without author, to be in some tangible way connected to God, or an ancientness that puts them beyond authorship. But much research still goes on to 'find' the originators and to ascertain what they meant, which suggests that these mysterious authors were

always there. Constitutional law ranges from the mundane to the acute, including, for instance, states of emergency and reproductive justice. What is included/excluded from constitutions is both a theoretical debate and context specific. Choices made to include, exclude or to be silent on, for instance, gender equality, impact directly on the lives of at least half the population, sometimes long after those decisions have been made. Just as in Jemisin's narrative, these core laws are about what you do or not do, on a quotidian basis while also being ever ready for crises, the potential for which is permanent.

England's ancient constitution, (Pocock 1967) or Roman law or Greek philosophy, or indeed the guidance of 'god' each suggest a different timeline of authorship (Wauters and de Benito 2017, 6, 31). Either religious or secular natural law as constitutional interpretive guide or gap filler is another (Bradley 2017, 397). The USA's recent return to the English common law of Coke and Blackstone as a source of US Constitutional law to deprive women of bodily autonomy appears rooted in specific authors (Finnis and George 2022, 927–37) whose publications predate the foundation of the USA and its constitution. Yet Coke's idea of 'finding' the common law relies on the notion that while it had 'attained concrete form' through Parliament, the judges and the King in Council, it is an ancient thing (MacKay 1924, 215). For Blackstone, natural law was less significant but made aspects of law inevitable as it coincided with man's self-interest, agreeing with Coke that it was not possible to assign reason as that reason was lost to the mists of time and was anyway inevitable (Lobban 1987, 324). In this way, *Dobbs v. Jackson Women's Health Organization* is rooted in those mists of time. These multiple temporalities are hidden beneath the use of constitutional language and in their 2022 judgment the majority in the US Supreme Court make use of Coke and Blackstone to naturalise control of women's bodies as unchanging, inevitable, immutable law.

Temporality is an essential trait of myth-making and placing of a legal narrative apart within worldbuilding (Lazar 2019, 185). The ILC, a body of (mostly) men, sets out to 'find' international law (O'Donoghue 2012, 806). The ILC places *jus cogens* in the realm of those laws whose age, authorship and extent are vague to convey a seeming immutability and authority. What is particularly useful about *jus cogens* is its comparatively recent, though ancient, origin, its global importance, and the spaces into which it may not go, even if they are sites of mass harm. *Jus cogens'* nebulous history moves it across time in a non-linear fashion (Weatherall 2015). In 1963 the ILC were insistent that it existed for a long time in some inchoate form. But by then reverting to procedure, the ILC centred on differences of opinion on their *raison d'être*, rather than on their foundations. The ILC proclaimed that all agreed on their existence as a higher social need, arguing 'ultimately it was more society and less the law itself which defined the content of *jus cogens*' (Weatherall 2015). That statement raises several issues: first what society the ILC is referring to in 1963, during a period of decolonisation, and second, its relationship to law-making and constituent power within international legal worldbuilding in the post-World War II era.

Weatherall suggests *jus cogens'* emergence as a post-World War II phenomenon stands in contrast or even 'admonishment of Westphalia and state sovereignty' (Weatherall 2015). If Weatherall is correct, this requires a temporal leap of faith from the ILC to argue that *jus cogens* existed for a long time, in admonishment of Westphalia, while contemporaneously arguing that all the procedural steps the ILC ultimately wrapped them under in the confines of the VCLT still support the interstate positivist system. *Jus cogens* are old but not, are substantive but largely procedural, and support the creation of a new international legal order that is post-Charter but also old (Rezadoost 2024, 1). They inhabit multiple time periods at once.

Stone law is interested in the extreme crisis moments of a society while the procedures are the quotidian reality of their operation. But the potential and cyclical nature of crisis/catastrophe is presented as natural and even reasonable, albeit contested by feminists and critical scholars alike (Gilman 1915). This gives a rationale to both the procedural and the substantive as natural and required (Charlesworth 2002, 377–92). That *jus cogens'* content often relates to 'monstrous events', slavery, torture or genocide, aids in their necessity narrative. There is a single solution to

the monstrous events, just as there is to the Seasons of the *Broken Earth*, placing their content beyond question (Garapon 2020, 20). Stone law speaks across time, often a much shorter time than might be first supposed. But by creating a lengthy unbroken history, broken except in violation, it establishes a legal world where these specific laws become ever more binding (Brown 2007, 46).

4.3 Flattering discourse and performance in law

Authorship and the rationales for stone law's content are rarely pierced. This murkiness adds to their worth, which then adds to their validity (D'Amato 1990, 1; Orakhelashvili 2006). This appears conflicting. We normally do not trust unknowable authorship. In an era where democratic legitimacy is theoretically important, even in the realms of international law and global constitutionalism, an absence of authorship or *post facto* endorsement seems at odds with legal legitimacy. But this in turn impacts discourse and the ability to challenge and contest. The *Broken Earth* trilogy demonstrates how this happens. And it is a process familiar in law, a belief in forefathers – and it is usually forefathers – having superior knowledge and an exceptional understanding of what is necessary. They possess a clarity that we do not, and while we may not know or even agree with their beliefs, aims or objectives because the law is seemingly old, created by those superior to us with absolute knowledge, we are unable to contest.

Constitutions can only be ended by their own catastrophic violation. They foresee no end for themselves (Wall 2013, 58). The authorial wit required to write such wise laws is such that, except for constitutional amendment, often a complicated task embedded within the constitutional structure, such wit is assumed to be unattainable. The flattening of complexity, as Williams describes law undertaking is entirely evident. The compromises, contestations and omissions that will have led to the constitution itself are flattened once it takes the form of stone law, including the destruction of the previous incumbent (Williams 1991, 4).

Invocation of *jus cogens*, and its use by the International Court of Justice, as has been argued, is vanishingly rare and rarely successful.¹ But its rare use or proceduralist life belies its significance. The list of its potential inclusions is stark in its absences. Just as Stone Law focuses on the survival of the Stills, *jus cogens* centres on issues chosen to be of interest by dominant states and academic elites. Some such as piracy are related to commerce and the necessity of regulating the ocean as the land, others such as use of force or slavery only became problematic after the West decided that it had (mostly) used them to their utility, while others such as self-determination were only recognised after decolonisation was conceded and even then, sparingly. Third World Approaches to International Law critique points directly to Eurocentric authorship as well as to their selective enforcement beyond the West. While the 'axiological explanation has gradually faded away as the notion of "general interest" has replaced the difficulty of the moral content explanation [...] the axiological materiality of peremptory norms has continued to pose problems' (Ruiz Fabri and Stoppioni 2021, 164). This is particularly acute in the flattening of discourse and in whose voices are being heard in the evolution of their substantive content (Al Attar 2020; Squeff and de Almeida Rosa 2018).

Women's concerns, as Charlesworth and Chinkin argue, are all but absent from the content of *jus cogens* (Charlesworth and Chinkin 1993, 63). What gains recognition as *jus cogens* are infused with patriarchal Western values that through procedural processes are limited to conservative stabilising process. *Jus cogens* do not tackle the harms that Jemisin points to – abandonment of the

¹Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory: Advisory Opinion of 9 July 2004. ICJ Reports (2004): 136–203. Armed Activities on the Territory of the Congo (New Application: 2002) (*Democratic Republic of the Congo v. Rwanda*), Jurisdiction and Admissibility, Judgment of 3 February 2006. ICJ Reports (2006): 6–54. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia-Herzegovina v. Serbia-Montenegro*), Judgment of 26 February 2007. ICJ Reports (2007): 43–240. Jurisdictional Immunities of the State (*Germany v. Italy: Greece Intervening*), Judgment of 3 February 2012. ICJ Reports (2012): 99–156.

children, infanticide, lobotomisation – except as part of very specific monstrous events. The quotidian monstrosities, often experienced by women, that lead to such events are beyond its purview when produced by the wider system that they sit within. As Jemisin's account demonstrates, the effect of stone law is to produce choices that are not real or substantive. Rather, the infanticide and lobotomisation are inevitable by-products of the system and must be endured to ensure the order continues. The quotidian harms that lead to femicide must be contorted to fit within *jus cogens*; even if they can, femicide must be flattened to fit a specific discourse or performed in an exact way (Hefti 2022, 254).

Critique or hostility towards stone law is rare from those who gain utility from their status. The material benefits of a global or constitutional order suited to certain kinds of power make a critique of the structural form of law rare. This includes academic engagement, where the high offices of (international or constitutional) law are rarely offered to those who consistently critique their form of existence. To offer such critique may lead to being left considered unsuited for such posts. It is not in the interests of international law to cast doubt over its own stone law or for constitutional lawyers to question its purpose. The performance of specific kinds of engagement leads to further entrenchment. Immutability as a core tenet shapes worldbuilding processes, including the academies that study them. In identifying iterations of stone law, the potential for questioning and dismantling is opened.

5 Conclusion

'The Season will always return' – Tablet 2, 'The Incomplete Truth', Verse 1

White argues that language – and law – shapes our perceptions of others and how we treat them (White 2006, 54). This can be positive in scenarios where it creates empathy but in other contexts it is integral to othering (West 1988, 154; White 2006, 54). Core/primary/fundamental laws are vital to worldbuilding; they can act as the fulcrum around which a society operates. Ursula K Le Guin's *The Left Hand of Darkness* has the Law of Cultural Embargo. Star Trek contains several fundamental laws. The 'Rules of Acquisition' among the Ferengi set out the core libertarian capitalist nature of their society and its misogyny (Grech and Grech 2015, 35, 38–40), while the 'prime directive' – a rule incessantly broken in the narratives – is theoretically core to Starfleet (Peltz 2003, 635). Isaac Asimov's Three Laws of Robots and Zeroth's Law form not only a core source of law for Asimov's worlds but also seep beyond into other fiction as well as debates on robotics, artificial intelligence and ethics and their regulation (Kaminka et al. 2017, 343; Leenes and Lucivero 2014, 193). The *Broken Earth* trilogy raises our consciousness of the 'power and historical patterns of oppression, exploitation, and marginalization' manifest in laws implicitly written in stone (Sarat et al. 2010, 7). The books contour law's immutability and its role in creating and sustaining harm so naturalised that we no longer see it because it has become 'illegible' to law (Sarat et al. 2010, 7). The specificity of stone law is such that it is sparingly used (Gaete 1991, 166). It is not all laws. But its sparing use is part of its immutability.

One of the critical elements of the *Broken Earth* trilogy is its rejection of a never-ending cyclical crisis. Destruction, tyranny, subjugation, slavery, ecological harm are neither inevitable nor natural. It is bringing that cycle to an end by rejecting immutability and rebuffing the worldbuilding around you that establishes a normality of crisis and trauma that facilitates its rupture. Ursula K Le Guin argues that one of the most important political contributions of science fiction is that it enables you to unhinge yourself from the reality that is presented as unalterable and to imagine another different world possible if we look beyond what is constraining us – here, stone law. When aspects of law are presented as absolutely necessary to tackle the world but do little to end cycles of crisis that require their existence, nor prevent the harms they suggest should

not take place, then those laws must be open to debate. The *Broken Earth* trilogy proposes that only in seeing the legal worldbuilding around us, rejecting immutability and imagining what we can achieve once we dismantle that world, can we stop forever cycles of harm.

This paper looked to *jus cogens* and constitutions through a law and humanities lens to gain insight into the specificities of their role in legal worldbuilding. Using a humanities lens creates a prism to see the impact of stone laws on legal worldbuilding, it considers what possibilities they create, what assumptions they are based upon and where the presentation of naturalness and immutability relies on complicating authorship and historicisation and materiality. Stone law, as legal worldbuilding, focuses on its content and performance in producing a society. Stone law's materiality, its performance, its place within (legal) narratives is presented as common sense, an immutability that can be the source of domination, trauma and subjugation. Stone law establishes a natural hierarchy of authority, far removed, temporally and materially, from constituent power, from feminist or critical critique. The historicisation combined with muddled authorship diffuses responsibility for harms that are perpetuated or the system of perpetual crisis.

By regarding law, and here stone law, as having both a fictional and a literary form as well as its own epistemic logic of authority and legitimacy, this paper shows what may be gained from understanding stone law as critical to legal worldbuilding and creates space to challenge what may otherwise be flattened under the weight of apparent immutability, freeing a discourse of contestation. This may not lead to rejection; there may very well be aspects deemed important to retain, but it makes debate, and a potential upending of a legal world, feasible. Identifying stone law as such and focusing on immutability as a fulcrum opens the possibility of rupturing the system, seeing it as created as all structures of power are. It opens the prospect of utterly changing it, and reducing stone law, and the legal world it produced, to smithereens.

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