Introduction
Jurisprudence of the Future

Alex Green
University of York, United Kingdom
Mitchell Travis
University of Leeds, United Kingdom
Kieran Tranter
Queensland University of Technology, Australia

Abstract

The future is in flux. There are many vectors of change, and none seem positive. Dark dystopian futures of war, climate catastrophe, polarising inequalities and digital disruption seem to be looming. This narrating of the future suggests the significance of science fiction. Science fiction acts as a storehouse for the imagining of the future. It also offers new approaches to justice and law. This symposium on 'Jurisprudence of the Future' contains contributions that bring together science fiction, justice and law. There is a sense of urgency to the contributions, to understand the science fictionality of the present and imagining alternative futures.

Why Jurisprudence of the Future

Within the Western legal, philosophical and social-theoretical mainstream, many contemporary conceptions of justice have been found wanting.[1] Concurrently, within legal and political practice, our institutionalisations of justice have often been marked by stagnancy, a failure to take radical action and, consequently, increasing levels of social, economic and cultural inequality.[2] The promise of constant and inevitable progress has proven to be false.[3] The legal architecture upon which it rests is creaking and fallible, largely existing to support, maintain and reinforce existing power structures.[4] In the West and elsewhere, access to justice has been decimated,[5] undermining procedural aspects of equality under the law. Politically, neither law nor liberal constitutionalism has done much to resist the threat of populism that is slowly undermining these institutional structures, nor the menace of climate change, which brings us humanitarian crises today and dark visions of an apocalyptic tomorrow.

Law has always been Janus-like in its focus on the past while attempting to 'future-proof' the status quo.[6] These divergent temporal focuses were highlighted by science fiction founder H. G. Wells in his lecture to the Royal Institution in 1902, where he outlined the idea that there were two types of mind: one focused on the past and one focused on the future. Informed by Bentham's distinction between the past focus of the common law and the future focus of legislators,[7] Wells' go-to analogy was law:

---

[1] Anderson, "What is the Point of Equality?"; Pettit, "The State"; Young, Justice and the Politics of Difference; Deneen, Why Liberalism Failed.
[2] United Nations Department of Economic and Social Affairs, World Social Report 2020; Judt, Ill Fares the Land; Tzouvala, Capitalism as Civilisation; Wagner, Emergency Law.
[3] Corbett and Walker, "Between Neoliberalism and Nationalist Populism."
[4] Brown, In the Ruins of Neoliberalism.
[5] Mant, "Neoliberalism, Family Law and the Cost of Access to Justice."
[6] Manderson, Danse Macabre.
[7] Postema, Bentham and the Common Law Tradition.

> The former type one might speak of as the legal or submissive type of mind, because the business, the practice, and the training of a lawyer dispose him toward it; he of all men must constantly refer to the law made, the right established, the precedent set, and consistently ignore or condemn the thing that is only seeking to establish itself. The later type of mind I might for contrast call the legislative, creative, organizing or masterful type, because it is perpetually attacking and altering the established order of things, perpetually falling away from respect for what the past has given us.[8]

The ability to look forward, to imagine and enact something new, something alternate, is vital to the study and progression of law in terms of both theory and practice. This is fundamental, given the contemporary dystopian narratives that surround and infuse the presence and multiply constituted present(s) of war, climate catastrophe, digital inequality and pandemic thanatology. Without the proactiveness of a future imaginary, law will be rendered impotent to deal with the range and magnitude of the threats humanity faces. Faith in the anachronistic legal systems we have inherited cannot save us. Like the protagonist in Octavia Butler's *Parable of the Sower*,[9] there is a need to create new belief systems through which justice can be articulated in the present to safeguard the future.[10]

Science fiction provides a space for considering new and necessary forms of legality and justice.[11] It provides the conceptual tools needed to think beyond the 'prison house' of the present.[12] It has been considered the mythform in which technological society dreams itself,[13] presenting alternative and competing accounts of justice, and to contemplate in practical, logistical and even regulatory terms how society, politics and economics might be improved. Moreover, the popularity of science fiction allows these discussions to take place beyond the academy,[14] to equip the populace at large with new epistemologies of 'popular jurisprudence' through which more just futures might be imagined, explored and pursued.[15]

This symposium highlights the potentiality and productiveness that emerge from bringing law and science fiction together. It benefitted greatly from the generative, caring and creative spaces provided by the Law, Literature and Humanities Association of Australasia's annual conference in 2021 and the Socio-Legal Studies Association's Annual Conference in 2022. Both conferences allowed us to gather with diverse and intellectually inspiring academics, share early drafts of these papers and recruit new contributors.

The Contributions

The first article in this collection sees **Mitchell Travis** returning to the relationship of law and science fiction 11 years after the publication of 'Making Space: Law and Science Fiction'.[16] In this new article, Travis argues for a broader focus on issues of justice rather than a simple focus on law. In doing so, science fiction opens up a myriad of opportunities for normative jurisprudence. At the same time, Travis traces the 'when' of justice, enabling new temporal categorisations of normative jurisprudential traditions. Through this, Travis argues that liberalism is an important theoretical outlier in terms of its conceptualisation of justice having already been achieved. All other forms of normative jurisprudence place justice as something to strive towards. Moreover, through the tracing of different temporal approaches to justice, Travis argues that science fiction allows for the enfolding of future conceptions of justice into the present.

Developing these strands of science fiction, temporality and justice, **Folúkẹ́ Adébísí** uses examples of Black science fiction and Afrofuturism to address inequalities of race in the present. Adébísí traces the continuing presence of colonial logics grounded in enslavement and exploitation from the past and into the now. Using science fiction, and particularly Octavia Butler's *Kindred*, Adébísí begins to unsettle White Western chronopolitics and challenge conceptions of an 'inevitable' linear and singular future.

Rostam Josef Neuwirth also considers the relationship between time, science fiction and law. Neuwirth traces the human need for prediction, anticipation and longing for the future. As part of this, Neuwirth outlines science fiction as an 'oxymora' or a caesura in which oppositional concepts are brought into contact, enabling the creation of new realities. Neuwirth uses this theoretical approach to highlight the 'disappearance of time', which, in turn, unlocks the predictive and persuasive power of

---

[8] Wells, The Discovery of the Future, 3–4.
[9] Butler, Parable of the Sower.
[10] Govan, "The Parable of the Sower as Rendered by Octavia Butler"; Miller, "Post-Apocalyptic Hoping."
[11] Tranter, Living in Technical Legality.
[12] Muñoz, Cruising Utopia, 1.
[13] Tranter, "The Speculative Jurisdiction."
[14] Csicsery-Ronay, The Seven Beauties of Science Fiction.
[15] MacNeil, Lex Populi.
[16] Travis, "Making Space."

law. This work is premised on the idea of a cognitive shift in human thinking that allows for a greater sensory engagement with time.

Moving away from time and towards hypotheticals, **Alex Green** explores the utility of dystopian counterfactuals in political theory and particularly the political project of liberalism. This article takes us through a deep engagement with the liberalism of Thomas Hobbes, John Locke, Immanuel Kant, John Rawls, Robert Nozick and Ronald Dworkin, diagnosing a preoccupation with the institutional arrangements through which justice can be produced. Using the examples of *Star Trek*, *Star Wars* and *Warhammer 40,000*, Green identifies human frailty as an important aspect missing from much political theory. Turning to the work of Hannah Arendt, Green pushes political theory towards 'hope' as a key ethical principle that must be further foregrounded in jurisprudence.

Similarly focused on counterfactuals is **Kritika Sharma's** article addressing the conceptual overlap between Marvel's 'What If?' comics and the widespread use of 'Feminist Judgment Projects' and their offshoots. By highlighting the intersections between these two seemingly disparate areas, Sharma sharpens the methodological tools needed for counterfactual thinking in this area. In particular, Sharma focuses on contingency, inter-temporality and causality as important variables in the production of law. By engaging more directly with these tools, we are better able to understand the creation, reinforcement and futures of legality.

Zoe Tongue's work shifts the focus from general conceptions of law, justice and science fiction to a more focused exemplification of these processes in action. Tongue highlights problematic approaches to reproduction in mainstream science fiction that continue to propagate cultural anxieties around reproductive technologies, abortion and pregnancy. These cultural anxieties both inform and are a product of the societies in which they are embedded. Tongue uses feminist science fiction as a counterpoint to these mainstream portrayals. Using the work of Octavia Butler and Laura Lam, Tongue exposes reproductive injustice and anchors the lived experience of women[17] to imagine worlds that may be otherwise. Such an approach allows us to challenge the gendered inequalities in the present while building towards a better tomorrow.

In keeping with the focus on contemporary issues, **Claire Williams** focuses on foundation models of AI and the biases encoded within them. While some biases are capable of being removed, Williams outlines the dangers of embedding legal and economic phenomena into AI that will lock in systematic inequalities as 'natural' if not unobservable. This may place these conceptual tools beyond interrogation. Williams uses Asimov's *Foundation* series to show how ideologies of law and economics can be similarly uncritically embedded into our conceptions of the future. While Asimov's futures were, to some extent, unrecognisable, they were very much underpinned by contemporary legalities and economics. Williams highlights that this type of encoding subtly limits our ability to refashion and recreate just futures.

Continuing the theme of AI, **Paul Burgess** questions how cultural anxieties around AI may alter our perception of the Rule of Law. For Burgess, both the Rule of Law and the cultural perception of AI are animated by a sense of fear. Burgess argues that the fears underpinning AI may push society to accept a different form of the Rule of Law. Burgess uses three hypotheticals; where AI is used to draft legislation, create secondary legislation and replace human legislators. Using these hypotheticals, he shows that traditional assumptions about accountability and non-arbitrariness in the Rule of Law are less persuasive when faced with AI and so new and non-traditional approaches must be developed for the theorisation and justification of the Rule of Law.

Finally, **Craig Newbery-Jones** considers the role of science fiction in the academy. Newbery-Jones exhorts us to see science fiction as a form of public legal education. Newbery-Jones examines both passive media (such as television and film) and more active media (such as video games and tabletop role-playing games). Through these mediums, science fiction allows for the translation of justice and legality into the public sphere. Science fiction becomes a point of dialogue between the law school and the wider populace we are duty bound to educate, lest we fall deeper into the dystopia in which we are immured.

Bibliography

Anderson, Elizabeth S. "What is the Point of Equality?" *Ethics* 109, no 2 (1999): 287–337. https://doi.org/10.1086/233897

Brown, Wendy. *In the Ruins of Neoliberalism: The Rise of Antidemocratic Politics in the West.* New York: Columbia University Press, 2019.

Butler, Octavia E. *Parable of the Sower.* New York: Four Walls Eight Windows, 1993.

---

[17] And others who can become pregnant.

Corbett, Steve and Alan Walker. "Between Neoliberalism and Nationalist Populism: What Role for the 'European Social Model' and Social Quality in Post-Brexit Europe?" *Social Policy and Society* 18, no 1 (2019): 93–106. https://doi.org/10.1017/S1474746418000349

Csicsery-Ronay, Istvan. *The Seven Beauties of Science Fiction*. Middletown, Connecticut: Wesleyan University Press, 2008.

Deneen, Patrick J. *Why Liberalism Failed.* New Haven, Connecticut: Yale University Press, 2019.

Govan, Sandra. "The Parable of the Sower as Rendered by Octavia Butler: Lessons for Our Changing Times." *Femspec* 4, no 2 (2003): 239–258.

Judt, Tony. *Ill Fares the Land.* New York: Penguin, 2011.

MacNeil, William P. *Lex Populi: The Jurisprudence of Popular Culture.* Stanford, California: Stanford University Press, 2007.

Manderson, Desmond. *Danse Macabre: Temporalities of Law in the Visual Arts.* Cambridge: Cambridge University Press, 2019.

Mant, Jess. "Neoliberalism, Family Law and the Cost of Access to Justice." *Journal of Social Welfare and Family Law* 39, no 2 (2017): 246–258. https://doi.org/10.1080/09649069.2017.1306356

Miller, Jim. "Post-Apocalyptic Hoping: Octavia Butler's Dystopian/Utopian Vision." *Science Fiction Studies* 25, no 2 (1998): 336–360.

Muñoz, José Esteban. *Cruising Utopia: The Then and There of Queer Futurity.* New York: New York University Press, 2009.

Pettit, Philip. "The State." In *The State*. Princeton, New Jersey: Princeton University Press, 2023.

Postema, Gerald. *Bentham and the Common Law Tradition.* Oxford: Clarendon Press, 1986.

Tranter, Kieran. *Living in Technical Legality: Science Fiction and Law as Technology.* Edinburgh: University of Edinburgh Press, 2018.

Tranter, Kieran. "The Speculative Jurisdiction: The Science Fictionality of Law and Technology." *Griffith Law Review* 20, no 4 (2011): 817–850. https://doi.org/10.1080/10383441.2011.10854722

Travis, Mitchell. "Making Space: Law and Science Fiction." *Law and Literature* 23, no 2 (2011): 241–261. https://doi.org/10.1525/lal.2011.23.2.241

Tzouvala, Ntina. *Capitalism as Civilisation: A History of International Law.* Cambridge: Cambridge University Press, 2020.

United Nations Department of Economic and Social Affairs. *World Social Report 2020: Inequality in a Rapidly Changing World* (United Nations, 2020).

Wagner, Adam. *Emergency Law: How We Lost Our Freedoms and Why It Matters.* London: Penguin Books, 2022.

Wells, Herbert George. *The Discovery of the Future.* Auckland: The Floating Press, 1911/2014.

Young, Iris Marion. *Justice and the Politics of Difference.* Princeton, New Jersey: Princeton University Press, 1990.