

Justice, Temporality and Science Fiction

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Abstract

This article examines how justice is conceived of and constructed through temporality in different traditions of normative jurisprudence. Three non-exhaustive and overlapping temporalities are discussed: counterfactual histories, the near future and science fiction. All of these temporalities are examined in terms of when and how they envisage the delivery of justice. Some traditions, such as liberalism, see the architecture of justice having already been developed and delivered. However, most jurisprudential approaches see justice as something yet to be achieved. The article traces these theoretical traditions' commitment to the pluralistic, the nonlinear, the impossible, the unlikely and the decentring of the human, and in so doing demonstrates the blurred lines between normative jurisprudence and science fiction. As a result, the article reveals the value of science fiction as a source of normative jurisprudence in its own right. Science fiction offers an important vehicle for enfolding the present and the future; in doing so it allows for the enactment of new forms of justice in the present. In its conclusion it is argued that placing science fiction within the field of normative jurisprudence helps us to imagine and create just futures.

Keywords: Justice; temporality; science fiction; time; jurisprudence.

The exercise of imagination is dangerous to those who profit from the way things are because it has the power to show that the way things are is not permanent, not universal, not necessary.¹

I. Introduction

As the quotation from Le Guin highlights, our texts and narratives about the future reveal the contingency of the present. This is crucial for justice as we endeavour to imagine better and fairer worlds and societies. In this article I examine, for the first time, how justice is temporally conceptualised within some of the main traditions of Western normative jurisprudence. The focus of my inquiry draws primarily on aspects of normative legal philosophy and critical legal studies, due to their overarching concern with the nature of justice (as opposed to the grounds or nature of law, which remains the focus of analytic or 'conceptual' jurisprudence).² Whereas conceptual jurisprudence has raised interesting and important questions about time, these fall outside the parameters of this article due to their focus on the legal rather than the just.³ By asking 'when' justice is anticipated to be delivered in normative jurisprudential thought we can better understand what that justice is expected to look like and help to determine the conceptual scaffolding that underpins such expectations. I organise these questions of 'when' into temporalities of the enactment of justice using three (overlapping) categories: counterfactual histories, the near future and science fiction. Through these categories I analyse several prominent and predominant normative jurisprudential approaches that are concerned with the articulation and depiction of justice (rather than the legal), including liberalism, Marxism, queer theory, feminist theory and posthumanism, in terms of their commitment to, understanding of and articulations of just futures (i.e., futures in which the conditions of justice have been achieved). In doing so, I address the theoretical architecture that various forms of normative jurisprudence use to depict justice, assessing the ways and the extent to which concerns for the future are drawn upon in these traditions. While many jurisprudential approaches engage with conceptions of the future, science fiction offers clear and distinct benefits to normative jurisprudential inquiry. This is particularly so in the search for, and the articulation and enactment of, just futures. In addition, I argue that in terms of temporality and the possibilities it reveals,

¹ Le Guin, *The Wave in the Mind*, 183.

² See, for example, Shapiro, *Legality*.

³ For more information about analytical legal philosophy and time, see Postema, "Melody"; Priel, "Analytic Jurisprudence in Time."



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normative jurisprudence is in many ways conceptually closer to science fiction than it is to law, as it chooses between, and attempts to guide us towards, various legal futures, utopias and dystopias. Science fiction's enfolding of potential futures into the present means that it is unique in potential to envision and create justice. Such an assertion collapses the binary between normative jurisprudence and science fiction. It further encourages scholars towards deeper and more meaningful engagement with science fiction texts within legal studies and jurisprudence, providing understandings of justice orientated towards our future(s).⁴

The next section of this article outlines the relationship between justice and temporality, tracing the growing body of work that situates law in its temporal context. More attention, it is argued, needs to be paid to the temporality of justice, and this work seeks to focus the conceptual tools developed by scholars of law and time into this fertile new ground. Section 3 addresses the nature of science fiction and its importance to law. For example, the world-building of science fiction allows for the depiction of new normativities and representations of justice. In this section the temporal elements of science fiction are further foregrounded to illustrate its ability to enfold the present and future, providing a space of rupture through which justice can be envisioned and enacted. The article then moves to examine the temporality of justice within normative jurisprudence, grouping distinct temporal approaches together. These three (porous and inexhaustive) categories are counterfactual histories, the near future and science fiction. The first temporal approach examines the social contract and liberalism as normative systems in which the temporality of justice is delivered in a counterfactual past and enacted through institutions in the present.⁵ I then discuss jurisprudential theories that understand justice to be located in the near future; these include Marxism and queer theory. In these theoretical traditions justice is multiply situated but immanent and tangible. The last temporality considered is that of science fiction, in which I trace the traditions of feminism and posthumanism. For these jurisprudential theories justice is enfolded into the present through the temporal logics of science fiction. Tracing these differing temporalities of justice allows us to re-examine our taxonomies of legal theory, highlighting liberalism as an obvious theoretical outlier. This has important implications for those who would see liberalism as the default approach within normative jurisprudence. Liberalism's failure to consider the future impoverishes normative jurisprudence as well as the legal and political imagination more generally. In the final section I return to the 'Futures of Justice' and outline the importance of science fiction in normative jurisprudential thought, legal pedagogy and public legal education.

II. Justice and Temporality

As Renisa Mawani has noted, 'time is often assumed to exist as though it were a natural phenomenon, unfolding effortlessly and inconspicuously as the backdrop to social and political life'.⁶ Such an approach, she explains, fails to consider the role of law in the production of time and how it is experienced.⁷ Time is a human phenomenon and as a result it is contingent upon the institutions through which it is brought into being. As Postema notes, 'time—or better, a certain way of thinking about time—is intrinsic to law's ordinary mode of operating, to its distinctive mode of normative guidance, and this fact shapes how we conceive of law'.⁸ Desmond Manderson usefully highlights law's complex relationship with time, as he writes:

law is always in a dialogue with the past, reinterpreting and re-reading prior texts whose temporal distance is a stamp of their authority and their authenticity. ... And law at the same time harbours ambitions for a future it cannot foresee.⁹

Thus, law's understanding of time is Janus-like in its focus on the past and its attempts to future-proof its own speculative jurisdiction. Temporality, in turn, can be understood as the construction, experience and mediation of time. Temporality has become a nascent field of study for legal scholars.¹⁰ Within this literature, scholars have argued that law has an important 'temporal' dimension. This entangled relationship consequently coproduces 'legal and temporal norms, subjectivities and political ontologies'.¹¹ As Manderson continues:

⁴ I am using the term justice here in a very broad sense capable of including, for example, injustice, dystopia, catastrophe, equality, freedom, personhood and more.

⁵ See also Green, "The Importance of Dystopian Hypotheticals."

⁶ Mawani, "Law as Temporality," 70.

⁷ Mawani, "Law as Temporality," 70; Grabham, "Introduction."

⁸ Postema, "Melody," 205.

⁹ Manderson, *Danse Macabre*, 12.

¹⁰ Valverde, "Governance"; Valverde, *Chronotopes of Law*; Grabham, "Transgender Temporalities"; Grabham, "Legal Form and Temporal Rationalities"; Grabham, *Brewing Legal Times*; Harrington, "Medical Law"; McNeilly, "Are Rights Out of Time?"; McNeilly, "The Temporal Ontology"; Gordon-Bouvier, "The Open Future"; Garland, "Temporal Bodies"; Mawani, *Across Oceans of Law*; Chowdhury, *Time, Temporality and Legal Judgment*; Manderson, *Danse Macabre*.

¹¹ Grabham, "Introduction," 2.

if time is habitually conceived of to be something external and objective, temporality attempts to capture our experience of it; if the former can be measured by an instrument, the latter is indicative of a culture. ... Temporality focuses on the particular representations that structure how groups and discourses frame the passing of time, how they situate themselves in relation to it, and with what social, conceptual, and normative consequences.¹²

Several important interventions into law's relationship with temporality have meant that, increasingly, temporality is understood as plural, nonlinear, subjective and contingent upon our relationships with institutions and society.¹³ Moreover, temporality is also intertwined with materiality, as it is understood through, and coproduced with, the body.¹⁴ For example, Tanzil Chowdhury has exemplified the criminal trial as a site of exegesis for thinking about how judicial consideration of relevant evidence is constrained by the time period that they are willing to see as of import.¹⁵ In his reading of the *Ahluwalia* case,¹⁶ he notes that the Appeal judges' willingness to see past the act of murder to the abuse that proceeded it allowed for the creation of a new partial defence. Therefore, a criminal trial is not just about facts, but also about the temporality of facticity—*when* (as well as *what*) matters?

Hitherto unexplored has been temporality's important influence on, and construction within, normative jurisprudence. This article is interested in the *when* of justice; when can we expect justice to be enacted? Is it just out of reach, deferred,¹⁷ or is it located in some far distant future? Conversely, as in some traditions, has justice already been enacted, delivered or realised? Are some futures unknown and unknowable¹⁸ and are others already determined?¹⁹ For Derrida, for example, justice is always 'to come':

But for this very reason, [justice] may have an *avenir*, a 'to come', which I rigorously distinguish from the future that can always reproduce the present. Justice remains, is yet, to come, *à venir*, it has an, it is *à venir*, the very dimension of events irreducibly to come. It will always have it, this *à venir*, and always has. Perhaps it is for this reason that justice, insofar as it is not only a juridical or political concept, opens up for *l'avvenir* the transformation; the recasting, or refounding of law and politics. 'Perhaps', one must always say perhaps for justice.²⁰

Derrida highlights one temporal account of justice that can be compared with other theories of justice explored in this article. Liberalism, as one example, assumes that justice has already been enacted through the creation of the institutional and procedural architecture of law and politics. The Marxist tradition, by contrast, fits more squarely with Derrida's proposition that justice is to come. Science fiction, in turn, presents new roadmaps on the path to justice while also temporally disrupting the 'to-comeness' of justice—sometimes radically reorientating it (at least in terms of potentiality) into the present. This focus on temporality then has an important bearing on *what* justice looks like within these different theoretical traditions and helps determine the conceptual scaffolding that underpins such ideas.

Therefore, a focus on temporality is more than just a discussion of time—locating things in the past, present and future. Temporality gives us a range of conceptual tools—including linearity, progression, imminence, inevitability, potentiality and becoming—to excavate and interrogate theories of justice. By paying attention to these temporal devices, we can better understand the ways in which normative jurisprudence frames justice as delivered or unattainable.

III. Science Fiction

Against this backdrop of time and temporality I am particularly interested in future depictions and realisations of justice in order to destabilise the boundary between normative jurisprudence and science fiction. Science fiction provides a space for thinking about the nature, scope and shape of justice. Vint questions:

¹² Manderson, *Danse Macabre*, 7.

¹³ Greenhouse, "Just in Time," 1636; Harrington, "Medical Law"; Garland, "Temporal Bodies"; Mawani, *Across Oceans of Law*; Chowdhury, *Time, Temporality and Legal Judgment*.

¹⁴ Grabham, "Introduction"; Grabham, *Brewing Legal Times*.

¹⁵ Chowdhury, *Time, Temporality and Legal Judgment*.

¹⁶ [1992] 4 All ER 889.

¹⁷ Desmond Manderson discusses the idea of justice (particularly through the rule of law) in chapter 3 of *Danse Macabre*. One of the anonymous reviewers also highlighted the perpetual deference of justice/deferred justice in debates around Israel/Palestine and international law.

¹⁸ Grosz, "The Untimeliness of Feminist Theory"; Edelman, *No Future*.

¹⁹ Marx, *Gotha Programme*, 5.

²⁰ Derrida, "The Force of Law," 27.

what role speculative fiction might play in revitalizing our affective investment in new futures premised on social justice, keeping always in mind both the genre's transformative potential and its simultaneous complicity in a techno-optimism that often merely perpetuates the world as we know it.²¹

The futures populated by science fiction oscillate between apocalyptic social collapse and utopian dream. However, in each of these forms, science fiction provides us with the conceptual architecture for thinking about how, where and when justice might be provided, enacted and reinforced.

Despite the potential benefits of science fiction to law and justice there has been some debate as to the definition of science fiction,²² which has been considered in detail elsewhere.²³ In part, these definitions struggle with the sheer volume of science fiction texts and their diffuse coverage of timescapes, scenarios, actors and subject matter. In addition, definitions struggle with science fiction's closeness (and permeation into) other genres such as fantasy²⁴ and horror.²⁵ Given these considerations, while there will always be exceptions and outliers to any definition of science fiction, there are certain temporal features of science fiction that help to identify it as a distinct and recognisable category for the purposes of law, justice and science fiction as a developing field.

Science fiction is primarily concerned with depictions of the future. Even where the text takes place in the past ('a long time ago in a galaxy far, far away') the *temporality* of science fiction is orientated around the future. This futurism often centres around technology,²⁶ highlighting a focus on (exponential) progress, but can equally take place in a regressive future where technologies have been lost and society is in decline.²⁷ However, the temporality of science fiction remains focused on the *future* of elements such as technology, environmental or other disasters, or interactions with extraterrestrial life.²⁸ These science fictive representations are often nonlinear, appearing unlikely or even impossible (both of which operate in temporal registers). Resultantly, science fiction offers a rich canvas for exploring the concerns and problems of contemporary legal issues.

The breadth of science fiction offers a myriad of sources through which we can examine disparate accounts of justice. Some texts focus on the perseverance of norms after the collapse of law and the state.²⁹ Other texts examine the sudden introduction of alternative normativities in Western contemporary conditions.³⁰ These texts can include examples of 'hyper-legality' where legal subjects are under the constant surveillance and power of law.³¹ Some texts consider the effects of environmental collapse on the ability to provide law and administer justice.³² Many sources focused on ecology provide important critiques of capitalist and neoliberal societies. These cultural depictions of the future provide the conceptual tools with which we can navigate towards just futures—many through the depiction of dystopias that we wish to avoid. Indeed, these texts importantly offer multiple and competing accounts of what a just future may look like, enabling a sense of perspective between alternative imaginaries of law. In this article, I engage with a jurisprudential history of legal philosophers whose work revolves around temporal accounts of justice. In doing so, I highlight how certain normative jurisprudential accounts of justice envision the future, with some drawing upon, being invigorated by and becoming conceptually aligned with science fiction. This perspective shifts away from previous work on the place of *law* in science fiction³³ towards the conceptual closeness of science fiction, aspects of normative legal (and political) philosophy, and critical legal approaches.

Temporality is the key aspect that brings these traditions together, breaking down the barriers between normative jurisprudence, critical legal theory and science fiction. As I will go on to outline, much normative jurisprudence shares the future-orientated temporality of science fiction. That is, the creation of principles of justice requires us to imagine futures—futures that rupture

²¹ Vint, "The Futures Industry," 8.

²² Disch, Dreams; Broderick, Reading by Starlight; Suvin, "Estrangement and Cognition"; Kincaid, "On the Origins of Genre"; King, "Science Fiction Cinema."

²³ Travis, "Making Space."

²⁴ MacNeil, Lex Populi; Romero, "Republicanism."

²⁵ Crofts, "Monstrous Bodily Excess"; Crofts, "Monsters and Horror"; Crofts, "Aliens"; Crofts, "What Kept You So Long?"

²⁶ Tranter, "Frakking Toasters"; Tranter, "The Speculative Jurisdiction"; Tranter, Living in Technical Legality.

²⁷ See, for example, Butler, Parable of the Sower; McCarthy, The Road; Kirkman, The Walking Dead.

²⁸ It must be noted that there are some instances of science fiction that are not future orientated (e.g., *The Man in the High Castle* by Phillip K. Dick). Science fiction cannot be thought of as a monolith due to its sheer breadth over several textual forms. Nonetheless, the majority of science fiction is concerned with the future. This point about alternative histories is returned to later in the article.

²⁹ Butler, Parable of the Sower; McCarthy, The Road; Kirkman, The Walking Dead.

³⁰ Atwood, The Handmaid's Tale.

³¹ Orwell, Nineteen Eighty-Four; Atwood, The Handmaid's Tale; Dick, High Castle; Moore, V for Vendetta; Lanthimos, "The Lobster."

³² Ballard, The Wind from Nowhere; Robinson, Forty Signs of Rain; Stanton, "WALL-E."

³³ Travis, "Making Space"; Travis, "Interrogating Absence"; Tranter, "Frakking Toasters"; Tranter, "The Speculative Jurisdiction"; Tranter, Living in Technical Legality.

the boundaries between normative jurisprudence and science fiction. Not only are the temporalities aligned, but also in some instances, which I will go on to exemplify, they are specifically grounded within the conceptual architecture of science fiction. Understanding the conceptual closeness of normative jurisprudence and science fiction also gives greater support to the idea that science fiction can (and should) be read jurisprudentially.³⁴ This places law and science fiction as a field much more squarely within the ambit of jurisprudence rather than as a simple outlier of the law and literature movement. This is important for the development of the field, as it shifts this work from science fiction as simile (this is *like* this) to critique (this tells us something important about justice, our society and our worlds), while also deepening its relationship with pedagogy and the academy.³⁵

Moreover, and as I will discuss, science fiction offers a more radical engagement with the conceptual devices revealed by temporality. Science fiction enables us to think in terms of the nonlinear, the regressive (or the exponential hyper-progression), the impossible, the unlikely and the decentring of the human. Indeed, these elements may be indicative of a potential definition of science fiction and add further evidence of its utility for normative jurisprudence. It is through the use of these conceptual tools that the boundary between jurisprudence and science fiction is blurred. When legal theory engages with these science fictive temporalities, it shifts into a temporal register that is rarely engaged with by law. Normative jurisprudence's concern for the unattainable, the improbable and the nonhuman brings it within the temporal ambit of science fiction. In particular, feminist and critical race theory's attempts to envisage beyond the patriarchal, colonised and structurally racist society in which we are immured benefits from radical temporal dislocations from the present. Similarly, posthumanism's need to think outside current human-based conceptions of justice and time may lead to radically different approaches to legal thinking. Moreover, the temporality of science fiction allows for an enfolding of present and future that permits new forms of justice to be enacted in the present. To illustrate and explore this further, the following sections will outline the ways in which normative jurisprudence engages with temporal accounts of justice. It explores how justice is temporally envisioned within some of the prominent and predominant theories and theorists of Western normative jurisprudence, before moving to highlight some of the implications for normative jurisprudence, law and science fiction. In the following sections I will explore normative jurisprudence's temporal focus on alternative histories, the near future and, finally, science fiction—three categories that are neither exclusive nor exhaustive.

IV. Temporalities of Justice

A. Counterfactual Histories

Counterfactual histories present an important temporal dimension of normative jurisprudence, as they seek to highlight and emphasise elements of the human condition (rather than offering an actual overview or engagement with history). Counterfactual thinking provides several benefits. As Ingo Venzke has noted in the context of international law:

counterfactual thinking can improve our understanding of how and why international law has assumed its present shape. ... [Another] reason in favour of counterfactual thinking lies in the realm of comparative moral assessments. Moral assessments typically involve implicit assumptions about alternatives that counterfactual thinking makes explicit. ... The point of such counterfactuals is analytical purchase, not probability. Counterfactual (hi)stories of international law thus serve the cause of freedom from reality in pursuit of normative commitments.³⁶

In normative jurisprudence, counterfactual thinking is often used to make claims about justice. These approaches are grounded in ideas about necessity but may also conceal alternative and potentially better approaches to justice. In this section I consider the way temporality is constructed in the social contract and liberalism in order to reveal the way it dictates (and reveals) their approaches to justice. Notably, theories following these intellectual traditions locate justice as having already taken place in the past through investment in the state and its institutional architecture.³⁷ This approach limits the theory's ability to imagine more radical and far-reaching approaches to justice either in terms of redistribution or recognition,³⁸ as its temporal construction of justice has already been achieved. In the next section I outline the social contract and liberalism as two theories that utilise counterfactual histories to justify their approaches to justice.

³⁴ MacNeil, *Lex Populi*.

³⁵ Campbell, "Teaching Law and Science Fiction"; Travis, "Teaching Professional Ethics"; Bradney, "It's About Power."

³⁶ Venzke, "What If?" 405–406.

³⁷ Green, "The Importance of Dystopian Hypotheticals."

³⁸ Fraser, "From Redistribution to Recognition?"

The Social Contract

Within the social contract tradition, Hobbes presents an early version of the famous counterfactual positions of ‘the state of nature’ and ‘the social contract’. The state of nature is characterised by the manifestation of humanity’s basest instincts driving them into competition and conflict. If we are unable to ascertain our resources or the actions of others, we will be driven into a state of constant war against all others. As Hobbes wrote:

whatsoever therefore is consequent to a time of war, where every man is enemy to every man, the same consequent to the time wherein men live without other security than what their own strength and their own invention shall furnish them withal. In such condition there is no place for industry, because the fruit thereof is uncertain: and consequently no culture of the earth; no navigation, nor use of the commodities that may be imported by sea; no commodious building; no instruments of moving and removing such things as require much force; no knowledge of the face of the earth; no account of time; no arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short.³⁹

Therefore, in this state of nature there is no law, order, right, wrong, justice or injustice. Importantly, time is stagnant in this state and there can be no progress, improvement or certainty. For Hobbes, the state of nature is presented as being atemporal and ahistorical. As a result, law (in the form of sovereign commands) emerges as the primary means for ascertaining rightness, wrongness, justice and injustice, and in the creation of a just future. Hobbes posits the social contract as the point where civilisation left the state of nature—in some ways the beginning of time (or at least progress). Hobbes presents the social contract as the acceptance of the sovereign’s right to rule to ensure the regulation of the ‘civilising conditions’. These civilising conditions are to seek peace, to respect other people’s rights to ownership, and that people should keep their promises. Hobbes suggests that on the basis of the information available in the state of nature, everyone will have reasons to accept these foundational principles, and this should motivate universal agreement on the need for principles and institutions that can ensure justice. Hobbes presents to us a manufactured, counterfactual history in which the sovereign is both vital and inevitable—providing an origin story rooted in ‘progress’ that is grounded in linear temporality.

Therefore, as an account of justice, the social contract uses a fictional account of the past to justify the presence of the state and its institutional apparatus. Justice is located as something that was previously lacking but has already been resolved by the creation and perseverance of the state. Although the state of nature is counterfactual, the state as a solution is equated with the very idea of justice and of a future. As a result, in this theoretical tradition, the *when* of justice has already been delivered, and the concept of time is tethered to civilisation and the state.

Although counterfactual, Hobbes’s approach has been influential in its justification of and commitment to the state as the sole arbiter of justice. However, in doing so, it may have fallen into two ‘traps’ that Venzke identifies in historical thinking.⁴⁰ First, Hobbes’s work overdetermines the relationship between the state of nature and the present. The path towards civilisation is too linear, and the contingencies and contexts within which justice can flourish are too singular, both in terms of approach and conduit. The sole focus on the sovereign, for example, leads too easily into authoritarianism.⁴¹ Second, this counterfactual approach, as will be discussed in relation to liberalism, falls into a state of ‘hindsight bias’.⁴² Such an approach overestimates the likelihood of particular results once they are known. Hobbes’s need to defend the social order of the time in which he was immured led to a counterfactual history that justified the present. As I will now explain, similar tensions underpin liberalism.

Liberalism

Liberalism, through Rawls, continues the practice of using ‘counterfactual history’ to justify its approach to justice in the present. However, Rawls’s counterfactual experiment shares some of the impossibility of science fiction. Rawls’s greatest science fiction device is that of ‘the original position’. In this thought experiment people are placed behind a ‘veil of ignorance’—a limbo place that shares the atemporality of Hobbes’s state of nature. In the original position we are freed from the characteristics we inhabit within the world—race, gender and disability, for example, are not experienced in the original position. As Rawls writes:

to set up a fair procedure so that any principles agreed to will be just. ... Somehow we must nullify the effects of specific contingencies, ... [tempting the original actors] to exploit social and natural circumstances to their own advantage. Now ...

³⁹ Hobbes, *Leviathan*, 78.

⁴⁰ Venzke, “What If?” 410.

⁴¹ Dyzenhaus, “Why Positivism Is Authoritarian.”

⁴² Venzke, “What If?” 412.

the parties are situated behind a veil of ignorance. They do not know how the various alternatives will affect their own particular case and they are obliged to evaluate principles solely on the basis of general considerations.⁴³

Freed from these contingencies, persons are able to determine the just principles of social organisation without knowing the exact position they will occupy in the world. As a result, behind the veil of ignorance people are not motivated by personal advantage and so must try to ensure fairness for all. Rawls uses this device to outline the justification for his ‘justice as fairness’ approach. The original position is, in some ways, atemporal—taking place outside the bounds of time. Nonetheless, it also occurs prior to our individual existence and so in a counterfactual past. Thus, liberalism continues Hobbes’s tradition of justifying the present through the idea that systems and apparatus for achieving justice were created as a linear response to this imagined past. This delimits potential futures by presenting the present as already having achieved the architecture needed to deliver justice.⁴⁴ Indeed, if we are to believe the original position, this is the *best* potential future. Liberalism’s construction of justice, thus, locates it as having been delivered in the past preventing serious political consideration of alternatives.⁴⁵ For liberalism, the present and the future are linear progressions of justice arising from the just and legal architecture that has already been achieved. The temporality and future envisioned within liberalism, thus, place it as an outsider within normative jurisprudence—as I will return to later in the conclusions. Nonetheless, the ideals of liberalism have been dominant and perhaps instrumental in the prevention of serious considerations of alternate just futures.

Key to liberalism’s understanding of temporality is the concept of ‘progress’ through time that connects counterfactual histories and past societies to future ideals.⁴⁶ Harrington, drawing on Fitzpatrick, argues that the project of liberal legalism represents time ‘spatially as a series of discrete containers, helping to realize the positivist goal of sharply distinguishing law from its wider social environment’.⁴⁷ Liberal understandings of time as ‘discrete containers’ has led to a lack of political and legal engagement and disconnectedness with the long-term future, individualising notions and instances of injustice. As a result, law continually downplays the power relations that are created through political constructions of temporality. Temporality, and the lack of focus on the future within liberalism, is expressly political in terms of liberalism’s lack of commitment to the distribution of resources and long-term responsibilities to global issues.⁴⁸ It is the absence of future consciousness (or as having already been decided by a fictive history) *combined with* a specific type of counterfactual history that ‘depoliticises’ liberalism and makes it largely incredulous to long-term responsibilities to global issues. The idea that time is nonpolitical allows for the concomitant downplaying of disastrous futures and potential emergencies.⁴⁹ As with Hobbes, the linearity of liberalism (and its lack of future consciousness) highlights its overdetermination and hindsight bias.⁵⁰ Liberalism downplays the contingency of justice in the present and the differing just futures that might be within reach.

B. The Near Future

Other forms of normative jurisprudence have been less convinced by liberalism’s claims that justice has been achieved in the present. Instead, they have looked to consider how justice might be achieved in the near future. This temporal engagement places justice as immanent, achievable and, for some, inevitable. These constructions share misgivings around how far justice has been achieved in the past and present and are animated by a series of inequalities. While these theories focus on the future of justice—thus, resonating with the temporality of science fiction—they do not draw upon the conceptual architecture of science fiction to the same extent as normative jurisprudential traditions such as feminism and posthumanism. In the next section, I outline Marxism and queer theory as two approaches that locate justice in the near future.

Marxism

For many Marxist legal theorists, justice cannot be achieved through law under the current conditions of capitalism.⁵¹ Temporally, Marxism differs from liberalism in its commitment to a better future. Nonetheless, Marx’s conception of temporality is contested—with some evidence that his understanding of time was singular and universal upon which ‘various epochs are arranged’.⁵² For example, in this passage from *A Contribution to the Critique of Political Economy*, Marx writes:

⁴³ Rawls, *A Theory of Justice*, 136–137.

⁴⁴ Green, “The Importance of Dystopian Hypotheticals.”

⁴⁵ Green, “The Importance of Dystopian Hypotheticals.”

⁴⁶ Greenhouse, “Just in Time,” 1638.

⁴⁷ Harrington, “Medical Law,” 74; Fitzpatrick, “Modernism and Law,” 93.

⁴⁸ Note, this is probably unfair to Rawls and is perhaps a characterisation of liberal politics as opposed to jurisprudence.

⁴⁹ Garland, “Temporal Bodies.”

⁵⁰ Venzke, “What If?”

⁵¹ Norrie, “Marxism”; Valverde, “Deconstructive Marxism”; Cruz, “Beyond Liberalism”; Knox, “Marxism”; Tzouvala, Capitalism as Civilisation.

⁵² Morfino, “Tempora Multa,” 7.

in broad outline, the Asiatic, ancient, feudal and modern bourgeois modes of production may be designated as epochs marking progress in the economic development of society. The bourgeois mode of production is the last antagonistic form of the social process of production ... the productive forces developing within bourgeois society create also the material conditions for a solution of this antagonism. The prehistory of human society accordingly closes with this social formation.⁵³

However, Morfino and Thomas have highlighted that Marx does not conceive of these epochs as linear but instead as a pluralistic set of temporalities that overlap, contest and coexist with one another.⁵⁴ Later, in their analysis of *Capital*, they show that Marx's work is permeated by a plural and nonlinear understanding of temporalities, which are constructed from 'the actual structures of production, from the diverse rhythms that mark production, distribution and circulation'.⁵⁵

Marx's work did not only focus on the material conditions of the past but was also concerned with the creation of a just future. While some have described Marx as an 'accidental' utopian,⁵⁶ others have pointed to Marx's communist vision as 'the Grandest and noblest vision in human history'⁵⁷ and 'more dazzling in its utopianism than that of even the most utopian of utopian socialists'.⁵⁸ While Marx and Engels at several times disavowed their utopian leanings,⁵⁹ many of their texts contained a clear desire to build a better future. In *Capital*, for example, Marx remarks that 'what distinguishes the worst architect from the best of the bees is this, that the architect raises his structure in imagination before he erects it in reality'.⁶⁰ This call for world-building inspired a new generation of Marxist thinkers such as Marcuse ('In order to retain what is not yet present as a goal in the present, phantasy is required')⁶¹ and Bloch, who wrote that 'reason cannot blossom without hope, and hope cannot speak without reason; both must operate in a Marxist unity; no other science has a future, no other future has a science'.⁶²

Marx's futurity focused primarily on the promise of the revolution to come, which he maintained would result in the overthrowing of capitalism in favour of socialism. In contrast to liberalism, for Marx, justice is yet to be achieved and the available conceptual architecture of liberalism actually creates and reinforces injustice. This view is shared by Marxist legal scholars who criticise the legal structures and conditions of capitalism as preventing the implementation of justice. As Katie Cruz writes:

we need norms capable of rallying and speaking to *all* workers. ... Contesting labour unfreedom and demanding 'freedom' within, and against, capitalist relations of (re)production should be the agenda for migrant sex workers, migrant workers, citizen workers, and all paid and unpaid workers globally.⁶³

Law, then, is predominantly used to shore up existing relationships of capital, rather than to introduce any meaningful form of equality or egalitarianism. To achieve justice, we need social change.

Marx writes that post-revolution, a new 'Communist' society will be established, ushering in an age of equality in terms of wealth, status and nationality. In this utopian future, capitalist concepts such as national borders and capital will be abolished. As Marx and Engels wrote, 'all that is solid melts into air, all that is holy is profaned, and man is at last compelled to face with sober senses his real conditions of life, and his relations with his kind'.⁶⁴ Here the temporal future register of Marx's theory becomes very clear. For Marx, communism represents the antithesis of contemporary conditions: 'We call communism the *real* movement which abolishes the present state of things. The conditions of this movement result from the premises now in existence.'⁶⁵ It is future-orientated in its deliberate removal of presentism.⁶⁶ This discussion of a communist future is sketched rather than detailed. As Marx notes:

in a higher phase of communist society, after the enslaving subordination of the individual to the division of labor, and therewith also the antithesis between mental and physical labor, has vanished; after labor has become not only a means of

⁵³ Marx, *A Contribution*, 22.

⁵⁴ Morfino, "Tempora Multa."

⁵⁵ Morfino, "Tempora Multa," 9.

⁵⁶ Webb, Marx, *Marxism and Utopia*, 3.

⁵⁷ Hunt, "Was Marx a Utopian Socialist?" 97.

⁵⁸ Kumar, "Anti-Utopia," 53.

⁵⁹ Webb, Marx, *Marxism and Utopia*; Geoghegan, "Marxism and Utopianism."

⁶⁰ Marx, *Capital*, 174.

⁶¹ Marcuse, *Negations*, 113.

⁶² Bloch, *On Karl Marx*, 15.

⁶³ Cruz, "Beyond Liberalism," 87.

⁶⁴ Marx, *The Communist Manifesto*, 13.

⁶⁵ Marx, *The German Ideology*, 11.

⁶⁶ Although, see Tomba, "Marx's Temporalities."

life but life's prime want; after the productive forces have also increased with the all-around development of the individual, and all the springs of co-operative wealth flow more abundantly—only then can the narrow horizon of bourgeois right be crossed in its entirety and society inscribe on its banners: From each according to his ability, to each according to his needs!⁶⁷

Marx sets out a utopian state and outlines the contemporary conditions necessary to ensure its arrival. Less certain is law's role in this revolution. Loosely speaking, Miéville sets the proposition that law's imbrication within global capitalism means that it cannot challenge it.⁶⁸ Marks, in contrast, sees the contestability of law as an important tool in challenging the inequalities produced by capitalism.⁶⁹ Knox offers a way out of this stalemate by reframing Marxist engagement with law around strategy and tactics.⁷⁰ Therefore, Marxist jurisprudence remains committed to a just future—although the legal means by which we arrive at that future remain contested. As a result, the pluralism encountered in Marx's historical approach to time is also present in his conception of the future. Apostol writes that 'within the framework of a new interpretation of Marxian dialectics, the structure of the future is seen as comprising a definite field of multiple possibilities'.⁷¹ This fits with Geoghegan's contention that the future as envisioned by Marx would be culturally and contextually specific. As he notes, 'the future would be the creation of the people of that time and would assuredly be very different from the speculation of earlier seers'.⁷² Therefore, on this understanding, Marxism is purposively non-proscriptive, allowing for its emergence in several different spaces and contexts.⁷³ Marx's future society should, therefore, be understood as pluralistic in its possibilities.⁷⁴ Thus, this pluralistic, future-orientated conception of justice can properly be understood as, for Marx, immanent and inevitable.⁷⁵ As Bloch writes:

Marxism, above all, was first to bring a concept of knowledge into the world that essentially refers to Becomeness, but to the tendency of what is coming up; thus for the first time it brings future into our conceptual and theoretical grasp.⁷⁶

Thus, Marxism's temporal lens and focus construct justice as yet to come. Nonetheless, Marx's focus on the immanence of future justice locates it as not only achievable but also certain.

Queer Theory

Queer theory offers several different approaches to justice, each produced through different modes of temporality. One key temporal element within queer theory has been in its critique of 'reproductive temporalities' whereby 'values, wealth, goods and morals are passed through family ties from one generation to the next'.⁷⁷ Law provides a foundation through which these reproductive temporalities are reified and naturalised. The legal ordering of reproductive temporalities, thus, shares much of the linearity and sense of 'justice-as-achieved' as liberalism. Again, for queer theory, the architecture of the state does not ensure that justice has been provided in the past but, in fact, produces and concretises inequalities. This is further realised by the liberal state's valorisation of the family unit through law.

Future concerns (and justice) are, thus, motivated by a series of institutional relations that privilege the reproductive heteronormative family unit. Logics of child protection, which are often employed against LGBTI groups, for example, compel theorists into discussions that frame the heterosexual experience as normative. In doing so, they render unthinkable 'the possibility of a queer resistance to this organizing principle of communal relations'⁷⁸ by refusing to frame queer experience as political. Rawls's deracination of the human follows through into a political liberalism that insists on formal equality rather than legal and institutional change.⁷⁹ Some branches of queer theory, therefore, seek to disrupt these temporalities and imagine futures that are not guided by heteronormative liberal framings. As Halberstam writes, 'queer subcultures produce alternative temporalities by allowing their participants to believe that their futures can be imagined according to logics that lie outside of those paradigmatic markers of life experience—namely, birth, marriage, reproduction, and death'.⁸⁰ Queer theoretical approaches to temporality, thus, destabilise much of the underlying assumptions on which liberal approaches to justice are based.

⁶⁷ Marx, *Gotha Programme*, 5.

⁶⁸ Miéville, *Between Equal Rights*.

⁶⁹ Marks, *The Riddle of All Constitutions*.

⁷⁰ Knox, "Strategy and Tactics."

⁷¹ Apostol, "Marxism," 201.

⁷² Geoghegan, "Marxism and Utopianism," 40.

⁷³ Tomba, "Marx's Temporalities."

⁷⁴ Apostol, "Marxism," 205.

⁷⁵ Van de Berg, *The Immanent Utopia*.

⁷⁶ Bloch, *The Principle of Hope*, 141.

⁷⁷ Halberstam, *Queer Time and Place*, 5.

⁷⁸ Edelman, *No Future*, 2.

⁷⁹ Again this is a characterisation of the politics that have followed Rawls rather than Rawls's work in and of itself.

⁸⁰ Halberstam, *Queer Time and Place*, 2.

In his book *No Future*, Lee Edelman offers an alternative to reproductive futurism, which eschews the future in favour of absolute presentism:

Rather than rejecting, with liberal discourse, this ascription of negativity to the queer, we might, as I argue, do better to consider accepting and even embracing it. Not in the hope of forging thereby some more perfect social order—such a hope, after all, would only reproduce the constraining mandate of futurism, just as any such order would equally occasion the negativity of the queer—but rather to refuse the insistence of hope itself as affirmation, which is always affirmation of an order whose refusal will register as unthinkable, irresponsible, inhumane. And the trump card of affirmation? Always the question: If not this, what? Always the demand to translate the insistence, the pulsive force, of negativity into some determinate stance or ‘position’ whose determination would thus negate it: always the imperative to immure it in some stable and positive form. When I argue, then, that we might do well to attempt what is surely impossible—to withdraw our allegiance, however compulsory, from a reality based on the Ponzi scheme of reproductive futurism—I do not intend to propose some ‘good’ that will thereby be assured. To the contrary, I mean to insist that nothing, and certainly not what we call the ‘good’, can ever have any assurance at all in the order of the Symbolic.⁸¹

In contrast to the other theories offered, Edelman refuses to offer an alternative future, instead advocating a commitment to changing social conditions through a focus on the present. Although it is clear from the above passage that Edelman is not evincing this argument, the focus on improving present conditions must have the corollary effect of changing the material conditions of the future to be more just. Although Edelman is strictly presentist in his approach, he still offers the possibility of a better future even as he denies it.

Other queer theorists are more obviously focused on the future. In *Cruising Utopia*, José Esteban Muñoz attempts to outline a queer utopia and, indeed, sees it as central to creating a queer theory of justice:

Queerness is a structuring and educated mode of desiring that allows us to see and feel beyond the quagmire of the present. The here and now is a prison house. We must strive, in the face of the here and now’s totalizing rendering of reality, to think and feel a *then* and *there*.⁸²

Muñoz uses the manifesto of the Third World Gay Revolution as an example of a queer utopia. This group, concerned with both sexual liberation and decolonisation, outlined their vision of a queer future:

We want a new society—a revolutionary socialist society. We want liberation of humanity, free food, free shelter, free clothing, free transportation, free healthcare, free utilities, free education, free art for all. We want a society where the needs of the people come first. We believe that all people should share the labor and products of society, according to each one’s needs and abilities, regardless of race, sex, [age], or sexual preferences. We believe the land, technology, and the means of production belong to the people, and must be shared by the people collectively for the liberation of all.⁸³

Thus, queer theory has the potential to offer a theory of justice that divorces itself from liberalism while maintaining the rights of LGBT people. This understanding of social justice takes places in an achievable, possible near future. It builds upon Marx’s conception of an imminent form of justice and continues the temporal trajectory of justice as progress (although decentred from liberalism’s heteronormative conception of progress). Attempts to build queer temporalities into law have come through scholars such as Kay Lalor, who traces the ‘spatio-temporal legacies of Empire’ in House of Commons debates over global LGBT rights,⁸⁴ or Nicola Barker’s rejection of marriage as a ‘progressive’ ideal for which LGBT people should be striving.⁸⁵ Other legal engagements have come from scholars considering trans and intersex issues that attempt to trace the institutional ways through which subjects are produced through time.⁸⁶ For example, Grabham has outlined:

durations, waiting periods and down-time ... could serve to intensify the somatic experience of gender, ‘hot-housing’ normative gender expressions and negotiations of identity into particular moments or time spans, and concentrating the social expression of particular gender ideologies. Prescribed periods of time are conceptually linked with high pressure and it is this spatio-temporal experience of intensity ... that helps to move trans subjects ‘forward’ to a legally ratified transition.⁸⁷

⁸¹ Edelman, *No Future*, 4.

⁸² Muñoz, *Cruising Utopia*, 1.

⁸³ Third World Gay Revolution, “Sixteen Point Platform and Program,” point 16.

⁸⁴ Lalor, “Queer Legacies of Colonialism.”

⁸⁵ Barker, *Not the Marrying Kind*.

⁸⁶ Grabham, “Governing Permanence”; Garland, “Temporal Bodies”; Travis, “The Vulnerability of Heterosexuality.”

⁸⁷ Grabham, “Governing Permanence,” 118.

Therefore, temporality is a key determinant in queer legal theory's production of and commitment to justice. Again, for many, justice is achievable even if the conditions that are necessary to overcome are messy and complex. Taking into account the situated histories of LGBT people is a key aspect of challenging these barriers.

C. Science Fiction

Some legal theorists have embraced the jurisprudential potential of science fiction. This enables jurisprudents to consider a broader range of temporal possibilities—these can be nonlinear, impossible or unlikely, offering different accounts of and approaches to justice. Indeed, science fiction might not be thought of as one temporality but rather as a myriad of competing temporal tools. Engagement with these tools allows for considerations of justice at a broader, nonhuman temporal scale. Particularly important for our purposes is science fiction's ability to rupture the temporalities of present and future, enabling a broader and more immediate engagement with justice than Derrida's 'to come'.⁸⁸ Science fiction places futures in the present, causing a break in linearity and a dislocation or disordering of time. This enables justice to be born into, and enacted in, the present: the future is now for these theories. In the next section I focus on feminist legal theory and posthumanism as two normative jurisprudential approaches that have utilised science fiction to enhance theorisations of justice and enfold the future and the present.

Feminist Legal Theory

While feminism has predominantly considered the material conditions of sex and gender in the past and present,⁸⁹ there has been a growing body of feminist work concerned with the future. As Grosz exhorts:

feminism must direct itself to change, to changing itself as much as to changing the world. It must direct itself to that most untimely and abstract of all domains—the future, and those forces which can bring it into existence.⁹⁰

Therefore, a feminist approach to temporality and the future attempts to provide alternate ontologies and epistemologies capable of reconceptualising and reconstructing the feminine 'other'.⁹¹ Some of this work has been 'prefigurative' in trying to imagine future laws as if they were an option in the present.⁹² Again, such approaches to justice are inherently pluralistic and indeterminate. As Grosz writes, 'the project of radical politics, and thus of a radical feminist politics, remains how to envisage and engender a future unlike the present, without being able to specify in advance what such a future entails'.⁹³

There have been some attempts within feminist theory to articulate a better future (e.g., premised on gender equity),⁹⁴ which have been enhanced by a long history of directly engaging with the terminology and thought experiments of science fiction. For example, Shulamith Firestone in *The Dialectic of Sex* (1970) built upon existing Marxist scholarship to point towards a revolution based on sex and gender:

Just as to ensure elimination of economic classes requires the revolt of the underclass (the proletariat) and, in a temporary dictatorship, their seizure of the means of *production*, so to assure the elimination of sexual classes requires the revolt of the underclass (women) and the seizure of control of *reproduction*: not only the full restoration to women of ownership of their own bodies, but also their (temporary) seizure of control of human fertility—the new population biology as well as all the social institutions of childbearing and childrearing. ... The end goal of feminist revolution must be, unlike that of the first feminist movement, not just the elimination of male *privilege* but of the sex *distinction* itself: genital differences between human beings would no longer matter culturally.⁹⁵

This control of reproduction would be facilitated by separating it completely from the female body. Firestone explicated the necessity of artificial reproduction to female liberation outlining and creating the 'bottled baby'. The creation of this new means of human reproduction would free them from both childbirth and motherhood. This technological innovation requires a nonlinear and, under current conceptions, 'impossible' temporal approach to justice that draws upon science fiction. Firestone pictures a temporal 'break', a rupture between now and a technologically inspired revolution.

⁸⁸ Derrida, "The Force of Law."

⁸⁹ Grosz, "The Untimeliness of Feminist Theory," 49.

⁹⁰ Grosz, "The Untimeliness of Feminist Theory," 49; see also Irigaray quoted in Whitford, Luce Irigaray, 14.

⁹¹ Grosz, "Feminist Futures?" 13.

⁹² Cooper, "Decertified Gender."

⁹³ Grosz, "Feminist Futures?" 18–19.

⁹⁴ Cooper, "Decertified Gender"; Renz, "Reimagining Gender."

⁹⁵ Firestone, *The Dialectic of Sex*, 10–11.

Conversely, Donna Haraway in *A Cyborg Manifesto* outlines that ‘the boundary between science fiction and social reality is an optical illusion’.⁹⁶ Haraway purposely weaves together science, feminist theory and science fiction—drawing on notable science fiction writers such as Octavia Butler to make larger points about the social construction of women and race. For Haraway, a future is on the horizon, but she embraces the dystopic nature of science fiction to address it. As she writes, ‘we have all been injured, profoundly. We require regeneration, not rebirth, and the possibilities for our reconstitution include the utopian dream of the hope for a monstrous world without gender.’⁹⁷ Again, Haraway’s tone is purposively placed in a future temporality—even as she addresses the contemporary conditions under which we are all cyborgs. Haraway’s writing disrupts notions of linear progress, destabilising technological and gender relations in both the present and the future. By understanding the present in terms of science fiction Haraway unlocks the potential for new feminist utopias, collapsing and enfolding the moment of justice’s potential into the present.

Haraway describes her cyborg myth as a hybrid of ‘machine and organism, a creature of social reality as well as a creature of fiction. Social reality is lived social relations, our most important political construction, a world-changing fiction.’⁹⁸ In this way, the cyborg challenges our binary divisions and encourages us to explore cyborgian conceptualisations. It represents ‘an argument for *pleasure* in the confusion of boundaries and for *responsibility* in their construction’.⁹⁹ Followers of Haraway have continued her engagement with science fiction. As Gray et al. maintain:

the complete cyborgologist must study science fiction as the anthropologist listens to myths and prophecies. Science fiction has often led the way in theorizing and examining cyborgs, showing their proliferation and suggesting some of the dilemmas and social implications they represent.¹⁰⁰

These works have been taken up within feminist legal theory in relation to the regulation of the cyborg embryo¹⁰¹ and ectogenesis.¹⁰² Feminist theories of justice are, therefore, future orientated—although some, such as Haraway, engage directly with the conceptual architecture of science fiction to envision and build alternate futures while also birthing the moment of justice into the present. The multiple temporalities and possibilities inherent to feminist theory, thus, place it squarely within the conceptual architecture of science fiction as it attempts to envision justice and imagine fairer societies. Science fiction allows us the conceptual tools to think through the means by which justice can be achieved. It is also capable of rupturing temporal space, enabling the imagination and enactment of justice in the present.

Posthumanism

One final normative jurisprudential theory that can be located within the multiple-temporal genre of science fiction is posthumanism. This theory, popularised by Rosi Braidotti, seeks to reorient the humanities away from its ontological and epistemological grounding in the human and towards recognising humanity’s interdependency on the environment and technologies.¹⁰³ Immediately, posthumanism draws on a similar lexicon to science fiction, where the human is often decentred from the narrative in favour of the technological, the planetary and the alien.

Not only does this challenge the *subject* of legal liberalism, but also it challenges human-centred conceptions of temporality with subsequent effects on the way that justice is imagined. The complexity of charting the human and nonhuman relationship with the environment necessitates engagement with ‘nonhuman, even inorganic temporalities beyond historiographical dating, periodisation or chronology’.¹⁰⁴ Such an approach aims to take nonhumanist agency seriously, and in so doing opens up the temporal horizon both before and beyond human existence.¹⁰⁵ Again, this shift in temporal scale resonates with some of the broader temporalities used in science fiction, spanning millennia, galaxies and civilisations, while firmly centring justice in the present.¹⁰⁶ Again, temporalities are ruptured through the use of science fiction. Bignall and Braidotti signpost several important and interesting questions generated by posthuman temporality:

⁹⁶ Haraway, “Manifesto.”

⁹⁷ Haraway, “Simians, Cyborgs, and Women,” 37.

⁹⁸ Haraway, “Simians, Cyborgs, and Women,” 1–2.

⁹⁹ Haraway, “Simians, Cyborgs, and Women,” 3.

¹⁰⁰ Gray, “The Cyborg Handbook,” 8.

¹⁰¹ Fox, “Pre-Persons, Commodities or Cyborgs”; Travis, “Making Space.”

¹⁰² Horn, “Establishing Boundaries.”

¹⁰³ Braidotti, *The Posthuman*.

¹⁰⁴ Rossini, “Posthuman Temporalities,” 5.

¹⁰⁵ Bignall, “Posthuman Systems,” 6.

¹⁰⁶ See, for example, the time between Herbert’s *Dune*, *Children of Dune* and *Heretics of Dune*.

How, for example, might we respond sanely to the contemporary posthuman situation of instantaneous and proliferating information overload driving cognitive capitalism, without reinforcing accelerationism by normalising presumptions of Anthropocene apocalypse as a symptom and effect of ‘catastrophic time’? Is it possible to hold fast to modern notions of progressive politics, while also abandoning conceptualisations of linear temporality in favour of a notion of history as multiple and simultaneous, ambivalent, fragmented, ephemeral, discontinuous and dissonant, registering the posthuman reality that diverse entities live diverse histories that travel incompossible lines of time? What happens to chrononormativity and chronobiopolitics when bodies are augmented for alternative reproductive capabilities? How do some Indigenous and non-European models of time and temporalisation resist the ‘homogenous empty time’ of universal History to affirm the ways in which experiences of time and history are shaped by places, and what happens to such experiences of temporal existence when ancestral places are destroyed by colonial histories of devastation?¹⁰⁷

Therefore, temporality within posthumanism opens up a range of productive lines of inquiry that echo the breadth, scale, indeterminacy and nonlinearity of science fiction. The focus on technology and nonhuman agency demanded by posthumanism is similarly reminiscent of science fictive concerns. This type of approach foregrounds ‘a new way of combining ethical values with the well-being of an enlarged sense of community, which includes one’s territorial or environmental inter-connections’.¹⁰⁸ Considering these environmental and technological interconnections necessarily draws upon a future imaginary—one that Braidotti grounds in a vision of hope:

Hope is a way of dreaming up possible futures: an anticipatory virtue that permeates our lives and activates them. It is a powerful motivating force grounded not only in projects that aim at reconstructing the social imaginary, but also in the political economy of desires, affects and creativity that underscore it.¹⁰⁹

This posthuman approach has been continued by a range of legal academics who are concerned with current approaches to the environment and climate change.¹¹⁰ For example, Jana Norman seeks to create a ‘posthuman legal subject’ to ‘secure the conditions for the health and future flourishing of the whole community of life on Earth’.¹¹¹ Similarly, Cielemęcka and Daigle aim to pivot:

not towards a future conceived in a linear fashion but rather emerging from the entanglement of beings and the plurality of temporal dimensions of the past, present, and futures and its different scales. … [This allows us to] recognize the nonheterogeneity of the future, and the violence that occurs whenever ‘our future’ becomes more important or worth protecting than that of some other being.¹¹²

Such an approach broadens the temporal scale with which we are concerned beyond human-centred approaches in line with the concerns of science fiction. Tackling climate change, for example, requires an understanding of justice far beyond human (and political) lifespans. Posthumanism, like the other theories and jurisprudential figures I have outlined, is driven by its imagination of the future but recognises its heterogeneity and entanglement within the past and present of the legal. Similar to other theories that use science fiction as a conceptual tool, though, the justice imagined by posthumanism is multiple, but the threats that it envisions and encounters are likely if not inevitable. In many ways these threats arise from liberalism’s inability to consider the future and so are a direct consequence of the exponential progress demanded under capitalism and the harms created by colonialism.¹¹³ However, the decentring of the human offers an important approach to justice that allows for an alternative temporal focus enabled by the conceptual architecture of science fiction, particularly the enfolding of the present and the future.

V. The Futures of Justice

So far, I have outlined three distinct (but porous) temporal registers through which justice is conceptualised in normative jurisprudence: counterfactual histories, the near future and science fiction. These three alternate temporal approaches dictate the types of justice that can be imagined and, subsequently, achieved. Of all of the theories discussed, social contract theory and its descendant liberalism serve as outliers in terms of *when* they imagine justice to have occurred.¹¹⁴ For these interlinked theoretical traditions, the architecture needed to achieve justice has already been introduced. Although the counterfactual

¹⁰⁷ Bignall, “Posthuman Systems,” 8–9.

¹⁰⁸ Braidotti, *The Posthuman*, 190.

¹⁰⁹ Braidotti, *The Posthuman*, 192.

¹¹⁰ Davies, *Law Unlimited*; Norman, “Posthuman Legal Subjectivity”; Grear, “Legal Imaginaries and the Anthropocene”; Grear, “Planetary”; Matthews, *Earthbound*; Cielemęcka, “Posthuman Sustainability.”

¹¹¹ Norman, “Posthuman Legal Subjectivity,” 5.

¹¹² Cielemęcka, “Posthuman Sustainability,” 82.

¹¹³ Braidotti, *The Posthuman*.

¹¹⁴ Green, “The Importance of Dystopian Hypotheticals.”

histories are imaginary, they serve to place the tools needed to achieve justice firmly in the past. For these theories, justice continues to be linear, progressive and largely achieved. Instances of injustice are, therefore, downplayed and individualised. Thus, the dominant political theory of justice is constrained by the type of future it can envisage, with alternative approaches being largely dismissed.¹¹⁵ Perhaps that is why there is a continuing fashion for dystopian texts—the only alternative to liberalism that the West is comfortable with is the breakdown of society. Such texts serve to re-establish the perceived importance and inevitability of liberalism. This is in keeping with liberal theories of time that tend to emphasise aspects of universality, objectivity and linearity.¹¹⁶ The ‘when’ of justice for liberalism is the past and present with little means for normative change. Liberal normative jurisprudence, even insofar as it is concerned with *justifying* the status quo, is almost always also explanatory. It tells us a story about what it takes us to already know/believe: that our states are legitimate and that our arrangements are broadly just. This is often taken as the point of departure for liberal ‘tweaking’ of the status quo within philosophy. Liberals can be radical but they can only ever be radical liberals. They are, as a result, concerned with the present and how it can or should be both understood and altered, rather than the future and what it might bring.

Aside from these approaches, the majority of normative or critical jurisprudential inquiry is concerned with the future. Outside liberalism the nature of justice is, by and large, a future-orientated project, as justice is yet to be achieved. The teaching and research of normative jurisprudence will seem jarring to other legal subjects in its temporality, ambition and concerns. This serves as an important distinction to law (particularly the teaching of law), which often venerates the past—focusing on what *has* been rather than what *should* be. This point speaks to an important aspect of normative jurisprudence: it is future orientated, it is about what *ought* to be, it is about world-making. Indeed, it is about making *better* and *more just* worlds. Therefore, normative jurisprudence contains a necessarily speculative dimension. The fundamental nature of normative jurisprudence has much in common with science fiction. Science fiction is similarly geared towards the future and is capable of presenting us with alternate worlds. Even if they are rarely better or more just, they provide us the conceptual architecture to illustrate these points—allowing for the consideration of the nonlinear, the regressive (or the exponential hyper-progression), the impossible, and the unlikely—and to decentre the human from our moral and legal reasoning.

These temporal modalities serve to break down the boundaries between the two (previously distinct) conceptual categories of normative jurisprudence and science fiction. In doing so, this article places science fiction within an important jurisprudential tradition, capable of contributing to debates around justice in and of itself. Understanding these jurisprudential traditions in a context of science fiction helps to understand the utility of science fiction to lawyers and jurisprudents concerned with justice. As mentioned, this does not mean that science fiction is *similar* to legal theory or reminds us of it in some ways, but that it has important jurisprudential messages to convey in its own right. As William MacNeil reminds us:

contemporary pop culture has something important to say to and about jurisprudence, above and beyond what the mainstream legal academy has to offer. ... The various media ... not only reach a much larger audience than standard legal texts, but potentially, and even more democratically, they also help restore topics of jurisprudential import—justice, rights, ethics—to where they belong: not with the economists, not with the sociologists, not even with the philosophers, but rather with the community at large.¹¹⁷

Science fiction offers a rich source of jurisprudential material. The questions that it poses, the situations that it imagines and the worlds that it can construct are ripe for jurisprudential examination—in a similar vein to Marx’s Revolution and Firestone’s bottled baby. Importantly, and as MacNeil outlines in the quotation above, the popularity of science fiction gives it even greater potential to raise popular debates about the nature of justice. While science fiction does have much to say about distinct elements of law, I believe that there is a bigger and more fundamental function of science fiction within normative jurisprudence. In some sense, law and science fiction’s focus on the legal mirrors the focus of the law and literature movement. To justify its legal credentials, this movement has been keen to focus on law as opposed to the literary, in part due to the pressures of the legal academy.¹¹⁸ Nonetheless, rather than focusing on law and science fiction, I believe there is more mileage in discussing the relationship between justice and science fiction.

To some, this may seem like a question of mere semantics. However, I contend that it allows for a much broader reading of science fiction texts. As William MacNeil outlines in his ground-breaking text on cultural legal studies, this allows us to read the texts *jurisprudentially*.¹¹⁹ This allows for the identification and critique of law, but additionally enables critique of larger legal and political systems, underlying principles of justice, moral actions within the texts, the development of proto law and normative systems in dystopic societies, and outlining the wider jurisprudential potential of science fiction. This shift towards

¹¹⁵ Green, “The Importance of Dystopian Hypotheticals.”

¹¹⁶ Greenhouse, “Just in Time.”

¹¹⁷ MacNeil, *Lex Populi*, 1–2.

¹¹⁸ Travis, “Teaching Professional Ethics”; Bradney, “It’s About Power.”

¹¹⁹ MacNeil, *Lex Populi*.

readings of justice has been pre-empted in other aspects of cultural legal studies—particularly readings of video games and justice.¹²⁰ Sheryl Hamilton, another prominent scholar of law and science fiction, takes a similar approach where she exhorts us to understand science fiction as an epistemology or an approach. In doing so, Hamilton highlights that:

in offering resources for a rethinking of the order of things between people and between people and things, I argue that [science fiction] can ground a transformed and transformative legal imagination, one especially well suited to exploring law's capacity to think and rethink persons.¹²¹

Taking this further we can see science fiction and jurisprudence as coproducing a theory of knowledge about the potential for just legal futures. Indeed, and as I have explained, science fiction enfolds future and present conceptions of justice, allowing for new forms of justice to collide with and disrupt the present. We would do well to take heed of this temporal pluripotentiality more widely in normative jurisprudence.

VI. Conclusions

This article has made several theoretical contributions. First, it has outlined the temporality of normative jurisprudence as a (predominantly) future-orientated project, with liberalism acting as an important theoretical outlier. Liberalism's presentism sees justice (at least on a systemic basis) as delivered, thus, individualising the responsibility for injustices. This theoretical tradition places the tools of justice in an imagined past and constructs the temporality of justice as linear and progressive. This point is significant precisely because liberalism is often considered the default within normative jurisprudence: it is the orthodox against which heterodoxy is determined. However, examined through a temporal lens it is clear that liberalism is the aberrant case: of all normative jurisprudential approaches, it is the only one that limits itself to consideration of the present. Since this has several negative implications for justice and for world-building, this seems to make liberalism a poor example, and even a very unusual example, of normative jurisprudence. It is not the default at all: it is the outlier within jurisprudence and significantly limits our legal-theoretical imagination. However, for the majority of normative jurisprudential approaches, justice is yet to come. Science fiction provides the conceptual architecture for considerations of justice including nonlinearity, impossibility, unlikelihood, nonhuman actors, regression and hyper-progress. This allows for depictions of justice that push the boundaries of normative jurisprudence and legal imagining and, indeed, grants the ability to enfold present and future, enabling new disruptive forms of justice.

Tracing the temporal similarities between jurisprudence and science fiction has another important function: it elevates science fiction to a form of normative jurisprudence in and of itself, embracing Margaret Davies's call for legal theory to be 'more open, more pluralist, more grounded in social fact, more textual, and more attentive to the law–power nexus'.¹²² It is hoped that blurring the boundaries between science fiction and normative jurisprudence will lead to greater engagement between the two, strengthening this nascent field. Science fiction has much to offer the legal and jurisprudential imagination, providing us with the architecture to explore the possibility of a more just future. Moreover, science fiction places normative jurisprudence beyond the academy and into the hands of the populace at large, allowing for broader and more meaningful engagement with the concept of justice. Aside from those committed to liberal approaches, normative jurisprudence is an exercise in thinking through, debating and bringing into being just futures. Science fiction gives us the lexicon and tools to not only understand *what* justice should look like, but also ask important questions of *when* it may occur. By enfolding the present and the future, science fiction allows for new and disruptive forms of justice to be imagined and enacted in the present.

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¹²⁰ Newberry-Jones, "Answering the Call of Duty."

¹²¹ Hamilton, "Human No Like Smart Ape," 303.

¹²² Davies, Law Unlimited, 1.

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