

## Inventions of Nemesis: Utopia, Indignation, and Justice

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Utopias emanate from a variety of texts, media and genres. Whether we are talking about fictional stories, blueprint plans for state-building or guides to living in utopian communities, utopian thinking necessitates conversations across disciplines. In *Inventions of Nemesis: Utopia, Indignation, and Justice*, Douglas Mao (Professor in the Humanities) uses literary critique to engage in a cross-disciplinary discussion that raises questions about justice, order and the relationship between the individual and the community. These questions, as well as the themes of freedom and rights that arise in the book, speak directly to legal scholarship.

*Inventions of Nemesis* brings together literary works by Octavia E. Butler, Ursula K. Le Guin and Samuel R. Delaney, and puts them in conversation with more traditionally discussed utopias such as Thomas More's *Utopia* (1516) and William Morris's *News from Nowhere* (1890). Butler's *The Book of Martha* (1995) explores individualised utopias through dreams, Le Guin's *The Dispossessed* (1974) depicts an anarchist society and Delaney's *Triton* (1976) imagines a 'feminist but also perhaps authoritarian Mars' (p. 195). Much of traditional utopian scholarship has focused on a select handful of texts and Mao is critical of this Eurocentrism that has dominated utopian scholarship. Centring the work of Black, feminist and decolonial utopian writers, which were for a time sidelined in the literature, is an important aspect of the book that opens up new avenues for thinking about the relationship between utopian studies and legal scholarship. This encounter offers my reflections on how this book from another discipline can generate novel ways of thinking in legal debates on utopianism.

Often in legal scholarship, utopian thinking is dismissed for being (among other things) fanciful, unprofessional or even dangerous. International legal scholarship, for example, is considered to reject utopianism on the basis that it is whimsical time-wasting (Rasulov, 2018; Rasulov, 2021). In the *Inventions of Nemesis*, Mao highlights how utopias are often considered to be constructions of perfection (p. 4) or predicated on happiness (p. 28), and we can see how this view of utopia – this idea of happiness and perfection – might have added fuel to the conjecture within legal scholarship that utopian thinking is wishful thinking and may lack professionalism. In *Inventions of Nemesis*, Mao proffers that utopian thinking is driven not by an ideal of perfection, but rather by indignation at injustices in the world. Mao's thesis that both utopian thinking and the construction of utopias are a response to injustice offers a fruitful alternative starting point for a discussion between law and utopia.

There is also a strain of critique that sees utopianism as a threat to freedoms and liberty. In the inter-war period, liberal writers such as Karl Popper, Lionel Trilling and Isaiah Berlin critiqued utopianism and utopian thinking for its association with totalitarianism and authoritarian regimes (Sarat *et al.*, 2014). As Mao shows, across many utopias, 'order' is a key feature (p. 4) and it is perhaps because of this connection with order (and the association with perfection) that critics have rejected utopias for their authoritarian tendencies. The fear that utopianism leads to authoritarianism looms over legal scholarship and might (in part) explain the dearth of scholarship exploring law and utopia until the revival of such scholarship relatively recently.

Understanding utopias as bringing about a new order is where law and utopian thinking could be seen to coalesce. Instead, studies that have considered the function of law in utopian fiction often find a complex relationship between law and utopia, with some studies finding them diametrically opposed (see Sarat *et al.*, 2014). Constructions of lawless spaces, such as in Delaney's *Trouble on Triton: An Ambiguous Heterotopia* (1976) (which is discussed by Mao (p. 219)) or the demise of law and law enforcement in Morris's *News from Nowhere* or even the 'few laws' in More's *Utopia*, suggest that law can be seen as 'an obstacle to the creation of the perfect community' (Sarat *et al.*, 2014, p. 6). For critics such as Popper, Trilling and Berlin, utopia's 'perfect community' leads to totalitarian tyrannies and for them law is a 'necessary bulwark against the inevitable excesses of utopia' (Sarat *et al.*, 2014). So, whilst for some law's ability to order society can hinder utopian futures, for others law can mitigate the descent into authoritarian control. Reading *Inventions of Nemesis* compels us to consider the complex relationship between competing ideas of 'order' in law and utopia. One such moment in *Inventions of Nemesis* in which we are faced with this issue is where Mao refers to Jack Hexter's study of More's *Utopia* (Hexter, 1952). Hexter argues that the inhabitants of utopia are 'better' people 'because their laws, ordinances, rearing and rules of living are such as to make effective man's natural capacity for good' (cited at p. 88). For Hexter, law has the capacity to *change* human behaviours. Here (again) law is a force for structuring behaviour. Arguably, law is often conceptualised in these utopias and related commentaries as a tool for creating order. *But what if law in utopian fiction was not (only) about order, constraint and structure?* Mao asks us to consider instead the question of justice.

An obvious departure point for future cross-disciplinary reflections here would be an interrogation of 'justice' and its relationship with law. In fact, in the book, order still seems to have a central role; utopia is tied up with the task of re-ordering, rearrangement and reappointment so as to respond to a perceived injustice at the current ordering of the world. However, Mao argues that 'the right ordering required by justice and sought out by utopian indignation need not be characterized by hierarchy, structure, or even orderliness' – features we might readily associate with law's role in building a just society (pp. 48–49). This asks us to reimagine the role of law in seeking justice, so as not to be predicated on establishing order. Utopias, and those written by Black, feminist and queer writers in particular, offer ways of dismantling racial and gender hierarchies and problematising subject–object binary structures that underpin legal systems.

Throughout the book, Mao returns to John Rawls's theory of justice to construct a largely redistributive model of justice. Justice is defined in *Inventions of Nemesis* as 'a condition of right arrangement' in which people 'receive what's due them' (pp. 5, 13). Of course, there are alternative theories of justice that legal scholars could draw on to explore further the interconnections between utopia and law. For example, More's critique in *Utopia* of the incomprehensible and inaccessible laws in Tudor England raises questions about *access* to justice – a perennial concern within legal debates. One further example could be the work of feminist scholars who prioritise justice as recognition, justice as dignity and justice as voice (see McGlynn and Westmarland, 2019). In bringing together law and literature, we can reflect further on these questions of justice as recognition and voice. As Mao notes, the canon of utopian literature as it is currently constructed is predominately Western (p. 10) and overwhelmingly written by men, thus denying recognition to more marginalised writers. Speculative fiction, which can include utopian fiction, has been used by Black, feminist and indigenous writers as a way of seeking recognition, of claiming a voice and of demanding justice (Imarisha and brown, 2015) and legal scholarship must engage with the calls for justice in these literary works.

Whilst utopianism is often conceptualised as concerned with futurity (rather than nostalgia), Mao's focus on justice demands a reconsideration of the role of the past in utopian literature. Works of Afrofuturism, for example, which is a form of speculative fiction that centres African or African-American themes and concerns, explicitly engages with the porosity of past, present and future (Capers, 2022). *Inventions of Nemesis* shows how foregrounding justice within utopian thinking excavates the ways utopia is 'deeply engaged with the past', and this is especially the case in 'reparative forms of justice' (p. 17).

For Mao, the focus is on not just justice, but more importantly injustices. The cognitive estrangement afforded by utopias, and speculative fiction in general, allows readers to reflect on the current state of the world (Suvin, 1998), but what Mao impresses upon his reader is how to use utopias to expose the *injustices* in the present. Indeed, he declares that that search for injustice is the ‘more fundamental’ aspect of utopian thinking, rather than focusing on how different utopias might seek to reorient the world, its institutions and practices (p. 50). Mao’s call to consider specifically what utopia tells us about current injustices, and the role of legal and political structures and orders, directly speaks to lawyers.

Mao offers an additional talking point for a cross-disciplinary conversation when he draws a direct comparison between utopia and the rule of law (p. 185). For Mao, the rule of law is concerned with mitigating the capriciousness and biases of humans. Yet, for constitutional scholars, the rule of law is a contested concept that invokes various definitions from equality before the law to a substantive rule of law encompassing human rights protections. In his work, Dylan Lino focuses on A.V. Dicey’s theory of the rule of law and has demonstrated how the rule of law was used as an imperialist tool (Lino, 2018). Specifically, Lino highlights those instances in which the rule of law was disappplied across the Empire when it suited the imperialists. This brings into question the relationship between the rule of law, utopianism and colonisation. Recognising the links between utopianism, utopian projects and colonisation, which are noted in the literature (p. 192), forces us as readers to ask whom the utopia is intended to serve and who benefits. Similar questions can then be asked of the rule of law, when we draw together these discussions on law and utopianism.

Following my encounter with *Inventions of Nemesis*, I want to reflect on two interrelated themes that can elaborate on the relationship between law and utopia: tensions in utopian thinking (p. 87) and utopia as process.

One of the overarching themes that stands out from Mao’s analysis is the tensions within utopian thinking. In his work, Tom Moylan reveals how utopian scholarship is often built on a construction of binaries (Moylan, 2022). For example, Jacoby compares blueprint utopias with iconoclastic utopias, which are less concerned with providing detailed elaborations of a utopia through maps and plans (Jacoby, 2005). Mao too sets up a distinction between managerial utopias, which are concerned with the specific system of incentives, and transformative utopias, which are more concerned with changing the nature of people (p. 7). Yet, the very etymology of utopia – as both ‘no place’ and ‘good place’ – is suggestive of how utopia transcends such dichotomies, making the bifurcation of the categorisations of utopias unsustainable. Rather, as Mao suggests, there are spectrums or degrees of utopia, and balancing acts that need to be performed. Through a genealogy of the literature, Mao shows how writers oscillate between depicting managerial and transformative utopias. He illustrates the need for a balance; a purely managerial utopia lacks the radical departure from current practices to be fully ‘utopian’, whilst the other extreme of a transformative utopia can be so perfect as to deny its inhabitants meaningful freedoms. In arguing for a balance, Mao talks about the ‘exchange of freedoms’ that takes place within utopias (pp. 183–184). This moves us away from an idea of utopia as perfection, which has been associated with authoritarianism and the ‘abolition of freedom’ (p. 184). Instead, this more ambiguous approach to utopia provides an in-road for legal scholarship. Here we can use utopian literature to reflect on which freedoms are being curtailed in the current systems, and to interrogate the role of law in that curtailment.

This idea of working through the tensions within utopianism is linked to the second theme I want to discuss, which is the idea of process. Mao refers to a passage in Margaret Cavendish’s *The Blazing World* (1666). One of the characters comments that the utopian land was ‘peaceable, [and] quiet’, but the ruler of this land replies ‘but although it is a peaceable and obedient world, yet the Government thereof is rather a trouble, ... for order cannot be without industry, contrivance and direction’ (cited at pp. 139–140). For Mao, this passage with its reference to the ongoing troubles of governing and the need for further direction invokes the need to ‘keep the work of justice, as it were, in view’ (pp. 139–140). The idea that utopia is a process is also a crucial part of Ruth Levitas’s work on utopia as method and of Moylan’s theories of utopia (Levitas, 2013; Moylan, 2022). Feminist utopias from the

1960s and 1970s are often used as examples of ‘process-orientated’ utopias (Johns, 2010; Houghton and O’Donoghue, 2020). For these theorists, utopia is not a destination, nor is it a perfect state of affairs; it is an ongoing process that requires a reflection on the injustices it is seeking to rectify, and it is an iterative process that demands repeated consideration of the meaning of justice and freedom. Using this conceptualisation of utopia, as Johan van der Welt argues, utopia can inspire a self-reflexive process within law and legal scholarship (van der Welt, 2014).

Writing within the disciplines of literature and the humanities, Mao’s methods can further this discussion of process. Mao uses the concept of intertextuality, which is a study of the relationship between texts. For example, Mao draws on Morris’s *News from Nowhere* (1890) as a ‘riposte’ to Edward Bellamy’s *Looking Backward: 2000–1887* (1888) (p. 2). He also refers to Delaney’s *Triton* as a response to Le Guin’s *The Dispossessed* (p. 194). Another example would be N.K. Jemisin’s *The Ones Who Stay and Fight* (2018), which acts as a reply to Le Guin’s *The Ones Who Walk Away from Omelas* (1973). In her short story, Le Guin exposes the injustices that underpin utopias, and the characters in the story have to choose whether to stay or walk away from the idealised society. In contrast, for Jemisin, part of the process of striving for a better world is to tackle the harm at the core of society, and specifically here the harm is racism. When we consider utopia as a process, what Mao’s use of intertextuality elicits is the role of counter-indignation (p. 8), which generates replies to utopian projects and creates an ongoing discussion of what is meant by justice.

This process of intertextuality also enables us to read seemingly very different texts alongside each other to generate new meanings. What Mao does in *Inventions of Nemesis* is to read legal and political philosophy alongside utopian literature, but he does so in a way that raises the question whether it is possible to read legal and political philosophy, such as Rawls’s, as if it were utopian literature. He writes: ‘Rawls’s proposals can sound extravagantly utopian, in the sense of sweeping and difficult to realize, but also because they point to a correction of wrong arrangement by means of a redesign of the social mechanism’ (pp. 46–47). If we read legal theory in search of utopias, and use Mao’s theory of utopianism as indignation, we can also uncover the anxieties and injustices that drive legal theory. We can consider whether the proposed changes within legal texts offer a sufficient break from the present realities (Jameson, 2009) or a significant re-ordering (to use Mao’s terminology) to justify being considered ‘utopian’. Reading legal texts for their utopian or speculative features also exposes the collective imaginaries that underpin law. Akbar Rasulov, for example, notes the ideological conservatism and need for self-preservation of the archetypal international lawyer that drives an anti-utopian stance within international law (Rasulov, 2021). Juxtaposing legal and literary utopias forces us to think about ‘the “correct” way to generate legal knowledge’ (Rasulov, 2021, p. 28).

In imagining alternative worlds, utopias can tell us more about the current world. Mao’s thesis of utopia as indignation at injustice pushes us to look at how the world is currently structured, and how legal systems currently dispense justice. In reflecting on the relationship between utopia and justice, Mao explicitly draws attention to two resemblances: first, that both are predicated on humans as beneficiaries, and second, that both can be ‘understood as problem-solving, as fundamentally reparative’ (p. 137). Critics of utopias stress the genre’s obsession with the construction of plans, maps, structures and institutions, but Mao’s call to look for indignation and to see utopia as a response to injustice compels us to locate the people calling for justice and the people who are the intended beneficiaries of these new structures and institutions (p. 136). In so doing, we are reminded to look behind the legal frameworks structuring our own world, and to be attentive to demands for justice, as well as to make central the people who should be the law’s ultimate beneficiaries (Nicholson, 2019; Houghton and O’Donoghue, 2020).

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