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TOWARDS A POST-WORK “UTOPIA”: A POLITICAL AND LEGAL EXERCISE IN IMAGINATION

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ABSTRACT

Recent advances in artificial intelligence (“AI”) and robotics have rekindled fears of a workless future. In the aftermath of the COVID-19 pandemic, in particular, dystopian headlines portend that a robot apocalypse will “steal”, “kill”, or “destroy” humans’ jobs on a mass scale, thereby framing automation as a threat that must be counteracted by law and policy. Conversely, drawing on Aristotelian moral and political philosophy, the prospect of automating human work through AI and the consequent vision of a flourishing-centred, post-work society emerge as not merely acceptable but actively desirable. Nonetheless, this vision of a society in which AI liberates humans from toil, allowing them to engage in those activities that they deem intrinsically valuable, risks being labelled as “utopian”.

To counter this objection, this paper advances four claims that seek to highlight the value of utopian thinking while questioning the very labelling of the purported post-work society as “utopian”. In the event that these four claims are accepted, however, the objection that the construal of a flourishing-centred society as of interest to the legal order would itself be utopian remains valid. For this reason, this paper resorts to “virtue jurisprudence” or “the aretaic turn” in law. As a normative theory that invokes Aristotle’s ethics to address key questions in law, virtue jurisprudence argues that the law should aim to ensure the necessary preconditions for human flourishing. Applying this theory to the “future of work” debate yields the question of how AI automation would be regulated if human flourishing were, indeed, the law’s ultimate objective. The paper concludes that, far from being neutral, pejorative characterisations of future scenarios as “utopian” should not be taken at face value, particularly in relation to the “future of work” debate. Rather, political and legal argumentation must provide space for imaginative, utopian considerations alongside more realistic or pragmatic ones.

KEYWORDS

Post-work; Utopianism; Flourishing; Virtue jurisprudence; Aristotle.

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*Our most important task
at the present moment
is to build castles in the sky.*

—Lewis Mumford, *The Story of Utopias*¹

INTRODUCTION

Recent years have witnessed exponential advances in the development of artificial intelligence (“AI”) systems, understood as “sets of algorithms that analyse data and statistical relations to perform a goal-oriented task which would otherwise require human intelligence”², as well as in robotics, which denotes “any kind of mechanical device that can perform tasks and interact without human assistance”.³ This recent growth has, in turn, rekindled fears of a possible “end of work”, leading to the resurgence of a heated “future of work” debate among academic, policy, and business actors.⁴ In the aftermath of the COVID-19 pandemic, in particular, dystopian headlines increasingly portend that AI robots will “steal”, “kill”, or “destroy” people’s jobs, thereby framing AI-driven automation as a threat that must be counteracted by law- and policy-makers.⁵

As a counterweight to such dystopian narratives, this paper argues that there is a case to be made for a more desirable scenario in light of the projected automation of human work by means of AI. To that end, it draws on Aristotle’s moral and political philosophy, an intellectual tradition that the relevant “future of work” literature has largely overlooked. Section 1 of the paper provides a brief

¹ Lewis Mumford, *The Story of Utopias* (Read Books Ltd 2013) 92.

² Anastasia Siapka, ‘The Ethical and Legal Challenges of Artificial Intelligence: The EU Response to Biased and Discriminatory AI’ (Social Science Research Network 2018) SSRN Scholarly Paper ID 3408773 14 <<https://papers.ssrn.com/abstract=3408773>> accessed 22 March 2020.

³ Eleonora Peruffo and others, ‘Automation of Work: Literature Review’ (European Foundation for the Improvement of Living and Working Conditions (Eurofound) 2017) Working Paper WPEF17039EN 2 <<https://www.eurofound.europa.eu/sites/default/files/wpef17039.pdf>> accessed 26 May 2022.

⁴ See, e.g., Carl Benedikt Frey and Michael A Osborne, ‘The Future of Employment: How Susceptible Are Jobs to Computerisation?’ (Oxford Martin School, Programme on the Impacts of Future Technology 2013) <https://www.oxfordmartin.ox.ac.uk/downloads/academic/The_Future_of_Employment.pdf>; Erik Brynjolfsson and Andrew McAfee, *The Second Machine Age: Work, Progress, and Prosperity in a Time of Brilliant Technologies* (1st edn, W W Norton & Company 2014); Martin Ford, *Rise of the Robots: Technology and the Threat of a Jobless Future* (Basic Books 2015); Klaus Schwab, *The Fourth Industrial Revolution* (World Economic Forum 2016).

⁵ Dan Shewan, ‘Robots Will Destroy Our Jobs – and We’re Not Ready for It’ *The Guardian* (London, 11 January 2017) <<https://www.theguardian.com/technology/2017/jan/11/robots-jobs-employees-artificial-intelligence>> accessed 2 November 2019; Phil La Duke, ‘Robots Are Stealing Our Jobs’ *Entrepreneur* (23 April 2019) <<https://www.entrepreneur.com/article/332468>> accessed 2 November 2019; Alison DeNisco Rayome, ‘Robots Will Kill 20M Manufacturing Jobs by 2030’ [2019] *TechRepublic* <<https://www.techrepublic.com/article/robots-will-kill-20m-manufacturing-jobs-by-2030/>> accessed 2 November 2019; Gil Press, ‘Is AI Going To Be A Jobs Killer? New Reports About The Future Of Work’ *Forbes* (15 July 2019) <<https://www.forbes.com/sites/gilpress/2019/07/15/is-ai-going-to-be-a-jobs-killer-new-reports-about-the-future-of-work/>> accessed 16 April 2021; David Deming, ‘The Robots Are Coming. Prepare for Trouble.’ *The New York Times* (30 January 2020) <<https://www.nytimes.com/2020/01/30/business/artificial-intelligence-robots-retail.html>> accessed 16 April 2021.

interpretation of the Aristotelian concept of flourishing to illustrate how it can serve as a vehicle for a positive post-work vision for society. Following this, the paper addresses the objection of utopianism, which may be advanced against this vision on two levels. On the first level, it may be argued that the suggested post-work vision is itself utopian and that any such thought experiment is consequently futile. On the second level, even if there were some value in sketching a post-work vision, it would arguably be utopian to consider that such a vision might be of interest to the legal order. To address the former, Section 2 offers four counter-arguments that demonstrate the different possible contributions of utopian thinking. To address the latter, Section 3 offers an introduction to the nascent theory of virtue jurisprudence and provisionally applies it to the “future of work” debate. Finally, the paper concludes by enumerating the key takeaway points.

1. THE VISION OF A FLOURISHING-CENTRED, POST-WORK SOCIETY

Aristotle begins his main treatise on ethics, the *Nicomachean Ethics*, with a quest to find the ultimate human good.⁶ He acknowledges that all acts and choices have as their end—or *telos*—a certain good.⁷ Some goods or ends are sought as a means to others. There must, however, be an ultimate end or *telos* that is sought for its own sake; otherwise, humans would be trapped in a state of infinite regress.⁸ This is why he introduces a division between those goods or ends that are sought as such, meaning for their own sake only, and those that might or might not be sought for their own sake but are always sought as a means to the former.⁹ Of the goods that are sought as such, one—the summum bonum—is central in human life and should thereby constitute the subject of the most important discipline, which, for Aristotle, is politics or statecraft.¹⁰ This ultimate good is captured by the concept of flourishing or *eudaimonia*, which he defines as an activity of the soul in accordance with perfect *arete* (meaning excellence or virtue) in the context of a complete life.¹¹

Through a series of arguments in his treatise on *Politics*,¹² Aristotle further demonstrates that flourishing is best accomplished under conditions of leisure, with “leisure” denoting the condition in which humans engage in activities that they desire for their own sake.¹³ Specifically, leisure facilitates the cultivation of moral and intellectual virtues as well as humans’ engagement in contemplation, both of which are elements of Aristotle’s concept of flourishing. Given that leisure contributes to flourishing

⁶ Aristotle, *Nicomachean Ethics* (H Rackham tr, W Heinemann; GP Putnam’s Sons 1934). Perseus Digital Library <<http://data.perseus.org/citations/urn:cts:greekLit:tlg0086.tlg010.perseus-eng1:1094a>> accessed 20 August 2022; Henceforth, “*NE*” with references given in Bekker numbering.

⁷ *NE*, 1.1, 1094a2.

⁸ *NE*, 1.2, 1094a15-25.

⁹ *NE*, 1.6, 1096b10-15; *NE*, 1.7, 1097b1-5.

¹⁰ *NE*, 1.9, 1099b29-32; *NE*, 1.2, 1094a25-30.

¹¹ *NE*, 1.13, 1102a5; *NE*, 1.7, 1098a15-21.

¹² Aristotle, *Politics* (H Rackham tr, Harvard University Press 1944). Perseus Digital Library <<http://data.perseus.org/citations/urn:cts:greekLit:tlg0086.tlg035.perseus-eng1:1.1252a>> accessed 20 August 2022; Henceforth “*Politics*” with references given in Bekker numbering.

¹³ *Politics*, 8, 1138a1-6; *NE*, 10.7, 1177b3-6.

via these two pathways, Aristotle regards it as superior to its antithesis, namely occupation, which denotes a preoccupation with affairs that are instead sought as a means to something else.¹⁴

However, although leisure is a natural condition for humans, its actualisation may be facilitated or thwarted by the political/legal regime that is dominant at any given time. That is, the human potential to be at leisure requires intentional political and legal arrangements in order to be realised. More broadly, for Aristotle, ethics is a practical rather than a merely theoretical enquiry and one that cannot be separated from politics. Politics should strive for living well rather than merely living, and so the optimal political arrangement will be that which enables its citizens to lead a flourishing life.¹⁵ If, then, leisure contributes to living well, in the sense of flourishing, it follows that the ideal political regime should cultivate leisure as its direct aim, a shared end in which all citizens would be able to partake. Therefore, the quest for flourishing and leisure emerges in Aristotle as a public effort rather than an individual or familial one.

Applying this—admittedly simplified—outline of Aristotle’s account to the discussion of AI automation entails accepting that all human actions should be directed towards and subordinate to flourishing as the ultimate human good. In that sense, work should not be considered the central human good that most other activities serve, as is often the case today. Rather than approaching work as a central good that should be saved from the threat of automation by any means necessary, it is leisure that should instead be prioritised. Hence, under certain conditions (which lie beyond the scope of the present paper), laws that increase the possibility of leisure may be desirable. Therefore, if technologies such as AI could provide alternative ways for subsistence and consequently reduce or even eliminate the need for human work, legislators should not only welcome but actively incentivise their development and adoption.

2. THE UTOPIANISM OF A FLOURISHING-CENTRED SOCIETY

It is evident from the above synopsis of Aristotle’s account of flourishing and leisure that Aristotelian moral and political philosophy can provide the theoretical scaffolding required to articulate the vision of a flourishing-centred, post-work society. A society of this nature would be organised such that work would occupy a peripheral or minimal rather than a central role in human life, thereby offering humans more opportunities for leisure. This vision, however, is often quickly dismissed with the justification that it is not realistic, that it merely constitutes wishful thinking or daydreaming, or—even worse—that it is “utopian”, whereby the adjective “utopian” is invoked in a pejorative sense. Specifically, in light of its association with AI-driven automation, the utopianism that is of interest here is a kind of “*technological utopianism*”, which for Howard Segal denotes “*a mode of thought and activity that vaunts technology*

¹⁴ *Politics*, 7, 1333a24–40.

¹⁵ *Politics*, 7, 1324a24–25.

as the means of bringing about utopia”.¹⁶ Those who criticise this vision as utopian might argue that with so many issues affecting work and workers in the here and now, it would be best to concentrate on short-term, politically feasible suggestions rather than lofty ideals. More broadly, it is anticipated that suggesting institutional reforms influenced by Aristotelian ethics will be met with resistance by “those who represent established power”.¹⁷ Indeed, the aspiration towards a post-work society, as espoused in this paper and in the broader doctoral research project within which it is situated, provides no practical policy guidance itself, nor is it immediately executable. Nonetheless, whether this aspiration might be considered utopian and, if so, whether its value would therefore be diminished are distinct questions.

Hence, in the remainder of this Section, this paper argues against the view that the objection of utopianism strikes a fatal blow to the vision of a post-work society by putting forward four main counter-arguments. The first three of these counter-arguments, detailed in sub-sections 2.1, 2.2, and 2.3, concern the consideration of “utopianism” as something necessarily negative or futile. The fourth and final counter-argument, detailed in sub-section 2.4, concerns the characterisation of a post-work society as utopian as such.

2.1 UTOPIANISM AS AN ANTIDOTE TO THE IMAGINARY CRISIS

First, the charge of utopianism exerts a “chilling effect” in the sense that it limits the set of possible suggestions or scenarios discussed.¹⁸ It pre-emptively dissuades reflection on, as well as pursuit of, the idea or scenario that is labelled “utopian”. By contrast, articulating the vision of a post-work society has the effect of expanding the range of narratives currently available in relation to the future of automation by visualising a society that rejects the often-assumed primacy of work. The formulation of such alternative narratives might mitigate what Geoff Mulgan terms the “*imaginary crisis*”, denoting people’s increasing inability to picture positive, desirable scenarios for societies of the future, owing to a deficit of social imagination.¹⁹ However, the ability to materialise desirable alternatives presupposes the ability to articulate them; therefore, the weakening of people’s imaginative abilities is not without consequences. According to Mulgan, societies that become overly specialised and geared towards a single direction are likely to struggle when conditions change, and so, far from being a luxury, a wider

¹⁶ Howard P Segal, *Technological Utopianism in American Culture: Twentieth Anniversary Edition* (Syracuse University Press 2005) 10.

¹⁷ Alasdair MacIntyre, ‘How Aristotelianism Can Become Revolutionary: Ethics, Resistance, and Utopia’ (2008) 7 *Philosophy of Management* 3.

¹⁸ As a relevant example, one might cite Margaret Thatcher’s infamous thesis that “*There Is No Alternative*” or “TINA”, signalling a lack of political imagination and explicitly marginalising alternative scenarios of the future: Claire Berlinski, ‘*There Is No Alternative: Why Margaret Thatcher Matters*’ (Paperback 1 publ, Basic Books 2011).

¹⁹ Geoff Mulgan, UCL STEaPP, and Demos Helsinki, ‘The Imaginary Crisis (and How We Might Quicken Social and Public Imagination)’ (UCL STEaPP 2020) UCL Science, Technology, Engineering & Public Policy Working Paper Series <https://www.ucl.ac.uk/steapp/sites/steapp/files/2020_04_geoff_mulgan_swp.pdf>.

“*menu of possibilities*”, conceived with the help of the imagination, is functional and necessary.²⁰ Once people are capable of imagining and comparing different futures based on this wider “*menu of possibilities*”, they might find appealing scenarios that they had not previously considered as such.

Imagination in this sense should be understood not only as an individual capacity but also as a collective practice. This more collective manifestation of imagination is encapsulated by the term “*imaginaries*” and—particularly in the case that is relevant here—by the term “*sociotechnical imaginaries*”. Sheila Jasanoff defines the latter as the “*collectively held, institutionally stabilized, and publicly performed visions of desirable futures, animated by shared understandings of forms of social life and social order attainable through, and supportive of, advances in science and technology.*”²¹ It is precisely such visions that utopian thinking can generate and shape.

Having said that, the possibility of utopian scenarios does not necessarily preclude the existence of more realistic or evidence-based ones. Instead of a competition between realist and utopian theoretical enterprises, these may be regarded as complementary in what could constitute an inclusive, mutually supportive division of intellectual labour. Moreover, utopian visions stem from actual frustrations with current ways of living. Indeed, many literary utopian visions were intended to serve not as an escape from but rather as engagement with and criticism of existing social and political structures. Thus, an approach that compares extreme utopian ideals and more realistic imaginings may offer a means of gaining critical distance from and interrogating the present. In particular, this scepticism regarding the existing state of affairs might help to identify what is lacking or undesirable in present arrangements—that is, the social needs that are not currently articulated—and determine how these might be rendered more visible.

2.2 UTOPIANISM AS A RESPONSE TO THE MONOPOLY OF IMAGINATION

The second point in the defence of “utopian” thinking regarding the post-work situation is that it serves to broaden the imaginative franchise. Imagination at the moment is monopolised by a few, particularly a few technological companies. Despite the recent surge in technological imagination, there has not been comparable space for imagination in terms of humans’ interaction with technological innovation.²² As such, contrary to the reproduction of desirable future and present arrangements that reflect the narrow worldview of a few Silicon Valley entrepreneurs, imaginative utopian thinking allows more diverse and counter-hegemonic actors (e.g., citizens, social movements, and civil society

²⁰ *ibid.*

²¹ Sheila Jasanoff, ‘Future Imperfect: Science, Technology, and the Imaginations of Modernity’ in Sheila Jasanoff and Sang-Hyun Kim (eds), *Dreamscapes of Modernity: Sociotechnical Imaginaries and the Fabrication of Power* (University of Chicago Press 2015) 5 <<https://doi.org/10.7208/chicago/9780226276663.003.0001>> accessed 16 February 2023.

²² Mulgan, UCL STEaPP, and Demos Helsinki (n 19).

organisations) to assume control of the narrative and nurture a kind of oppositional as well as motivational hope. For instance, while workers live with the constant threat that they will be replaced by an AI system, they are more likely to accept whatever changes are imposed on their wages and working conditions. Hence, the ability to conceive scenarios of a different kind, some more favourable to them, far from being a distraction, might actually increase their bargaining power and thereby improve their condition in the long term.

Utopian thinking of the kind that this paper advances might also help resist the narratives of technological determinism, which, following Arnold Pacey, “*presents technical advance as a process of steady development dragging human society along in its train*”.²³ Those who subscribe to technological determinism treat AI automation as a phenomenon that is set to influence society in a particular manner, which is not only predictable but also inevitable and one-way. They present mass automation as an unstoppable force that will wholly disrupt society by leaving swathes of people jobless and thus as something with which society needs to reckon.²⁴ The desirability of such a dystopian scenario and of the myriad ways in which it might unfold remain unquestioned.

It is crucial that such deterministic premises be resisted not only because they may be inaccurate as theoretical paradigms and ways of making sense of technological progress but, most importantly, because they have real-life implications. By approaching technology as the primary or sole factor underlying societal change, deterministic premises disregard humans’ agency and power, the possibility of societal resistance and the role of policy. Moreover, they curtail democratic deliberation.²⁵ If the anticipated type and impact of technological developments are treated as a given, then all society can do is either accept or reject them but not shape them.²⁶ It is thus imperative that mainstream perceptions of AI automation as a development whose trajectory depends solely on engineers should be counterbalanced by critical normative analyses that move from questions of what “can” or “might” happen to what “ought to” happen. In other words, there should be a transition from focusing on questions of feasibility towards exploring questions of desirability with regard to the technological futures and specifically the future of work and automation. This is the kind of contribution that could be offered by utopian thinking.

2.3 UTOPIANISM AS A COMPLEMENT TO INCREMENTAL THINKING

Third, utopian thinking might be criticised as too broad—for instance, in terms of its temporal or material scope—to be sufficiently action-guiding and meaningful. Karl Popper’s influential anti-utopian critique

²³ Arnold Pacey, *The Culture of Technology* (1st MIT Press ed, MIT Press 1983) 24.

²⁴ See e.g., Ford (n 4); Schwab (n 4).

²⁵ Judy Wajcman, *Pressed for Time: The Acceleration of Life in Digital Capitalism* (The University of Chicago Press 2015).

²⁶ *ibid.*

stresses that, instead of utopian goals aspiring to change society as a whole, we should engage in the more modest, rational project that he calls “*piecemeal engineering*” and work with step-by-step goals that eliminate “*concrete miseries*”.²⁷ In this sense, utopian thinking overlaps to a certain extent with ideal theorising, given that both envisage a more favourable version of society, or, more specifically, ideal theorising could be considered a sub-set of utopianism.²⁸ In particular, ideal or “end-state” theory focuses on identifying an ideal end-state for societal reform. It stands in opposition to non-ideal theory, which focuses on transitional improvements of existing institutions without identifying an optimum “end-state”.²⁹

However, society is likely always to be afflicted by pressing, short-term “miseries” that require immediate resolution; an exclusive focus on these would deprive legislators of the opportunity to reflect on and make progress towards a greater good. Again, an either/or approach is not the only solution. A collaborative rather than exclusionary relationship between ideal and non-ideal theory is also supported by John Rawls, who argues that “*until the ideal is identified, at least in outline ... nonideal theory lacks an objective, an aim, by reference to which its queries can be answered*”.³⁰ Akin to compasses, utopias may serve as abstract ideals that provide direction and remind us where we want to be headed; simultaneously, these broader, long-term visions may be complemented with more concrete, incremental short-term goals. A similar synergy is implied in Pierre Bourdieu’s suggestion of a “*reasoned utopia*”, whose goals and means are determined in collaboration with science.³¹ Contrary to Rawls, though, ideal theorising need not assume logical or temporal priority over non-ideal theorising. These two modes of thinking need not occur consecutively, but one may oscillate between end-state and transitional thinking, refining both the abstract vision and the concrete means of achieving it along the way.

2.4 UTOPIANISM AS A CHALLENGE TO THE LIMITS OF REALISM

Finally, labelling the suggested vision of a post-work society as “utopian” is a questionable act per se and may not be wholly justifiable. Aside from the constraints imposed by the laws of physics, for example, the contours of what is feasible or alterable in a society do not constitute a given but are themselves a matter of political debate. What is perceived as necessary and inevitable may at times be interpreted as contingent or as something to which one has been (socially/culturally) conditioned.

²⁷ Karl R Popper, *The Open Society and Its Enemies* (Princeton University Press 1994) 157, 352 <<https://doi.org/10.1515/9780691212067>> accessed 16 February 2023; Karl Popper, *Conjectures and Refutations: The Growth of Scientific Knowledge* (Routledge 2002) 485.

²⁸ Volker Ruitinga, ‘Ideal Theory and Utopia’ (2011) 1 *Erasmus Student Journal of Philosophy* 48.

²⁹ Laura Valentini, ‘Ideal vs. Non-Ideal Theory: A Conceptual Map’ (2012) 7 *Philosophy Compass* 654.

³⁰ John Rawls, *The Law of Peoples* (Harvard University Press 1999) 90 <<http://www.gbv.de/dms/sub-hamburg/270769919.pdf>> accessed 23 November 2022.

³¹ Pierre Bourdieu, ‘A Reasoned Utopia and Economic Fatalism’ [1998] *New Left Review* 125.

As Gerry Simpson has observed, “[t]he description of things as they are is merely the adoption of some other’s act of imagination as one’s own.”³²

Presenting the constraints of reality as fixed and universally accepted shuts down reflection and, albeit invoked as a self-evident matter of fact, is premised upon a series of assumptions regarding what is understood as utopian and what is taken to be realistic, despite the fact that neither is settled. For instance, why characterise a suggestion as utopian if that which it requires is a reorganisation of society? Is it still utopian if it anticipates what has not yet come into being and encourages what may potentially but does not actually exist? Does utopia also capture low probability or only zero probability? Is it not possible that ideas considered utopian within a specific historical period will be proven realistic in subsequent years or, conversely, that what a given generation regards as realistic may ultimately be viewed as utopian by that generation’s successors? Might it be the case that the acceptance of certain developments as an inevitable “natural” order is actually a manifestation of complacency or fatalism?³³ Or might it even conceal a vested interest in the status quo and established hierarchies?

Although the foregoing questions do not permit easy answers, it is necessary to reflect on them in order to clarify what precise characteristics of the post-work scenario render it utopian rather than merely difficult, inconvenient, or disruptive to existing power structures. Conversely, in the “future of work” context, it might be the insistence on saving work by any means rather than the proposed transition to a leisure-centred, post-work polity that will end up as an impossible, utopian demand, thereby highlighting the inadequacies of the status quo along with the need for more radical reforms. More broadly, though, utopias challenge the received wisdom by stimulating reflection on which of the constraints presented as fixed are actually so or are, instead, merely political, social and cultural choices or conventions.

3. THE UTOPIANISM OF A FLOURISHING-CENTRED LEGAL ORDER

Even while admitting the value of formulating the vision of a flourishing-centred, post-work society based on the preceding four counter-arguments, one might still argue that the emphasis on individual and collective flourishing in a post-work society as the ultimate goal or *telos* of law is “*bad utopianism*”.³⁴

³² Gerry Simpson, ‘Imagination’ in Jean d’Aspremont and Sahib Singh, *Concepts for International Law* (Edward Elgar Publishing 2019) 414 <<https://www.elgaronline.com/view/edcoll/9781783474677/9781783474677.00031.xml>> accessed 12 February 2023.

³³ Philip Allott refers to such defeatist approaches as “whateverism”, understood as resignation to a view such as “*Whatever. Things are as they are, and always will be.*” Philip Allott, ‘The Idealist’s Dilemma: Re-Imagining International Society’ (*EJIL: Talk!*, 9 June 2014) <<https://www.ejiltalk.org/the-idealists-dilemma-re-imagining-international-society/>> accessed 12 February 2023.

³⁴ Lawrence B Solum, ‘Virtue as the End of Law: An Aretaic Theory of Legislation’ (2018) 9 *Jurisprudence* 6 citing Donald J Kochan, ‘The Mask of Virtue: Theories of Aretaic Legislation in a Public Choice Perspective’ (2014) 58 *Saint Louis University Law Journal* <https://scholarship.law.slu.edu/lj/vol58/iss2/3?utm_source=scholarship.law.slu.edu%2Fvj%2Fvol58%2Fiss2%2F3&utm_medium=PDF&utm_campaign=PDFCoverPages>.

According to this line of thinking, even conceding that this vision is worth sketching and discussing, it is questionable whether the law is an appropriate forum for its articulation. Consequently, the quest for human flourishing is marginalised as a distraction from more productive uses of the law.

3.1. UTOPIA, IMAGINATION, AND THE LAW

Undoubtedly, law is neither the sole nor the most evidently plausible avenue for articulating this post-work, flourishing-centred vision of society. Art, politics, civil society, and education are among the alternative arenas wherein such utopian, imaginative thinking might be iterated. Moreover, in an ideal society, assuming that its citizenry would not be severely afflicted by conflicts or scarcity, the existence of a legal order, together with its concomitant restraints on citizens’ behaviour, might seem unnecessary and less fitting than a state of lawlessness (*anomia*).³⁵

Nonetheless, utopianism and the law are not invariably incompatible. Utopian visions may anticipate a role for the law in their design, completion, and maintenance and may support the establishment of alternative, radically improved legal rules and institutions by critiquing those already in existence. In general, law is envisaged as a vital instrument that transforms society and leads it from its present state towards the intended utopia.³⁶ Utopianism thus includes scope for the “*pursuit of legal, institutional, bureaucratic and educational means of producing a harmonious society.*”³⁷ At the same time, although imagination and utopia are not typically regarded as technical legal concepts or processes, legal reasoning and decision-making are premised upon imagining ideal states and societies: legal norms seek to realise optimal arrangements for society, while avoiding possible worst-case scenarios. Without this dimension of imagination, the law would be likely to collapse into a technocratic management of the status quo.

This connection between imagination and law has not escaped the attention of legal scholars. According to Maksymilian Del Mar, imagination routinely enters the legal discourse in the form of legal fictions, metaphors, figures and scenarios.³⁸ Jean d’Aspremont considers imagination as having been inextricably linked to the work of international lawyers in particular, ever since the field’s inception, and understands imagination as an “*act of denaturalizing what comes naturally*” to said lawyers.³⁹ With a

³⁵ Miguel Angel Ramiro Avilés, ‘The Law-based Utopia’ (2000) 3 *Critical Review of International Social and Political Philosophy* 225.

³⁶ *ibid.*

³⁷ JC. Davis, *Utopia and the Ideal Society: A Study of English Utopian Writing, 1516-1700*. (Cambridge University Press 1981) 371.

³⁸ Maksymilian Del Mar, ‘The Legal Imagination: Individual, Interactive and Communal’ in Amalia Amaya and Maksymilian Del Mar (eds), *Virtue, Emotion and Imagination in Law and Legal Reasoning* (1st edn, Hart Publishing 2020) <<http://www.bloomsburycollections.com/book/virtue-emotion-and-imagination-in-law-and-legal-reasoning/ch13-the-legal-imagination-individual-interactive-and-communal/>> accessed 28 January 2020.

³⁹ Jean d’Aspremont, ‘Legal Imagination and the Thinking of the Impossible’ (2022) 35 *Leiden Journal of International Law* 1017.

comparable focus on international law, Martti Koskenniemi likens the critical process of legal imagining to “*bricolage*”: by creatively drawing on vocabularies that are “*lying around*”, legal actors as well as those in other arenas have long been able to “*construct responses to new problems in order to justify, stabilise or critique the uses of power*”.⁴⁰ Such vocabularies are legal—for example, sourced from the lawyer’s formal training and experience—but may also be supplemented by non-legal counterparts (e.g., religious, scientific, or political).⁴¹ This imaginative process of contemplating the impossible becomes, then, a powerful tool for legal actors, enabling them to not only proffer authoritative, persuasive arguments but also resist the constraints and conventions of their own discipline.⁴²

A similar attitude is echoed by Gerry Simpson, for whom imagination is understood as the “*adoption of ‘the exterior glance’ combined with a relentless process of resistance and questioning and estrangement – a literary project as much as a political one*”.⁴³ In an even stronger formulation, Philip Allott remarks: “*Nation and state and government are notorious fictions, metaphysical entities existing only in and for the human mind. The whole of the law is a vast work of fiction, a masterpiece of the human imagination, creating its own entirely artificial reality. Lawyers – even practising lawyers – are creative writers, re-inventing the story of the law every day.*”⁴⁴

Aside from this general interconnection between law and imaginative thinking, the remainder of this Section seeks to demonstrate that the law may fulfil an important if not necessary role in the achievement of human flourishing specifically.

3.2 THE REVIVAL OF VIRTUE IN ETHICS

From the fifth century B.C.E. until approximately the Enlightenment, the paradigmatic ethical tradition of Western philosophy has been the virtue ethical one, whose roots are traced back to Aristotle. Virtue ethics is the strand of normative ethics that evaluates agents, and subsequently their actions, according to whether they manifest virtuous or vicious dispositions. After antiquity, however, and particularly from the late eighteenth century onwards, virtue ethics was largely disregarded, when consequentialist and deontological theories emerged as viable alternatives and dominated anglophone moral philosophy. In particular, consequentialist theories evaluate actions according to their consequences and specifically according to whether or not they bring about good states of affairs. Deontological theories evaluate types of actions according to general and absolute rules, duties, or principles.

⁴⁰ Martti Koskenniemi, *To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300–1870* (1st edn, Cambridge University Press 2021) 2–4 <<https://www.cambridge.org/core/product/identifier/9781139019774/type/book>> accessed 12 February 2023.

⁴¹ Koskenniemi (n 40).

⁴² d’Aspremont (n 39).

⁴³ Simpson (n 32) 421.

⁴⁴ Allott (n 33).

During the late 1950s, however, a series of influential articles—the most prominent of which was Elizabeth Anscombe’s “Modern Moral Philosophy”—reignited the interest in virtue ethics by giving rise to what is termed neo-Aristotelian ethics.⁴⁵ This revival was the result of discontent with the dominant approach to moral philosophy in the twentieth century and, more concretely, with the hegemony of deontology and consequentialism. Virtue and Aristotle’s ethics were likewise investigated by Philippa Foot and John McDowell in the 1970s, followed by Alasdair MacIntyre in the 1980s.⁴⁶ Later on, Rosalind Hursthouse’s book *On Virtue Ethics* attracted considerable attention and inspired further scholarly work on virtues.⁴⁷

3.3 THE REVIVAL OF VIRTUE IN LAW

These developments in ethics were mirrored in the realm of law. Until approximately the transition to the twenty-first century, the dominant paradigms of legal analysis have been, on the one hand, consequence-oriented (consequentialist) and, on the other hand, rules- or rights-oriented (deontological). For consequentialist theories, the law should aim to maximise good consequences or states of affairs—for example, to maximise the satisfaction of individuals’ preferences. This emphasis on consequences is exemplified by the law and economics movement, legal realism, and pragmatism.⁴⁸ For deontological theories, the law should aim at the implementation of certain rules or principles, such as the protection of rights. This emphasis on rules and rights is exemplified by legal positivism, formalism, and Ronald Dworkin’s theory of parties’ pre-existing rights.⁴⁹

Contrary to these paradigms, which appear to talk past each other, this paper suggests that attention is due to a third, alternative strand, which has been in development since the 1980s: virtue jurisprudence. Otherwise called “the aretaic turn” in law, virtue jurisprudence is a normative legal theory that, without overlooking consequences or rules and rights, attributes primacy to the concepts of virtue, excellence, and flourishing.⁵⁰ Amalia Amaya summarises this stance as the “*thesis of the primacy of virtue*”.⁵¹ The extent of this primacy determines whether virtue jurisprudence will be given strong, moderate, or weak articulation and, subsequently, whether it will be alternative or merely

⁴⁵ GEM Anscombe, ‘Modern Moral Philosophy’ (1958) 33 *Philosophy* 1.

⁴⁶ Philippa Foot, *Virtues and Vices and Other Essays in Moral Philosophy* (Blackwell 1978); John McDowell, ‘Virtue and Reason’ (1979) 62 *The Monist* 331; Alasdair C MacIntyre, *After Virtue: A Study in Moral Theory* (1981).

⁴⁷ Rosalind Hursthouse, *On Virtue Ethics* (Oxford University Press 2001)

<<https://oxford.universitypressscholarship.com/10.1093/0199247994.001.0001/acprof-9780199247998>> accessed 23 January 2022.

⁴⁸ Amalia Amaya, ‘Law and Virtue Theory’ in Mortimer Sellers and Stephan Kirste (eds), *Encyclopedia of the Philosophy of Law and Social Philosophy* (Springer Netherlands 2019) <http://link.springer.com/10.1007/978-94-007-6730-0_159-1> accessed 12 October 2022.

⁴⁹ *ibid.*

⁵⁰ Lawrence B Solum, ‘Chapter 1 - Virtue Jurisprudence: Towards an Aretaic Theory of Law’ in Liesbeth Huppel-Cluysenaer and Nuno MMS Coelho (eds), *Aristotle and The Philosophy of Law: Theory, Practice and Justice* (Springer Netherlands 2013) <<http://link.springer.com/10.1007/978-94-007-6031-8>> accessed 24 November 2022.

⁵¹ Amaya (n 48).

complementary to the existing paradigms.⁵² Therefore, instead of or in addition to asking what the exact outcome of a particular legal rule will be or whether it is right or wrong, virtue jurisprudence posits another type of question, namely what sort of (individual/shared) lives and traits this legal rule will foster.

In other words, virtue jurisprudence appeals to the virtue ethics strand of moral philosophy to address key questions in modern law. Despite the existence of several approaches to virtue ethics, including Confucian, Buddhist, Humean, Platonic, and Stoic, it is the Aristotelian approach that has mostly been adopted in this context. In particular, virtue jurisprudence has hitherto addressed the following three questions: (i) how virtue ethics might serve as moral grounding for law in general or specific, substantive areas thereof; (ii) how virtues impact legal reasoning and decision-making; and (iii) how interaction with the law fits within the broader context of living a flourishing, virtuous life.⁵³

In answering the first of these three questions, for virtue jurisprudence, the end or *telos* of the law is not to protect a set of rights or maximise the satisfaction of individuals’ preferences; rather, the law aims to promote human flourishing at both the individual and the collective level. For Lawrence B. Solum, such flourishing is constituted by “*lives of social and rational activities that express the human excellences or virtues*”.⁵⁴ Specifically, to achieve the *telos* of flourishing, the law must undertake two main tasks. The first is to furnish the conditions required for “*faring well*”, such as prosperity, peace, and leisure.⁵⁵ This first task further creates the necessary preconditions for the second task, which is to provide humans with opportunities for “*doing well*”—that is, for the development and exercise of human excellences or virtues, for instance through suitable education.⁵⁶ Therefore, the main tenets of virtue jurisprudence refute the objection that it would be utopian for the law to be interested in human flourishing.

3.4 SUBSTANTIVE VS. PROCEDURAL APPROACHES

Having sketched an overview of virtue jurisprudence, it is important to clarify that it is not an entirely homogeneous body of thought. In particular, virtue jurisprudence approaches may be divided according to whether they are substantive or procedural. Substantive approaches proceed from the premise that to best promote human flourishing, the law can and should embody substantive moral standards—for example, efficiency in contract breaches.⁵⁷ By contrast, procedural approaches

⁵² *ibid.*

⁵³ Amalia Amaya and Claudio Michelon, ‘Introduction to “Virtue and Law” Symposium’ (2018) 9 *Jurisprudence* 1.

⁵⁴ Solum (n 34).

⁵⁵ Solum (n 50).

⁵⁶ *ibid.*

⁵⁷ Chapin Cimino, ‘Virtue Jurisprudence’ in Nancy E Snow (ed), *The Oxford Handbook of Virtue*, vol 1 (Oxford University Press 2017) <<https://academic.oup.com/edited-volume/28109/chapter/212242563>> accessed 24 November 2022.

examine how the law affects a person’s pursuit of the good life and what safeguards the state should establish to facilitate such a pursuit, rather than what substantive standards the law should embody.⁵⁸ In such approaches, the normative core of virtue jurisprudence is not constituted by a single value, such as welfare or rights, but is instead the process by which flourishing is promoted.⁵⁹

This distinction is important. Given that substantive approaches seek to reform the law so that it embodies certain moral standards, the selection of these standards may be subject to disagreement and objections, particularly the objection that it limits individuals’ choices and is thus paternalistic, illiberal, and inconsistent with value pluralism. With regard to the objection of utopianism, in particular, the description of a utopian vision for society might be considered as a subjective process poised to give rise to disagreements concerning the ideals, values, and standards with which such a society should be imbued. Briefly put, one person’s utopia might be another person’s dystopia. Indeed, the significance of upholding liberal commitments has been raised by numerous scholars as the main grounds for rejecting utopian visions for society. For Karl Popper, Lionel Trilling and Isaiah Berlin, largely influenced by the experiences of fascism and communism, utopian thinking is not merely innocuous daydreaming; rather, it is a dangerous enterprise that inevitably leads to illiberalism, the collapse of democracy and, even worse, the rise of totalitarianism.⁶⁰ However, by emphasising the process by which individuals’ flourishing might be supported without narrowly prescribing moral standards for what might constitute such flourishing, procedural approaches do not intrude excessively into individuals’ private realms and can accommodate multiple beliefs, life plans, and ways of living. Therefore, procedural approaches evade the objection of paternalism and fit more easily with modern liberal societies.

3.5 APPLICATION TO THE “FUTURE OF WORK” DEBATE

Virtue jurisprudence approaches—whether substantive or procedural, Aristotelian or otherwise—have hitherto been applied to a wide range of legal areas and issues, including theories of judging and law-making, bankruptcy law, contract law, tort law, and criminal law. To date, however, they have not been applied to topics pertaining to AI or, more specifically, to the “future of work” debate. Attempting a preview of what such an application would look like requires starting from the premise that law should support individuals and communities in their quest for flourishing. In particular, adopting a virtue jurisprudence approach to the “future of work” debate entails that the regulation of AI automation should

⁵⁸ *ibid.*

⁵⁹ *ibid.*

⁶⁰ Popper (n 27); Lionel Trilling, *The Liberal Imagination: Essays on Literature and Society* (Scribner 1976); Isaiah Berlin, ‘The Decline of Utopian Ideas in the West’ in Henry Hardy (ed), *The Crooked Timber of Humanity* (Revised, 2, Princeton University Press 2013) <<http://www.jstor.org/stable/j.ctt2tt8nd.7>> accessed 24 November 2022.

serve two main objectives: (i) the achievement of peace, prosperity and, most importantly, leisure; and (ii) the cultivation of humans’ intellectual and moral excellence/virtue.

Precisely how the law might bring about these objectives is an empirical question that exceeds the scope of this paper. Besides, the value of this thought experiment dwells primarily in its ability to invite questions and debate rather than provide clear-cut answers. By way of illustration, however, one might envisage lighter-touch approaches to implementing this utopian vision of society, in line with the so-called “*symbolic*” or “*communicative*” approach to legislation.⁶¹ Based on this approach, law, among other things, provides aspirational norms to shape human behaviour, not by means of threat but rather indirectly, by stimulating discussion and raising awareness in society.⁶² In the context that is relevant here this would mean that the law would seek to raise awareness of the value of leisure. Leisure’s superiority to occupation in Aristotle’s account could further influence the content of the rights to work and leisure, pointing even towards a right *not* to work. More practical configurations might comprise the implementation of a Universal Basic Income (“UBI”) or a Participation Income (“PI”). Funded by the anticipated productivity gains of AI automation, a UBI would be a guaranteed minimum income that would provide access to subsistence in an unconditional and universal manner, whereas a PI would reward citizens’ contribution to society in ways that transcend traditional work—for example, “*people engaging in approved forms of education or training, caring for young, elderly or disabled dependants or undertaking approved forms of voluntary work*”.⁶³ The development of AI may also be regulated to ensure that interactions with AI systems do not impede citizens’ development and exercise of virtue. Overall, regardless of the specifics of the eventually selected approach(es), speculation over the institutional arrangements that would be conducive to achieving the goal of flourishing already challenges as well as expands the available sociotechnical imaginaries.

CONCLUSION

This paper’s main takeaway point is that, far from being a neutral description, the charge of utopianism often stifles much-needed enquiries into that which is possible and that which is fixed and may be indicative of a broader antipathy towards utopian thinking. Such an unjustified fear, aptly referred to as “*utopophobia*”, might be countered through engagement in the task of “*anti-anti-utopianism*”.⁶⁴ Accordingly, the four counter-arguments put forward in defence of utopian thinking (Section 2) have sought to demonstrate that the label of “utopianism” should be challenged, reappropriated, and

⁶¹ Bart van Klink, ‘Symbolic Legislation: An Essentially Political Concept’ in Bart van Klink, Britta van Beers and Lonneke Poort (eds), *Symbolic Legislation Theory and Developments in Biolaw*, vol 4 (Springer International Publishing 2016) <http://link.springer.com/10.1007/978-3-319-33365-6_2> accessed 24 November 2022.

⁶² *ibid.*

⁶³ Philippe Van Parijs, ‘Why Surfers Should Be Fed: The Liberal Case for an Unconditional Basic Income’ (1991) 20 *Philosophy & Public Affairs* 101; AB Atkinson, ‘The Case for a Participation Income’ (1996) 67 *The Political Quarterly* 67.

⁶⁴ David Estlund, ‘Utopophobia’ (2014) 42 *Philosophy & Public Affairs* 113; Fredric Jameson, *Archaeologies of the Future: The Desire Called Utopia and Other Science Fictions* (Verso 2005) xvi.

stripped of its inherently negative meaning. Particularly when it comes to the “future of work” debate, which is currently dominated by dystopian prophecies, speculation about alternative futures—even if these are unattainable—is a politically and legally valuable exercise. The approach advanced herein, relying on Aristotle’s account of human flourishing—of which leisure and virtue are constitutive elements (Section 1)—alongside the transplantation of this account in law through virtue jurisprudence (Section 3), aspires to provide the necessary resources for such an exercise. In this way, this paper seeks to vindicate as well as undertake the imaginative task that Lewis Mumford extols in the epigraph, while heeding his advice that “[o]ur castles-in-air must have their foundations in solid ground”.⁶⁵ Beyond this, it seeks to demonstrate that in the face of uncertain events, such as the advent of mass AI-driven automation, the range of available responses includes not only anxiety but also hope; hence, our laws and, more broadly, our collective thinking should cultivate both.

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⁶⁵ Mumford (n 1) 85.

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