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[Book Review] *Law and the Utopian Imagination* (edited by Austin Sarat, Lawrence Douglas & Martha Merrill Umphrey), from The Amherst Series in Law, Jurisprudence and Social Thought

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AUSTIN SARAT, LAWRENCE DOUGLAS AND MARTHA MERRILL UMPHREY (EDS), *Law and the Utopian Imagination (The Amherst Series in Law, Jurisprudence and Social Thought)*. Stanford, California: Stanford University Press, 2014, pp. 185, ISBN 9780804790819, \$75.00 (hbk).

Described in its introductory chapter as 'a project of exploration and resuscitation' (p. 2) that 'seek[s] to explore the possibilities of a productive engagement between the utopian and the legal imagination' (*ibid.*), *Law and the Utopian Imagination* presents an edited collection in which a number of scholars consider the contribution utopianism may make to the analysis of law and legal theory.

This is an engaging and original text, which would be of particular interest to advanced level undergraduate and postgraduate students, as well as established academics, with interests in legal theory and utopianism. Its contribution, as the editors highlight, is situated in a contemporary context that eschews utopianism as both impossible and, potentially, dangerous. Reflecting a commitment to the instantiation of a perfect society, utopia has, from a liberal perspective, been seen to 'pave[] the way to totalitarianism' (p. 1) from which the law is seen as necessary to provide protection. Accordingly, utopia and liberalism have often been considered mutually incompatible: where utopianism has 'typically displayed hostility toward legal forms and processes' (p. 4) – notwithstanding those utopias that recognise a role of law in maintaining harmony in the ideal society they propose – from a liberal standpoint, law is considered 'a necessary bulwark against the inevitable excesses of utopia' (p. 6). The consequence of this has been the rejection and neglect of utopian thought within legal theory.

Against this backdrop, *Law and the Utopian Imagination* presents an attempt to reinject utopian thought into legal theory and to challenge the seeming intractability between utopianism and liberalism. Formed of a collection of essays by different authors, a central theme that can be traced throughout the various contributions lies in an attempt to negotiate this tension through an exploration of the relationships (both actual and potential) between utopia and the law. This is done in various ways throughout the different contributions to the collection and it is perhaps in this variety that utopianism's potential contribution to legal theory is most effectively articulated.

Specifically, having set the context in which the collection is situated in chapter 1, each of the subsequent chapters sees its respective author grapple with the question of what is the relationship between law and utopia and offer a reimagining of this relationship that challenges the apparent contradictions outlined in the first chapter.

In Chapter 2, James Martel suggests, through his analysis of the work of Walter Benjamin, that '[t]he value [...] of connecting legal to utopian thought comes from the way that both can serve as ways to rethink our contemporary practices by mutually calling the assumptions that we make about these practices into question' (p. 23). Specifically, for Martel, '[u]topianism [...] serves as a powerful

tool by which to do something that is otherwise difficult or even impossible: to rethink the nature of law' (p. 55.).

For Johan Van Der Walt, on the other hand, legal theory and utopianism are best understood as alternative responses 'that emerge from and respond to a primordial event or happening' (p. 63). Drawing upon the Heideggerian notion of the 'event' – a rupture to existing social worlds which also entails the creation of new ones – Van Der Walt argues that utopia offers an opportunity to unmake and remake the world in new ways, but always and only every with reference to the event from which it is derived. In this respect utopias seem almost like the embodiment (albeit always mediated through language) of the event: at once both offering up new possibilities and horizons of the unknown, but only ever able to do so through systems of language that already exist. By contrast, he argues, law seeks to move beyond the event and remove the ambiguity it necessarily invokes. By asserting itself and seeking legitimacy, law seeks to 'distance' itself from the event and impose a normative order, in so doing, suppressing and denying its fictive nature. In this sense, Van Der Walt taps into the ambiguity or tension between law and utopia identified in the introduction to the collection: utopianism embraces the event as a moment to open up the horizons of reality and challenge our normative assumptions, law works to offer order in the face of upheaval.

Offering an alternative view is Nan Goodman whose contribution highlights '[t]he reciprocity that exists between the law and utopia' (p. 101). Whilst the role of utopia in shaping the law is well-recognised, Goodman focuses on the somewhat less-explored role of law in shaping utopian alternatives. Using Cotton Mather's (1961) sermon *Things to be Look'd For* as a case study, Goodman challenges the idea that utopia can only exist in a perfect society with the eradication 'of all difference and the annihilation of all enemies' (p. 16) instead, highlighting a vision of 'peace as a cessation of war negotiated through the legal instrument of treaty and managed through diplomacy' (*ibid.*).

A similar approach is evident in Diane Morgan's paper, which comprises an interesting analysis of Kant's contribution to utopian thinking. Morgan identifies in Kant a defence of utopianism, not in terms of the imposition of a blueprint, but in the potential of 'the republican "dream of perfection"' (p. 127) as an essential component of politics in order that it 'does not foreclose possible change as a result of preconceived notions of what is, and what is not, possible.' (*ibid.*). Cognisant of capacity for impositions of utopia to turn into nightmarish realities and sympathetic, therefore, to a contemporary shift within utopian theory 'away from the "blueprint" model of legislation as a means of implementing social progress' (p. 130), Morgan seeks 'to explore "cosmopolitan" law as a different form of justice, more evolutive and explorative than other forms of legislation' (*ibid.*).

In the final chapter, Shulamit Almog highlights 'an innate kinship between many legal and utopian expressions' (p. 155). Through her analysis of two dystopian films: Jean-Luc Goddard's (1965) *Alphaville* and Ridley Scott's (1982) *Blade Runner*, Almog demonstrates the role of law in both creating dystopia – through

'excessive and abusive use of law' (p. 171) and acting as a safeguard against it. In so doing, she challenges the contemporary liberal standpoint identified in the opening chapter that juxtaposes utopian and legal thinking: where the former leads by necessity to the realisation of dystopia and the job of the latter is to safeguard against this. Instead, she highlights the extent to which both utopianism and legal thinking are necessarily intertwined, or, as she puts it, 'how dystopian imagination augments the legal imagination' (p. 172). In so doing, Almog perhaps sounds an implicit note of caution against those who would see legal thinking and utopia as mutually and necessarily incompatible, lest they fail to recognise the implicit dystopia that can be contained within a commitment to legal thinking absenting an interrogation 'of independent values or stable moral codes' (p. 172).

This variety of approaches to this tension between utopianism and law is perhaps the collection's greatest strength. It seems that individual chapter authors have been given relative free reign in their interpretation of the concept of 'utopia', and/or the application of utopian theory to the field of legal theory. Such freedom allows for a range of views and accounts of legal theory, some of which are more or less accessible to those familiar with legal theory than utopian studies (and *vice versa*). There is a strong sense in which this publication genuinely seeks to marry together fields of study, which, as the editors highlight in their opening chapter, have long been kept distinct. It also operates to demonstrate, in practice, the ambiguity that is inherent to the concept of utopia (as simultaneously both 'good place' and 'no place') and the variety of uses to which the term has historically been put.

At the same time, however, at times one wonders whether this was deliberate or more accidental. There is, perhaps, a danger that readers can be left questioning how, exactly, each author is employing the term 'utopia' and whether, in fact, they are all talking about the same thing. As noted above, this has the potential to be a real strength of the collection, pointing to the various ways in which utopianism may or may not intersect with legal theory. However, one cannot help but wonder, whether, if it *is* deliberate the collection might not also have benefitted from a stronger editorial narrative tying the respective contributions together in a final, concluding chapter to make this important contribution clearer and more explicit.

Moreover, and still with this in mind, one equally wonders if more direct and more explicit engagement with the literature of utopian theory (and, in particular, definitions of utopia) could have lent clarity and helped to improve the accessibility of the ideas and arguments made, particularly to those readers who do not engage with this text from the perspective of legal theory (in which category I include myself). Whilst this was done well in some chapters (especially that of Almog which draws on some well-known texts to students of utopian studies, including J.C. Davis, Lyman Tower Sargent, Ruth Levitas, and Tom Moylan and Raffaella Baccolini, and the editor's introduction), others appeared to be written more with a legal theory audience in mind. There is nothing wrong with this *per se* and, admittedly, it could, perhaps, simply be that I am reviewing a text for whom I am not the intended audience. However, it also,

potentially, gives rise to the question of whether this book is best understood of an exercise in using law to explore the utopian imagination or using a utopian imagination to explore the law.

The case for the need to explore utopianism in relation to law is made clearly and convincingly in the editor's introduction and the book produced is both an interesting and engaging contribution to that field. However, perhaps reflecting the difficulties of disciplinarity (and perhaps, implicitly pointing to the capacity of utopian theory and literature to offer an appeal beyond disciplinary boundaries), in making the case for the importance of their text, one wonders if more recognition by the editors might also be given to aligned areas in which interest in utopianism has been growing in recent years, such as criminology (see, for example, Malloch and Munro (2013)). Not only would this help provide a richer understanding of the ways in which the concept of 'utopia' and utopian theory has been deployed as an antidote to the anti-utopianism of previous decades, it would also help situate this text as part of a broader shift in contemporary social theory and research whilst not disputing the original contribution it makes in its particular focus on legal theory.

This would necessarily be a trade-off between appealing to a specialist legal theory audience and a more general readership and it is a strength of the collection that there is, in a sense, something for everyone: both legal theorists and scholars of utopia alike. However, as a means of inviting legal theorists into a consideration of utopia, this seems a timely, necessary and genuinely interesting collection of papers. As a means of inviting scholars of utopia into the world of legal theory (which is the perspective to which I confess to belong) it is, perhaps, less satisfying – not because the ideas are not interesting or relevant or important, but because disciplinary assumptions sometimes shape the ideas presented making them less accessible to the uninitiated reader. That said, in any case, it is perhaps as an exercise in exploring the various definitions of utopia or applications of the utopian theory, that, for this reader at least, this text finds its greatest appeal.

Lynne Copson,
The Open University, UK

Reference

Malloch, M. and Munro, B. (eds) (2013) *Crime, Critique and Utopia*, Basingstoke: Palgrave Macmillan