

## “Ourworld”: a feminist approach to Global Constitutionalism

### I. Introduction

The ‘story’ proffered by global constitutionalism is almost unequivocally positive.<sup>1</sup> It emerged in a period where the tangibility of international law’s potential to become a system centred in legitimacy was, perhaps, at its height.<sup>2</sup> Any persistent flaws in international law could be remedied by recognising an existing culture steeped or becoming steeped in the rule of law, democracy, division of power and checks and balances. But, as with most positive narratives, the question ‘better for whom’ is seldom asked. Whose ideal is being created? This article asks what a feminist global constitutionalism ideal – a feminist constitutionalist utopia – might look like.

The term ‘utopia’, first coined by Thomas More, is a much older expression of political hope.<sup>3</sup> Utopian literatures, from Plato’s *The Republic* to More’s *Utopia* or William Morris’ *News from Nowhere*, have straddled literary art and political treatise.<sup>4</sup> More recent utopian literature has used speculative fiction (such as science fiction and fantasy) as a mode for discussing new utopias.<sup>5</sup> Yet, feminist utopias, presented in speculative fiction, are rarely read or considered as political or legal treatises. Science fiction (like international and constitutional law scholarship) has historically been a male, conservative forum where women and minority voices are less prominent or intentionally omitted.<sup>6</sup> This article places feminist utopias at the centre of our analysis and considers what they offer those seeking a feminist global constitutionalism and what work remains to be done.

Donna Haraway contends that ‘science fiction is political theory.’<sup>7</sup> Patricia Melzer proffers that science fiction is crucial for ‘feminist theorizing *outside* the science fiction community’ and that ‘science fiction can be understood as part of a feminist criticism of existing power

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<sup>1</sup> ‘Global constitutionalisation’ is the process of constitutionalising international law and governance, ‘global constitutionalism’ denotes the theories of constitutionalism for global governance.

<sup>2</sup> TM Franck, *The Power of Legitimacy Among Nations* (Oxford University Press, Oxford, 1990), older versions of constitutionalism such as Verdross’ alongside contemporary discussions also contribute to this development. A O’Donoghue, ‘Alfred Verdross and the Contemporary Constitutionalization Debate’ (2012) 32 *Oxford Journal of Legal Studies* 799.

<sup>3</sup> J Shklar, ‘The Political Theory of Utopia: From Melancholy to Nostalgia’ (1965) 94 *Daedalus* 367.

<sup>4</sup> For a discussion on relationship between literature and political treatise see, R Levitas, *The Concept of Utopia* (Peter Lang, Oxford, 2010) xiii. For a discussion of the relationship between utopia and genocide, see ED Weitz, *A Century of Genocide: Utopias of Race and Nation* (Updated Edition, Princeton University Press, Princeton, 2015).

<sup>5</sup> P Fitting, ‘Utopia, Dystopia and Science Fiction’ in G Claeys (ed), *The Cambridge Companion to Utopian Literature* (Cambridge University Press, Cambridge, 2010) 135.

<sup>6</sup> M Dery, ‘Black to the Future: Interviews with Samuel A Delany, Greg Tate, and Tricia Rose’ in M Dery (ed), *Flame Wars: The Discourse of Cyberculture* (Duke University Press, Durham North Carolina, 1994) 188; SR Delany, ‘Racism and Science Fiction’ in SR Thomas (ed), *Darkmatter* (Warner Book, New York City, 2000) 383. Fredric Jameson, leading scholar in utopianism, dismissed the work of Octavia E Butler and race-critiques in science fiction: ‘As for race, its thematic is relatively neutralised by the presupposition of alien life in the first place – which can, to be sure, stand as the allegory of race, as in Octavia Butler’. See F Jameson, *Archaeologies of the Future* (Verso, London, 2005) 140.

<sup>7</sup> D Haraway, *How Like a Leaf: An Interview with Thyrza Nichols Goodeve* (Routledge, Abingdon Oxfordshire, 2000) 120.

relations'.<sup>8</sup> Science fiction provides feminists with a testing ground just as More's fictional island in the South Atlantic or Morris' future society did for them.<sup>9</sup> Walidah Imarisha and adrienne maree brown prefer the term 'visionary fiction' to encapsulate the 'organising' potential science fiction has for minority groups and people of colour;<sup>10</sup> as Octavia E Butler writes of science fiction, '[humanity] will go someplace else and be forced to change.'<sup>11</sup> Butler states that she does not write utopian literature *per se*, but readers locate 'hope' within her work.<sup>12</sup> This article advocates reading feminist utopian visions as depicted in science fiction as a starting point for global constitutionalist debates.

Since it builds on international law and constitutional theory, both of which are gendered,<sup>13</sup> global constitutionalism is also inherently gendered as it often unquestioningly replicates patriarchal structures. As they create conservative formations impervious to the everyday exercises of constituent power, both international and constitutional law are also resistant to change, often requiring constitutional moments of rupture to alter their structures.<sup>14</sup> Feminist legal scholars, such as Catherine MacKinnon, Karen Knop, Hilary Charlesworth and Christine Chinkin offer critiques of law's gendered structures,<sup>15</sup> asserting that neither constitutional nor international law (as gendered constructs) can readily offer alternative governance models. Albeit, as Kimberlé Crenshaw argues, often feminist strategies to overcome these constructs fail to consider intersectionality as an imperative.<sup>16</sup> It is thus necessary to ask whether there is any latent potential for constitutionalism to be an instrument of feminist change within international law or whether, as Audre Lorde argues, it is impossible to use the Master's tools to dismantle the Master's house.<sup>17</sup> This article uses

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<sup>8</sup> P Melzer, *Alien Constructions: Science Fiction and Feminist Thought* (University of Texas Press, Austin Texas, 2006) 9.

<sup>9</sup> *Ibid* 11.

<sup>10</sup> see W Imarisha, 'Introduction' in W Imarisha and am brown (eds), *Octavia's Brood: Science Fiction Stories from Social Justice Movements* (AK Press, Chico California, 2015) 3; K Williams, 'Demanding the Impossible: Walidah Imarisha Talks About Science Fiction And Social Change' (*bitchmedia* 13 April 2015), available at <<https://www.bitchmedia.org/post/demanding-the-impossible-walidah-imarisha-talks-about-science-fiction-and-social-change>>

<sup>11</sup> SW Potts and OE Butler, "'We Keep Playing the Same Record": A Conversation with Octavia E Butler' (1996) 23(3) *Science Fiction Studies* 331, 336 (Octavia E Butler).

<sup>12</sup> A Hairston, 'Octavia Butler – Praise Song to a Prophetic Artist' in J Larbalestier (ed), *Daughters of Earth: Feminist Science Fiction in the Twentieth Century* (Wesleyan University Press, Middletown Connecticut, 2006) 287, 295; J Miller, 'Post-Apocalyptic Hoping: Octavia Butler's Dystopian/Utopian Vision' (1998) 25(2) *Science Fiction Studies* 336, 336.

<sup>13</sup> H Charlesworth and C Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, Manchester, 2000); C Pateman, *The Sexual Contract* (Stanford University Press, Redwood City, 1998).

<sup>14</sup> H Charlesworth, 'International law: A Discipline of Crisis' (2000) 65 *The Modern Law Review* 377.

<sup>15</sup> e.g. B Baines, D Barak Erez and T Kahana (eds), *Feminist Constitutionalism: Global Perspectives* (Cambridge University Press, Cambridge, 2012); H Charlesworth, 'Alienating Oscar? Feminist Analysis of International Law' in DG Dallmeyer (ed), *Reconceiving Reality: Women and International Law* (American Society of International Law, 1993) 1; H Charlesworth and C Chinkin, 'The Gender of Jus Cogens' (1993) 15 *Human Rights Quarterly* 63; H Charlesworth, C Chinkin and S Wright, 'Feminist Approaches to International Law' (1991) 85(4) *The American Journal of International Law* 613; C MacKinnon, *Towards a Feminist Theory of the State* (Harvard University Press, Cambridge MA, 1989).

<sup>16</sup> K Crenshaw, *On Intersectionality: Essential Writings* (New Press, New York City, 2019). In international law see, AN Davis, 'Intersectionality and international law: Recognizing complex identities on the global stage' (2015) 28 *Harvard Human Rights Journal* 205.

<sup>17</sup> A Lorde, *Sister Outsider: Essays and Speeches* (Crossing Press, Berkeley CA, 1984) 110.

utopian narratives of women-centric societies found in speculative fiction, specifically science fiction to rethink governance and proffer a feminist global constitutionalism.

Science fiction as a genre is often set in the future and is concerned with 'scientific and technological extrapolation',<sup>18</sup> but there is a move to define the genre not by its content, but rather by its function, which is 'cognitive estrangement';<sup>19</sup> science fiction offers 'an imaginative framework alternative to the author's empirical environment'.<sup>20</sup> Science fiction can be understood as a subset of fantasy literature.<sup>21</sup> Crucially fantasy offers 'allegories and extensions of the "real world"', which encourage readers to 'suspend their disbelief for the course of the story'.<sup>22</sup> Utopia as 'no place' or 'good place', traditionally evokes a blueprint for better governance. Utopianism, however, is not a 'place', it 'defines a sense of lack that stimulates a "desire for a better way of being"'.<sup>23</sup> Utopianism and dystopia then are contingent; Søren Baggesen shows how the pessimism of dystopia can inspire 'utopian hope' that society can be changed.<sup>24</sup> Reading these utopian/dystopian narratives therefore offers both 'critiques of the contemporary world' and 'the presentation of alternate possibilities'.<sup>25</sup> Some utopias created by women will be dystopian for others, whether through the exclusion of men, the harmful essentialism or the negation of experiences. The duality of utopianism/dystopia offers a critique of the current society, but also a drive for change. These utopian/dystopian narratives offer a space for 'imaginative speculation necessary for generating new liberating strategies.'<sup>26</sup>

Feminist science-fiction utopias have been prevalent within the genre of utopian literature since the first speculative fiction; Margaret Cavendish's *Blazing World* (1666) is a feminist – if conservative – critique of governance. Rokeya Hossain's 1905 short story, 'Sultana's Dream', describes a world where men live in purdah and women lead active public lives.<sup>27</sup> Feminist utopian texts offer a body of literature that have always been available to governance discourse but were largely ignored. The narratives that form the core of this article are: Charlotte Perkins Gilman's *Herland* (1915) - the article title adapts the title to the sequel *With Her in Ourland* (1916) - Leslie F Stone's 'The Conquest of Gola' (1931); Ursula K Le Guin's *The Left Hand of Darkness* (1969); Sally Miller Gearhart's *The Wanderground* (1979); Sheri S Tepper's *The Gate to Women's Country* (1989); Naomi Alderman's *The Power* (2016) and N.

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<sup>18</sup> P Sargent, 'Introduction: Women in science fiction' in *Women of Wonder* (Vintage, New York City, 1975) xiv.

<sup>19</sup> D Suvin, *Positions and Presuppositions in Science Fiction* (Springer, New York City, 1998) 71–72; See Fitting (n 5) 135.

<sup>20</sup> Suvin (n 19) 37.

<sup>21</sup> See T Burns and JW Hunter, *Contemporary Literary Criticism* (vol. 193, Thomson Gale, Michigan, 2005) 137; S Gibney, 'Science Fiction, Feminism and Blackness: The Multifaceted Import of Octavia Butler's Work' in S Jackson and JE Moody-Freeman (eds), *The Black Imagination: Science Fiction, Futurism and the Speculative* (Peter Lang, Oxford, 2011) 100, 105.

<sup>22</sup> Gibney (n 21) 100, 105.

<sup>23</sup> Levitas (n 4) 221.

<sup>24</sup> S Baggesen, 'Utopian and Dystopian Pessimism: Le Guin's "The Word for World Is Forest" and Tiptree's "Who Stole the Dream"' (1987) 14(1) *Science Fiction Studies* 34, 41.

<sup>25</sup> E James, 'Utopias and anti-utopias' in E James & F Mendlesohn (eds), *The Cambridge Companion to Science Fiction* (Cambridge University Press, Cambridge, 2003) 219.

<sup>26</sup> A Johns, 'Feminism and utopianism' in G Claeys (ed), *The Cambridge Companion to Utopian Literature* (Cambridge University Press, Cambridge, 2010) 174.

<sup>27</sup> D Mookerjea-Leonard, 'Futuristic technologies and purdah in the feminist utopia: Rokeya S. Hossain's 'Sultana's dream' (2017) 116 *Feminist Review* 144.

K. Jemisin's *Broken Earth Trilogy* (2015-2017). Other texts discussed include: Ursula Le Guin's, 'The Ones Who Walk Away from Omelas' (1973), Joanna Russ' *The Female Man* (1975), Marge Piercy's *Woman on the Edge of Time* (1976), Octavia E Butler's *Xenogenesis* series - *Dawn* (1987),<sup>28</sup> *Adulthood Rites* (1988), *Imago* (1989) - alongside *Fledgling* (2005), Jewelle Gomez's *The Gilda Stories* (1991), and N. K. Jemisin's 'The Ones that Stay and Fight' (2016). These narratives span the first, second, and third/fourth waves of feminism. The feminist science fiction of the first wave concerned questions of suffrage and economic independence and explores role reversals through matriarchal and separatist societies. Into the 1970s and 1980s, the literature uses separatist societies and the reversal of gender roles to pick up on debates around women's sexuality and the ongoing oppression of women.<sup>29</sup> Later feminist science fiction disrupts gendered power structures through undermining and subverting power, often through the use of technology, as seen in Alderman's *The Power*.<sup>30</sup> Jemisin's *Broken Earth Trilogy* does not offer a utopia but rather an important counterpoint to a sub-genre that extends little toward intersectionality or relies upon post-race narratives.<sup>31</sup> Whilst not complete, this selection offers multi-various ways in which feminist utopian narratives could inform global constitutionalist discourse and critiques some of the foibles that feminist science fiction shares with global constitutionalism.

Just as More, Morris and Plato would not agree on their visions of utopia, neither does feminist utopian literature. The existence of violence, eugenics, racism, war, class, hereditary monarchies and other less recognisable feminist tropes reveals the divergent contexts within which these narratives were composed. Le Guin argues that while all of her works invent new societies that improve in some way on our own, she regards utopia as too grand and rigid for what she does, arguing her works are neither blueprints nor dire warnings but rather 'celebrations of that infinite variety by the invention of still more alternatives and possibilities'.<sup>32</sup> Indeed, Le Guin in a short story set in the same universe as *The Left Hand of Darkness* called 'Coming of Age in Karhide' (1995), wrote from a Gethenian perspective to complicate her original narrative, which had assumed that relations were restricted to 'heterosexual coupling'.<sup>33</sup> This article is not about searching for a blueprint, but rather reflecting on the lessons garnered from the different narratives.

A key concern, particularly for global feminist constitutionalism and utopias, is that many of the narratives highlighted were written by white Global North women and we are two white female academics from the Global North, with privileged access to the advantages that come with that position. In the majority, these are utopias designed for white women. In asking 'better for whom', this article exposes the limitations of these utopian projects. Le Guin suggests in 'The Ones Who Walk Away from Omelas' (1973) that utopias always come with a cost, but as Jemisin suggests in 'The Ones that Stay and Fight' (2016) this is a false dichotomy, there does not have to be suffering for others to have utopia but this is only possible in a 'postcolonial Utopia' where you stand and fight against the harm of oppression

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<sup>28</sup> Now published as OE Butler, *Lilith's Brood* (Warner Books, New York City, 2000).

<sup>29</sup> Melzer (n 8) 8.

<sup>30</sup> Ibid 8.

<sup>31</sup> NK Jemisin has said that the Trilogy in some ways is a response to Ursula le Guin's *The Ones Who Walk Away from Omelas* (1973) writ large, see <<https://twitter.com/nkjemisin/status/955935985199714304>>

<sup>32</sup> U Le Guin, 'War Without Ends' from *Essays on More's Utopia* (Verso, London, 2016), available at <<https://www.versobooks.com/blogs/3585-a-war-without-end-by-ursula-k-le-guin>>

<sup>33</sup> A Lothian, 'Feminist and Queer Science Fiction in America' in G Canavan and EC Link (eds), *The Cambridge Companion to American Science Fiction* (Cambridge University Press, Cambridge, 2015) 70, 76.

and racism.<sup>34</sup> It is this division between utopias that ignore race or assume a 'post-race' world and those authors who chose to fight the harm directly before establishing the utopia,<sup>35</sup> which demonstrates that not all utopian projects are emancipatory. The division can inform our understanding of what is necessary for utopia and highlights questions that need to be revisited by global constitutionalism in its utopian project.

In a previous piece, we outlined a seven-point manifesto for feminist global constitutionalism.<sup>36</sup> This manifesto calls for: first, women's genuine participation as agenda setters, second, agenda setting that moves beyond a Eurocentric gaze, third, a right of rejection, fourth, women co-authors of constitutions, fifth, women's substantive involvement in the continuous unfolding of the constitution, sixth, women as active participants with both constituent and constituted power, and seventh, a right of revolt. Here, two key elements of that manifesto – attention to constituent and constituted power and a right to revolt – alongside a consideration of how these are to be articulated through the public/private divide lie at the centre of our exploration.

The article is divided into five sections: the first section discusses the exclusions within utopian projects that surface when asking who benefits from such projects as global constitutionalism, and it does so by demonstrating how science fiction has excluded women of colour, the second explores constructions of constituent power holders and communities as well as the role of constituent moments; the third continues a discussion on constituent moments alongside the right to revolt, and against entrenchment of constitutional structures; and, the fourth section explores the public/private divide within the descriptions of home and motherhood in feminist science fiction. The fifth section of the article reflects on the limitations of reading feminist science fiction. Crucially, this section highlights the risk that feminist discussions in global constitutionalist debates might reiterate former power structures.

The utility of utopian thinking is a long-established method of critiquing the present and facilitating hope for the future. Reading feminist utopias offers us new ways of thinking about governance. In challenging global constitutionalism to consider the nature of its own project, this article questions whether it listens to feminist concerns as expressed in utopian literature.

## II. Better for Whom?

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<sup>34</sup> NK Jemisin 'The One who stands and Fights' in *How Long 'Til Black History Future Month* (Orbit, London, 2018).

<sup>35</sup> See also ideas of 'survival' in the work of Octavia E Butler. HM Zaki, 'Utopia, Dystopia, and Ideology in the Science Fiction of Octavia Butler' (1990) 17(2) *Science Fiction Studies* 239, 242; C Robinson, 'Minority and Becoming-Minor in Octavia Butler's *Fledgling*' (2015) 42(3) *Science Fiction Studies* 483, 484; D Allison, 'The Future of Female: Octavia Butler's Mother Lode' in HL Gates (ed), *Reading Black, Reading Feminist* (Meridian, Oldbury West Midlands, 1990) 471.

<sup>36</sup> Aoife O'Donoghue and Ruth Houghton, 'Can Global Constitutionalisation be Feminist?' in Sue Harris Rimmer and Kate Ogg (eds), *Future of Women's Engagement with International Law* (Edward Elgar, Cheltenham, 2019) 81.

Critiques of global constitutionalism should consider whom the global constitutionalist project benefits. This 'better for whom' question resonates with the feminist utopian science fiction. As Melzer insists, '[T]he [science fiction] texts themselves often either propagate a typical liberal color blindness or are racist - openly as well as implicitly'.<sup>37</sup> Some, such as Le Guin, have a definite perspective on making a post-race society, and while in Stone's 'The Conquest of Gola', the women are not human, there remains a lack of intersectionality.<sup>38</sup> Le Guin removes race from her depicted world in *The Left Hand of Darkness* to make a political point. However, this can be problematic if in removing race the narrative silences a group's understanding of itself and its relationship with others. Unlike Jemisin's 'stay and fight' science fiction, *The Left Hand of Darkness* does not provide the vital space for contestation on how such a post-race utopia can be created. Of central concern therefore must be the extent to which utopian feminist science fiction literature silences racial politics.

*Herland* and in particular the sequel, *With Her in Ourland*, are predicated on racism. *Herland* was written by Perkins Gilman in 1915 and it is a story of three men who go on an exploration and venture into a land populated only by women. The people living around Herland and the guides who lead the male protagonists there are referred to as 'savages'.<sup>39</sup> The men assume that the women of *Herland* are Aryan.<sup>40</sup> When Ellador is described, her darker skin colour is eroticised by the narrator.<sup>41</sup> Moreover, Perkins Gilman's non-fiction writing demonstrates clearly racist attitudes including eugenics and racist language.<sup>42</sup> While we discuss Perkins Gilman's *Herland*, it is its place as an early iteration of feminist science fiction that renders it useful for our purposes, rather than dismissing her racism. Indeed, the extent to which questions of race are side-lined in these science fiction narratives is fundamental to our discussion on whom global constitutionalism benefits.

In contrast to the texts of Perkins Gilman and Gearhart, there are few separatist societies written by women of colour. One explanation for this is the construction of a 'black matriarchy' during the civil rights movement in America.<sup>43</sup> Daniel Moynihan's 1965 report, 'The Negro Family: The Case for National Action' argued that black families were often led by a single woman, the outcome being that black men lacked the confidence to compete with white men in the workplace.<sup>44</sup> bell hooks explains how '[b]lack men were able to use the matriarchy myth as a psychological weapon to justify their demands that black women

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<sup>37</sup> Melzer (n 8) 44-45.

<sup>38</sup> K Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) 1 *University of Chicago Legal Forum* 139.

<sup>39</sup> CP Gilman, *Herland* (1915, Vintage, New York City, 2015) 3.

<sup>40</sup> *Ibid* 71.

<sup>41</sup> 'As for Ellador: Suppose you come to a strange land and find it pleasant enough - just a little more than ordinarily pleasant - and then you find rich farmland, and then gardens, gorgeous gardens, and then palaces full or rare and curious treasures - incalculable, inexhaustible, and then - mountains - like the Himalayas, and then the sea' (*Herland* (n 39) 119); 'Celis was a blue-and-gold-and-rose person; Alima, black-and-white-and-red, a blazing beauty. Ellador was brown: hair dark and soft, like a seal coat; clear brown skin with a healthy red in it; brown eyes - all the way from topaz to black velvet they seemed to range - splendid girls, all of them' (*Herland* (n 39) 121); see also *Herland* (n 39) 71.

<sup>42</sup> For a discussion see, DD Knight, 'Charlotte Perkins Gilman and the Shadow of Racism' (2000) 32(2) *American Literary Realism* 159, 161.

<sup>43</sup> Hairston (n 12) 287, 292.

<sup>44</sup> See J Donovan, *Feminist Theory, Fourth Edition: The Intellectual Traditions* (Continuum International Publishing Group, New York, 2012) 155.

assume a more passive subservient role in the home'.<sup>45</sup> Feminists, therefore, contest the stereotype of the strong black woman matriarch, a stereotype that Angela Davis has criticised for ignoring the experiences of black women.<sup>46</sup> This is why it is crucial, when using feminist utopias, that *all* voices are heard; whilst the all-woman society as a thought experiment can empower some women, it can exclude and cause further oppression for others.

Some of the feminist science fiction narratives written by white women in the 60s, 70s, and 80s share the racist and imperialist overtones of other utopian work including More's. As China Miéville argues, a new discourse is therefore essential:

[a] start for any habitable utopia must be to overturn the ideological bulls\*\*\* [sic] of empire and, un sentimentally but respectfully, to revisit the traduced and defamed cultures on the bones of which some conqueror's utopian dreams were piled up. "Utopia" is to the political imaginary of betterness as "Rhodesia" is to Zimbabwe, "Gold Coast" to Ghana.<sup>47</sup>

As such, the narratives discussed in this article are not presented as templates to be emulated, but rather a way of looking at alternatives unshackled from patriarchal preconceptions of governance, with full cognisance of the negative actions that have followed when societies have embraced some utopias.<sup>48</sup> As Miéville argues, the stain upon utopias should not prevent us from examining them.<sup>49</sup> Both Alderman in *The Power* and Jemisin in the *Broken Earth Trilogy* demonstrate that intersectional questions of race, of social status, of economic power, of religion, of abuse all must be tackled, to be fought, before utopias can emerge and the 'better for whom' question given a full answer.

### III. Constituent Power and Community

'They themselves were a unit, a conscious group; they thought in terms of the community'

(Charlotte Perkins Gilman, *Herland* (1915, Vintage, New York City, 2015) 125)

Feminist utopian narratives consider how communities are constructed, their purpose and the role of individual women *but* critically all through a collective lens. They raise questions about the construction and the exercise of constituent power as non-hierarchical relationships, realising women's substantially active engagement in the evolution of the constitution as both constituent and constituted power holders and as agenda setters. These

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<sup>45</sup> bell hooks, *Ain't I a Woman* (South End Press, Boston, 1981) 79; Donovan (n 44) 155.

<sup>46</sup> A Davis, 'Reflections on the Black Woman's Role in the Community of Slaves' (1972) 13(1/2) *The Massachusetts Review* 81, 84; Donovan (n 44) 155.

<sup>47</sup> See C Miéville, 'Introduction', Thomas More's *Utopia* (Verso, London, 2016) i, insertion of \*\*\* by article writers.

<sup>48</sup> Weitz (n 4).

<sup>49</sup> Miéville (n 47) ii.

feminist utopian narratives, in looking at ideas of constituent power, highlight the violence of the single constituent moment and advocate for ongoing constituent moments executed, for the most part through collective reflection and discussion. These narratives illuminate the inter-relation between individuals within collectives to consider how to achieve “The People” as a series of persons in dialogue, rather than a homogenous whole.

In a move away from advocating homogenous communities as a basis for constitutionalism, scholars of global constitutionalism have started to proffer constituent power as an alternative model.<sup>50</sup> The feminist approach to consider the individual within the collective, sits in contrast with traditional liberal or republican theories of constitutional communities, which either prioritise the individual or the collective.<sup>51</sup> These feminist utopias offer alternative starting points and questions for global constitutionalist scholarship.

### *Constituent Power and Constituent Moments*

For constitutionalism, the identification of constituent and constituted power holders as the basis of community underpins its legitimacy.<sup>52</sup> Liberal constitutionalism is buttressed by the myth of the constituent moment as a point of radical change heralding the way for constitutional order. In constitutional scholarship, constituent power can be understood as either exhausted or as dormant.<sup>53</sup> Within global constitutionalism, both constituent power and the constituent moment remain peripheral, albeit emerging, debates. If the holders of constituent power remain unidentified and thus cannot exercise their warrant, the exercise of constituted power is inevitably constitutionally illegitimate.<sup>54</sup> Moreover, failure to debate the role of constituent moments in global constitutionalist discourse risks transposing problematic trends of historicism found in domestic constitutionalism. The feminist texts under consideration here problematise the relationship between constituent power holders and the constituent moment, highlighting anxieties around constituent power and the constituent moment offering new points of departure for global constitutionalist debates.

The constituent moment is a rupture that heralds a new constitutional order.<sup>55</sup> These moments are usually preceded by violence and war. For example, within international law, World War II is often considered to be the violence that preceded the constituent moment that brought about the UN Charter. The violence referred to as constitutive is general physical force, such that routine daily violence against women or poverty are not considered

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<sup>50</sup> See e.g., Aoife O’Donoghue, *Constitutionalism in Global Constitutionalisation* (Cambridge University Press, Cambridge, 2014) 54–87.

<sup>51</sup> MG Dietz, ‘Context Is All: Feminism and Theories of Citizenship’ (1987) 116 *Daedalus* 1, 2–6.

<sup>52</sup> For a discussion see O’Donoghue (n 50) 56–57.

<sup>53</sup> For a discussion on it being exhausted see, UK Preuss, ‘Constitutional Powermaking for the New Polity: Some Deliberations on the Relations between Constituent Power and the Constitution’ (1992-1993) 14 *Cardozo Law Review* 639; For a discussion on it being non-exhaustible see, J Locke, *Two Treatises of Government* (P Laslett ed, Cambridge University Press, Cambridge, 1998) ch II, sec 222. See also DJ Galligan, ‘The Paradox of Constitutionalism or the Potential of Constitutional Theory’ (2008) 28(2) *Oxford Journal of Legal Studies* 343, 358; JI Colón-Ríos, *Weak Constitutionalism: Democratic Legitimacy and the Question of Constituent Power* (Routledge, Abingdon Oxfordshire, 2012) 8; A Kalyvas, ‘Popular Sovereignty, Democracy, and the Constituent Power’ (2005) 12(2) *Constellations* 223, 227.

<sup>54</sup> See O’Donoghue (n 50) 201.

<sup>55</sup> In contrast see, B Ackerman, *We the People, Volume 2: Transformations* (Harvard University Press, Cambridge MA, 2000) 409.



as moments of rupture within constitutional discourse.<sup>56</sup> Moreover, the violence that precedes and occurs during constituent moments is rarely remembered.

Johns argues that typically utopian narratives 'rely on revolutionary substitution, abrupt regime change, for the origin of the society'.<sup>57</sup> She gives the example of More's *Utopia*, which recounts how Utopus conquered the country overpowering and killing the indigenous people.<sup>58</sup> Similarly, the history of *Herland* begins with two violent overthrows, in which hierarchies are inverted.<sup>59</sup> First, the slaves revolt against their masters – men who have been engaged in war with other countries for a long period – killing older women, and seizing the younger women in an attempt to take power.<sup>60</sup> Then, 'the young women, instead of submitting, rose in sheer desperation and slew their brutal conquerors'.<sup>61</sup> It is unclear in the narrative whether the slaves are class- or race-based, but either way this depicts the oppression of oppressed groups. As Le Guin explores in 'The Ones Who Walk Away from Omelas', this oppression of a minority suggests the disturbing price of a feminist utopia; a question that can be asked of global constitutionalism as well.

For the most part, the feminist utopias depict a more pluralist picture of the constituent moment, often discussing 'gradual reform and ongoing change',<sup>62</sup> and where violence occurs, it is *revisited and remembered*. Remembering the experience of violence is a repeated trope in these texts. In *The Wanderground*, the women are reminded of the violent past they have endured. Gearhart's *The Wanderground* is set in a future United States and the narrative centres on communities of hill women, who have fled from the City ruled by men. Their experiences of rape and torture are recollected by remember-guides and stored in Remember Rooms. It is the job of a remember-guide to 'call up and re-play' these rapes, killings and torture to those who did not know about the past, 'Lest we forget how we came here'.<sup>63</sup> Rather than ignoring the violence that precedes a constituent moment, the Remember Rooms are a permanent reminder of the violence done to the women. Queer theory on history can add an additional reflection here; Heather Love in *Feeling Backward* argues for a 'politics of the past', one that does not view negativity and shame in the past as *useable* for progress.<sup>64</sup> For Love, an 'insistence on using negativity as but a stepping stone to positive agency is a refusal to fully engage with histories of hurt and to see the persistence of this "history" in the present'.<sup>65</sup> Love 'acknowledges the importance of shame in queer politics', but she 'argues for the need to develop a "politics of the past" that can work with the past without resignifying the stigma that resides there'.<sup>66</sup> The women's stories are not

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<sup>56</sup> For a discussion on the gender-based aspects of poverty, see M Campbell, *Women, Poverty, Equality: The Role of CEDAW* (Hart, London, 2018).

<sup>57</sup> Johns (n 26) 186.

<sup>58</sup> T More, *Utopia* (Verso, London, 2016) 1–2.

<sup>59</sup> *Herland* (n 39) 72–73.

<sup>60</sup> *Ibid* 72.

<sup>61</sup> *Ibid* 72–73.

<sup>62</sup> Johns (n 26) 191.

<sup>63</sup> SM Gearhart, *The Wanderground* (The Women's Press, London, 1985) 24.

<sup>64</sup> H Love, *Feeling Backward: Loss and the Politics of Queer History* (Harvard University Press, Cambridge MA, 2009).

<sup>65</sup> S McBean, 'Queer temporalities' (2013) 14(1) *Feminist Theory* 123, 126. For an alternative discussion on temporalities and queer theory, see JE Muñoz, *Cruising Utopia: The Then and There of Queer Futurity* (New York University Press, New York, 2009).

<sup>66</sup> Love (n 64) 21 cited in McBean (n 65) 126.

'used' to construct a foundational constitutional myth, they are woven into the community and remembered.

*The Left Hand of Darkness* is centred on an ambisexual planet where sexuality manifests itself once a month for the purposes of reproduction. The people on the planet have a violent myth of their founding moment: the planet originally had thirty-nine individuals, all siblings, and the first individual to awaken kills thirty-seven of them out of fear.<sup>67</sup> In doing so 'darkness' is created alongside light at a key constitutional moment of founding. A planet with no gender still has need for opposites but crucially, these are not antagonistic, but rather part of a whole. Unlike other founding myths of governance, such as the US constitution and its founding fathers, there is no idealisation of the founder; rather, the founder created, by his actions, the darkness that coexists with the light, just as they are both male and female and have violence but not war.<sup>68</sup> Everyone lives with the darkness and this acts as a reminder of the violence of the constituent moment. The histories of the constituent moment and the re-remembering of the violence subverts constitutionalism's role in both the suppression of this violence and its valorisation.

Acts of remembrance are problematised in Jemisin's *Broken Earth Trilogy*.<sup>69</sup> The *Broken Earth Trilogy* is set on a planet with perpetual tectonic activity and three peoples. One of the peoples is dominant, a second are either slaves or are murdered and a third are entirely apart. The tectonic activity means that entire civilisations are wiped out and the violence of extreme events are remembered, but through the lens of the dominant group. Upendra Baxi argues constitutionalism works to silence 'lived and generationally embodied histories of collective hurt'.<sup>70</sup> The first and dominant group in the *Broken Earth Trilogy* understand this and their attempted silencing forms part of the governance order through histories and rules (constitutional rules) written on tablets. The trilogy explores the need for revolt against the domination and violence of the first group and the histories they create where violence by the dominant group is natural. Jemisin's feminist science fiction exposes the 'collective hurt' silenced by constitutionalism.<sup>71</sup>

Global constitutionalism does little to remember its oppressive history. The discourse has hitherto left little space for critical engagement from feminism or Third World Approaches to International Law (TWAAIL). It should seek to continually remember its oppressive history in the guise of international law and constitutionalism. All too often, however, a negative topic, having been considered once, is deemed dealt with, whereas 'positive' constitutional moments, such as those in 1945 or 1989 or moments of overcoming genocide or human rights abuses, are regularly returned to and celebrated.

In addition to the problematisation of the forgotten violence preceding the constituent moment, some of the feminist narratives espouse deliberative change rather than the one-off rupture found in liberal constitutionalist narratives. Both *Herland* and *The Wanderground* depict how the separatist societies – living beside but not with patriarchal societies –

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<sup>67</sup> U Le Guin, *The Left Hand of Darkness* (Virgo, London, 1997) 193.

<sup>68</sup> Ibid 39.

<sup>69</sup> NK Jemisin, *The Fifth Season* (Orbit, London, 2015).

<sup>70</sup> U Baxi, 'Constitutionalism as a Site of State-Formative Practices' (2000) 21(4) *Cardozo Law Review* 1183, 1209; Z Oklopčic, 'The South of Western Constitutionalism: A Map Ahead of a Journey' (2016) 37(11) *Third World Quarterly* 2080.

<sup>71</sup> Ibid.

continue to bring about constitutional change. The gradual growth of Herland is outlined in detail; how a small community 'worked together' and grew into a nation.<sup>72</sup> The narrator describes how the women made decisions regarding population growth; '[t]hey sat down in council together and thought it out',<sup>73</sup> and Somel (one of the guides) further elaborates that the problem of overpopulation was 'equally plain to all – all were equal interested' and so they 'gave the matter their most earnest thought and study'.<sup>74</sup> In *The Wanderground*, decision-making, or 'sister-search', is described as a collective and deliberative process.<sup>75</sup> 'When the women meet publicly to debate a political issue around which they are divided, for example, they describe this process as an inward movement into a common female center of power that they all share'.<sup>76</sup> In coming together, the women feel 'a presence greater than any one individual, which 'makes each woman feel "more deeply grounded, more vital, more steady, more nearly at home"'.<sup>77</sup> Thus, cognitive change is a product of deliberation.

The decision-making practices of these separatist societies have been critiqued for their idealisation and essentialism. Scholars argue that communitarian decision-making can work to negate agency as the individual voice is lost in the group.<sup>78</sup> Moreover, the idealised deliberative processes mask problematic choices, such as decisions on eugenics in *Herland* and the potential exclusions of LGBTQ men in *The Wanderground*. Whilst deliberation is evidence of politics rather than the calcification of constitutional moments seen in liberal constitutionalism, and in these decision-making processes alternative perspectives are heard, essentialism haunts these processes and can conceal layers of oppression. Global constitutionalism must be alert to the haunting effects of such essentialism.

In addition to re-reading constituent moments, feminist utopian literature also offers perspectives on constituent power holders. Alessa Johns argues that feminist utopian literature includes a sense of 'shared power'.<sup>79</sup> She demonstrates how feminist scholars have woven individual women's narratives into grand histories. For example, in *The Wanderground*, in the Remember Rooms 'from countless seemingly disconnected episodes the women had pieced together a larger picture' of what happened as they fled the City.<sup>80</sup> Crucially, all stories were collected, 'however dramatic or mild, however heroic or horror-ridden'.<sup>81</sup> This act of sharing stories is part of the construction of the collective; '[a]s a woman shared, she became part of all their history'.<sup>82</sup> Critical past moments are not stratified, glorified, or calcified – as on tablets in *The Broken Earth Trilogy* - but rather are part of present understandings and inform the identification of constituent power-holders. A feminist global constitutionalism seeking to identify constitutional moments would not fossilise single narratives or events, and neither would it place great importance on fulfilling the intention

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<sup>72</sup> *Herland* (n 39) 74.

<sup>73</sup> *Ibid* 90.

<sup>74</sup> *Ibid* 93.

<sup>75</sup> See, *The Wanderground* (n 63) 20.

<sup>76</sup> J Burwell, *Notes on Nowhere: Feminism, Utopian Logic, and Social Transformation* (University of Minnesota Press, Minneapolis Minnesota, 1997) 75.

<sup>77</sup> *Ibid* 75.

<sup>78</sup> See *Ibid* 81; C Ferns, *Narrating Utopia Ideology, Gender, Form in Utopian Literature* (Liverpool University Press, Liverpool, 1999) 194.

<sup>79</sup> Johns (n 26) 186.

<sup>80</sup> *The Wanderground* (n 63) 24.

<sup>81</sup> *Ibid* 24.

<sup>82</sup> *Ibid* 24.

of past actors; rather, in these feminist texts, constitutional moments inform present constituent actors in considering their extant decision making.

Alderman's *The Power* – a dys(u)topian novel set in a modern-day world, but where women (re)discover that they have a bar of static electricity in their collar bone and can give electric shocks – demonstrates the 'shared power' Johns highlights.<sup>83</sup> The novel is written from the perspective of a series of protagonists – who cross socio-economic, race, religion, gender, sexuality, religious and ethnic experiences – whose narratives collide in various ways over the course of the novel. Though 'Eve' – a Christ-like figure – acts as a fulcrum around which other characters revolve, the characters have very separate roles in bringing about the change that results in a female-dominated society (whether it is the journalist exposing stories, the female politician facilitating training-centres, or Roxy who takes the lead on financing the cult around Eve via drugs trading). They are nodal characters operating in different countries, but each is needed to bring about change.

Global constitutionalist scholarship, as a response to international law, can be reoriented towards those actors that act as nodes of governance in a non-linear trajectory.<sup>84</sup> Appreciating 'nodes' can disrupt a governance order built around states, but there must be a contextual understanding of how those nodes are constructed.<sup>85</sup> For example, this might entail recognising the impact of the women's movement on the League of Nations or in the creation of the Permanent Court of Arbitration or in Security Council Resolution 1325.<sup>86</sup> The narratives of male-dominated linear progress toward an ever-greater constitutional order could be disrupted by this nodular account of action at different moments and sites, not all of which need be positively evolutionary. *Herland* and *Women's Country* contain narratives of change that reflect needs at that moment, implying that constitutional moments and constituent power is not geared toward a Hegelian narrative of progress.

In *The Power*, 'power' is manifested in the electricity. Through using this metaphor, the feminist narrative offers alternative perspectives on 'power'. 'Power' becomes inter-generational as younger women turn on the electrical abilities of older women.<sup>87</sup> The force of the electricity, and therefore the 'power', is felt in the inter-relation between the person giving off the spark and the other receiving it. Alderman describes the 'arcs' of electricity that the women make between their hands, showing 'power' as inter-relational. Electricity is a powerful metaphor for how constituent power can be understood, highlighting the need for inter-relational activities (e.g. communication), and for an understanding of constituent power's non-exhaustion in the constituent moment. Whilst constituent power can become a mythical starting point for a constitutional framework,<sup>88</sup> global constitutionalist scholarship

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<sup>83</sup> Johns (n 26) 186.

<sup>84</sup> For a discussion see, KY Shin, 'Governance' in L Disch and M Hawkesworth (eds), *The Oxford Handbook of Feminist Theory* (Oxford University Press, Oxford, 2018) 304, 310.

<sup>85</sup> Ibid.

<sup>86</sup> See, A O'Donoghue, 'Paris Peace Conference 1919' in *Women's Legal Landmarks* (Bloomsbury, London, 2018) 125; C O'Rourke, 'Walk[ing] the Halls of Power'? Understanding Women's Participation in International Peace and Security (2014) 15 *Melbourne Journal of International Law* 128; J Addams, *Peace and Bread in a Time of War* (Hail & Co, 1922) 1; LJ Rupp, *Worlds of Women: The Making of an International Women's Movement* (Princeton University Press, Princeton, 1997).

<sup>87</sup> N Alderman, *The Power* (Penguin Books) 59

<sup>88</sup> M Loughlin, *The Idea of Public Law* (Oxford University Press, Oxford, 2004) 99.

should also try to understand how such constituent power can manifest (where it appears, its forms, and its dialectic qualities).

The electricity in the novel is a palpable representation of power; the women describe feeling it hum within them and it can cause harm and death. Some actors have more electricity and therefore higher status within the novel, some characters have less and are isolated because of it, and some (the male characters) have none. The violence that can be perpetrated through this power is vividly portrayed through the electrocutions, making the violence of 'power' visible. Some commentators argue this is a dystopian novel because of the arbitrary use of power by the women towards the end of the novel. Anxieties of arbitrary power are also found in *The Wanderground*, where the women have combined their energies into Gatherstretch; 'the combined psychic energies of hundreds of hill women generate a channelled power which could prove literally lethal'.<sup>89</sup> Some of the women want to use the power to 'wipe the City [and thus the men] out now'.<sup>90</sup> Scholars have criticised this aspect of *The Wanderground* because it is suggestive of individuals wanting to use power without feeling guilt, as they can hide behind the collective.<sup>91</sup> The concerns over abuses of power in *The Power* and in *The Wanderground* and the repeated incidences of mass violence in the *Broken Earth Trilogy* challenge the idealisation of women's use of power; the idea that women in power would exercise it differently from men. Towards the end of the story in *The Power*, Alderman describes the 'power':

The shape of power is always the same: it is infinite, it is complex, it is forever branching. While it is alive like a tree, it is growing; while it contains itself, it is a multitude [...] The closer you look, the more various it becomes.<sup>92</sup>

That '[t]he shape of power is always the same' acts as a critique against essentialist arguments that women would use power differently. If power is the same, there is the same potential for it to be used arbitrarily. The idea of a 'multitude' here is critical too, and it resonates with the collective in *The Wanderground*. Power is a form of unison, '[w]hen a multitude speak with one voice, that is strength and that is power'.<sup>93</sup> Yet, the power also evokes a sense of diversity as the electricity, as a multitude, becomes 'more various'.<sup>94</sup> Both *The Wanderground* and *The Power* highlight an ongoing tension about feminist conceptualisations of power; how to reconcile women having power with the potential for the abuse of power.

This anxiety around power also highlights the utopian/dystopian duality of science fiction, as the dystopian elements reflect that we presently live in a dystopia; there is nothing that happens to men in the last third of *The Power* that is not women's everyday lived experience across the world. Violence is re-appropriated by the female characters in *The Power* as a way of critiquing current uses of violence in society. Utopian narratives are complex, whilst they can be seen to offer blueprints, they also draw on the real world; asking the reader to reflect on the present where men can abuse power.

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<sup>89</sup> Ferns (n 78) 197

<sup>90</sup> *The Wanderground* (n 63) 129

<sup>91</sup> Ferns (n 78) 197

<sup>92</sup> *The Power* (n 87) 330.

<sup>93</sup> *Ibid* 325.

<sup>94</sup> *Ibid* 330.

To read feminist science-fiction utopias through a constitutional lens, exposes critiques of the traditional conceptualisations of constituent moments and constituent power. Throughout the feminist narratives, the violence of the constituent moment and of wielding power is made palpable. Constituent power becomes something that is tangible and experienced between people rather than situated with the founding myths of constitutional orders. Global constitutionalist debates should heed these calls to account for the structural violence underpinning its project and to reconceptualise constituent power as being the project of inter-relational exchanges.

### *Community*

The existence of a global community is critical to global constitutionalism, but how a community may be global without providing the necessary 'other' that defines community remains unanswered.<sup>95</sup> Feminist utopian narratives shed light on the import of community and offer a myriad of ways to construct communities; sisterhood, shared experience, and discourse. Often narrating relations between individuals and between communities, these feminist utopias also highlight the dangers associated with seeking a 'global' community.

Community does not have an exact content in political discourse; nonetheless, it holds connotations such as collectivity and binarity. Community has both an exclusionary impact and a dampening effect on those within and outside its purview.<sup>96</sup> Those identified as outside a given community, who may nevertheless take part in law creation, are considered dispensable. This process of exclusion is based upon notions of commonality or shared characteristics where to be in the community is to have something in common with others; members of a community must resemble each other in some manner. When based on a romanticised 'original' community, citizenship is often idealised as masculine, an idyll that women always fall short of, particularly women who also fail to meet other idealised standards of race, class or gendered performance.<sup>97</sup> The dampening effect arises due to the absence of space to question the basis of commonality. A community member who questions a commonality risks exclusion and to question the commonality from the outside is to self-deny admission; one cannot share in a commonality one does not embody and embrace.

Stultified debates on a community's rationale places any process of change in a conservative frame, which must not question the basis on which the community operates. This is further underscored by the idealisation of the public active figure – reliant on the existence of a private passive alternative – fetishized as the constituent power holder. Narratives of the idealised citizen be they noble, active, or good, must always be open to re-evaluation to reflect the gendered and often racist stereotypes that accompany them. The binary nature of community and its tendency toward dampening debate agitates against it as a fulcrum

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<sup>95</sup> TM Franck, *Fairness in International Law* (Oxford University Press, Oxford, 1995) 10–12; S Benhabib, *Another Cosmopolitanism* (Oxford University Press, Oxford, 2006) 72.

<sup>96</sup> N Fraser, *The Problems of Communitarian Politics: Unity and Conflict* (Oxford University Press, Oxford, 1999) 60; JL Nancy 'The Confronted Community' (2003) *Postcolonial Studies* 23,31.

<sup>97</sup> B Baines, 'Gender and Constitution: Is Constitutionalism Bad for Intersectional Feminists' (2009) 28 *Penn State International Law Review* 427, 431; S Moller Okin, *Women in Western Political Thought* (Princeton University Press, Princeton 1979) 247.

around which a feminist global constitutionalism could emerge. It would perhaps seem strange then that feminist utopias focus on community.

These traditional ideas of community are critiqued or subverted in feminist science fiction. In *The Wanderground*, the hill women can question the unity of the community. The idea that members of a community must resemble each other is evocatively portrayed in the *Broken Earth Trilogy* where the dominant group exploit another people because of a single characteristic, while using that characteristic to their advantage. Both Butler and Gomez use vampire narratives to explore alternative constructions of communities and options for power-sharing. In Gomez's *The Gilda Stories* (1991), the sense of community is complicated as the protagonist has to navigate 'overlapping spaces/communities within which she must live as, simultaneously, a vampire, a woman, a lesbian, and an African American'.<sup>98</sup> Butler's *Fledgling* (2005) explores options for shared power and cooperation, unbound from patriarchal structures, as the vampires and humans gain reciprocal health benefits from their interactions.<sup>99</sup> Afrofuturist feminist literature constructs black female protagonists,<sup>100</sup> depicting the movements of black bodies across time and space,<sup>101</sup> and illustrating how these women's bodies can thrive in dystopian environments as they 'challenge the white male dominant power structure in place'.<sup>102</sup> Ideas of survival, revolt and freedom are at the heart of how these utopian communities are constructed. Science fiction written by women of colour, such as Butler, Jemisin and Gomez, offers crucial alternative perspectives on constructions of community and power-sharing due to the multiple intersectional sites of potential conflict and discrimination. Reading feminist science fiction then, offers alternative possibilities for community.

'The Conquest of Gola', a short story originally published in a magazine, *Wonder Stories*, demonstrates a commitment to community. A matriarch tells an audience of Golans (and the reader) about an unsuccessful invasion by the Detaxal and their (ultimate) violent defeat. The Golans are a technologically advanced society dominated by women, with few men all of whom are servants. The Detaxal are a patriarchal society from another planet, seemingly Earth. In 'The Conquest of Gola', Stone draws a contrast between the individualistic world of the Detaxal, and the collective enterprise of Gola. The Matriarch uses collective pronouns ('our', 'we' and 'ourselves') to recount their collective overwhelming of the Detaxal invasion – where the Detaxal intended to offer/impose patriarchal capitalist progress – and contrasts this collective exploit with the Detaxal's selection of a 'chosen few' to invade to Gola.<sup>103</sup>

Stone's story-telling also offers a reflection on the construction of "we". As the Matriarch tells the story, there is an ambiguity around the identity of the audience. This ambiguity

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<sup>98</sup> ER Helford, 'The Future of Political Community: Race, Ethnicity, and Class Privilege in Novels by Piercy, Gomez, and Misha' (2001) 12(2) *Utopian Studies* 124, 132.

<sup>99</sup> SM Morris, 'Black Girls Are from the Future: Afrofuturist Feminism in Octavia E. Butler's *Fledgling*' (2012) 40(3) *Women's Studies Quarterly* 146, 156.

<sup>100</sup> For a discussion on Afrofuturist Feminism see, *ibid* 152–155.

<sup>101</sup> See D Ferreira da Silva, 'Toward a Black Feminist Poethics: The Quest(ion) of Blackness Toward the End of the World' (2014) 44(2) *The Black Scholar* 81, 93. See also GJ Hampton, 'Vampires and Utopia: Reading Racial and Gender Politics in the Fiction of Octavia Butler' (2008) 51(1) *CLA Journal* 74, 77.

<sup>102</sup> Hampton (n 101) 77.

<sup>103</sup> LF Stone, 'The Conquest of Gola' (*Wonder Stories* 1931, reprinted in J Larbalestier (ed), *Daughters of Earth: Feminist Science Fiction in the Twentieth Century* (Wesleyan University Press, Middletown Connecticut, 2006) 36, 37. See also, In SS Tepper's *The Gate to Women's Country*, Beneda, a friend of Stavia's, comforts Stavia saying: "We grieve, Stavia. We grieve" (SS Tepper, *The Gate to Women's Country* (Bantam, New York, 1989) 6).

draws the reader into becoming part of the Golan; as the Matriarch speaks directly to the reader, the reader becomes part of “we”.<sup>104</sup> This creates a reflexivity of the self who becomes constructed as part of a “we”.<sup>105</sup> The sense of belonging is constructed not through common characteristics or territory, but rather as both part of a narrative and as an audience that experiences events through the narrator.

Johns outlines how communities are created through a range of ties, such as ‘love, intimacy and spiritual connection’,<sup>106</sup> and Russ documents the similarities amongst feminist utopian narratives, in which communities are constructed through kinship and familial ties.<sup>107</sup> These kinship ties subvert the nuclear family and thus ‘subvert the sex-gender system by disembodying sexuality from reproduction’.<sup>108</sup> For example, in *The Female Man*, Russ raises a world-wide ‘kinship web’,<sup>109</sup> in Piercy’s *Woman on the Edge of Time*, everyone is a relative of everyone else, and in Gearhart’s *The Wanderground*, the hill women have multiple mothers and all are sisters. Butler’s *Xenogenesis* series depicts an extended family of humans, Oonkali, animals, plants and the spaceship.<sup>110</sup> The ancestral lineage of Perkins Gilman’s *Herland* creates a community where all are descended from a single woman, establishing governance without hierarchy. Rather than a historic fetishization of inheritance or ancestry this makes all the women in *Herland* sisters. Their community is based on shared motherhood and collective governance – including decisions on reproduction and what to do about the male antagonists – through the exercise of constituent power.

In science fiction written by white women, these narratives often start from an assumption of kinship rather than seeking commonality or defining a difference. Respect for one another comes from the ties of intimacy. Love and governance are said to sit in a troubled relationship,<sup>111</sup> given the use of such emotions by autocratic regimes. But, the communities in the narratives are neither presented as being constructed from the top-down (i.e. propaganda from constituted power holders) nor do they espouse patriotism (see discussion below), but rather they focus on the relations between constituent power holders.<sup>112</sup> It is not love of the state but rather intimacy and respect between constituents. As the narratives construct constituent and constituted power holders in a symbiotic relationship, using dialogic decision-making, this love and intimacy discussed is also that which constituted

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<sup>104</sup> see B Attebery, ‘The Conquest of Gernsback: Leslie F Stone and the Subversion of Science Fiction Tropes’ in J Larbalestier (ed), *Daughters of Earth: Feminist Science Fiction in the Twentieth Century* (Wesleyan University Press, Middletown Connecticut, 2006) 50, 52.

<sup>105</sup> see *ibid* 51.

<sup>106</sup> Johns (n 26) 184.

<sup>107</sup> J Russ, *To Write Like a Woman: Essays in Feminism and Science Fiction* (Indiana University Press, Bloomington Indiana, 1995) 136.

<sup>108</sup> R Silberglied, ‘Women, Utopia, and Narrative: Toward a Postmodern Feminist Citizenship’ (1997) 12(4) *Hypatia* 156, 161.

<sup>109</sup> J Russ, *The Female Man* (Orion Publishing Group, London, 2010) 31 and 80.

<sup>110</sup> For a discussion see, Miller (n 12) 343.

<sup>111</sup> See CS Lewis, *The Four Loves* (Harper Collins, London, 2010) 111.

<sup>112</sup> Indeed, Perkins Gilman draws a distinction between this ‘love’ and patriotism; they ‘loved one another with a practically universal affection, rising to exquisite and un- broken friendships and broadening a devotion to their country and people for which our word patriotism is no definition at all’ (*Herland* (n 39) 125–126).



power must possess for constituents. Love in this sense requires constituted power to recognise the dignity and worth of all constituents.<sup>113</sup>

Commentators are wary of these constructions of community because community can be 'inimical to individual freedom'.<sup>114</sup> Reading Butler shows the problems of assuming the type of 'kinship' discussed. Butler's construction of the Ooankalis as a community with collective decision-making has been criticised for neglecting 'the autonomy of the individual'; the Ooankalis act 'in a condescending, paternalistic way that, at times, crosses over into oppression'.<sup>115</sup> But in Butler's *Xenogenesis* series, the collectivism of the Ooankalis is contrasted with the competitive and individualistic nature of the humans.<sup>116</sup> Through Lilith, Butler explains how the individual and the community might be reconciled:

Humans fear difference.... Oankali crave difference. Humans persecute their different ones, yet they need them to give themselves definition and status. Oankali seek difference and collect it. They need it to keep themselves from stagnation and overspecialization.... You'll probably find both tendencies surfacing in your own behavior.... When you feel a conflict, try to go the Oankali way. Embrace difference.<sup>117</sup>

It would seem then that the 'ideal society' for Butler 'is one in which the relationship between the individual and the larger society is reciprocal and mutually enriching',<sup>118</sup> but that the need to continue to 'embrace difference' is suggestive that the ideal is not an end-point, but a process of continually embracing difference.

Reading these narratives offers a starting point for re-thinking the *demos* or current liberal strategies of constructing community within international law and global constitutionalist literature, which are usually predicated on territory or on the use of 'all-affected' or 'all-subjected' people.<sup>119</sup> Inter-relationships in the feminist narratives challenge those common *demos* myths around territory and homogeneity in global constitutionalism. These narratives offer a commitment to understanding one another and an inter-relational and inter-generational experience, that ideas of 'global citizenry'<sup>120</sup> predicated on mere presence on Earth, do not. This commitment to respect moves discussion away from commonality or shared characteristics, which can be predefined, and focuses on inter-relationships and connections amongst constituent power holders; as each evolves so too does the

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<sup>113</sup> B Douglas, 'What's Love got to do with it' (*Centre for Catholic Social Thought and Practice*, March 2017), available at <<http://ccstp.org.uk/articles/2017/3/21/whats-love-got-to-do-with-it>>

<sup>114</sup> Zaki (n 35) 243.

<sup>115</sup> Miller (n 12) 346.

<sup>116</sup> Ibid.

<sup>117</sup> OE Butler, *Adulthood Rites* (Popular Library, New York, 1988) 90 cited in ibid 346–347.

<sup>118</sup> Miller (n 12) 347.

<sup>119</sup> For example, A Peters, 'Dual Democracy' in J Klabbers, A Peters and G Ulfstein (eds), *The Constitutionalization of International Law* (Oxford University Press, Oxford, 2009) 303; JHH Weiler, 'The Geology of International Law – Governance, Democracy and Legitimacy' (2004) 64 *Zaöerv* 547. See in contrast, J Klabbers, 'Setting the Scene' in J Klabbers, A Peters and G Ulfstein (eds), *The Constitutionalization of International Law* (Oxford University Press, Oxford, 2009) 23.

<sup>120</sup> See for example, A Peters, 'Membership in the Global Constitutional Community' in J Klabbers, A Peters and G Ulfstein (eds), *The Constitutionalization of International Law* (Oxford University Press, Oxford, 2009) 153. For a discussion on all-affected and all-subjected, see N Fraser, 'Transnational public sphere: Transnationalizing the public sphere: On the legitimacy and efficacy of public opinion in a post-Westphalian world' (2007) 24 *Theory, culture & society* 7, 21.

community. When constructing ideas of communities, global constitutionalism must heed the feminists' call for an alternative way of collective life.

In addition to highlighting alternative ways of constructing communities, the narratives offer depictions of the impositions placed on those communities. In 'The Conquest of Gola' the Golans act collectively to stave off the 'other.' The women use telepathy to communicate with each other and to attempt to understand the Dextral who have landed on their planet.<sup>121</sup> The Dextral, on the other hand fail to listen to the women, who reject their offer of trade. The Golan are not interested in trade and when they are not listened to and as the Dextral attempt to impose trade upon them, they blow them up. The women, through collective action, fend off the Dextral.<sup>122</sup> There is a lesson to be learnt here: in the 16th Century, the Amerindians had international law imposed on them when, Francisco de Vitoria accorded them protection under international law, after they came under attack by the Spanish, but this led to 'legal' colonisation<sup>123</sup>; few listened to what they wanted.<sup>124</sup> We can perceive Golan violence as an act of self-preservation by those who do not wish to be encompassed, as they recognise that trade may be the penumbra of domination. Similarly, the community in *The Gate to Women's Country* function within a broader world with other nations including warrior garrisons and theocratic patriarchal nations. As is common in feminist utopian narratives, these patriarchal societies eventually attempt to take them over or 'fix' their perceived matriarchal governance mistakes. Patriarchal assumptions of 'good' community, found in liberal thought, never mind more conservative variations, often attempt to silence feminist methods of community governance found in utopian tracts. In adopting traditional, liberal understandings of community, global constitutionalism imposes notions of a 'good' community, without consideration of alternative voices as to how this ought to be constructed, and thus replicates the acts of correcting feminist – and other – methods.

Historically – and, at times, in the present – both constitutionalism and international law dismantle ways of life through imperialism, colonialism, the imposition of constitutions and specific economic policies. Presence on the planet may make an individual part of the global space but as each of these examples demonstrate, more is required; non-nuclear kinship, collective listening and discussion processes, or indeed respect for a specific community, can form an alternative basis for understanding global community and its relationship with constituent and constituted power.

#### IV. A right of revolt: facilitating change

The feminist science-fiction utopias discussed here tell particular stories about the (f)utility of the past and the importance of facilitating change. Ideas of Hegelian dialectics or narratives of Whiggish progress are absent. Indeed, law and lawyers as sources of progress

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<sup>121</sup> Telepathy is often found in feminist utopias and can represent an intuitive understanding of each other. The women in *The Wanderground* can 'worry-read', see *The Wanderground* (n 63) 2. See also OE Butler, *The Mind of My Mind* (1977); OE Butler, *Dawn* (1987).

<sup>122</sup> A Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, Cambridge, 2005) 13.

<sup>123</sup> Ibid 13; see also, A Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842–1933* (Cambridge University Press, Cambridge, 2015).

<sup>124</sup> Anghie (n 122) 13.

are truants from governance in these texts, and in their stead is the overthrow of previous more recognisable patriarchal constitutional orders.<sup>125</sup> In the texts, there is a desire to negate the power of the past over the future (e.g. *Herland*, *The Broken Earth Trilogy*), or to seek to re-write the past (e.g. *The Power*), and to question the role of traditions. Not entrenching law and the impermanence of constitutional arrangements (especially *Herland* with laws that remain in place for less than 20 years as discussed below in contrast to the *Broken Earth Trilogy* where the laws are literally set in stone) are central features of these feminist utopias.

Our global feminist manifesto includes a right to revolt, which inculcates continual challenge to constituted power, but does not undercut constitutionalism to a point of nothingness.<sup>126</sup> The suffrage movements redefined the right to vote as a right to revolt, indeed they had to revolt so as to construct a political identity that was not present in the constitutional structure that had persisted up to that point.<sup>127</sup> For them, to vote was to challenge the nature of constituent power, to bring about a substantive change, to revolt. Ewa Plonowska Ziarek argues that reinterpreting the right to revolt is a process by which gender politics reclaims and redefines politics.<sup>128</sup> A vital suffragette legacy within the revolutionary tradition is this productive tension between the constituted, institutionalized nature of power and its inaugural, constituting force.<sup>129</sup> Feminist global constitutionalism must insist on this right to revolt as a basis of continued contestation.

The feminist utopian science-fiction narratives written by white women, discussed in this article, rarely start with revolt, but often situate it in their past. These revolts overthrow a patriarchal order. As we already discussed, in *Herland* this is problematic in that the original slave revolt is used as an opportunity for the women to assert their constituent power. On other occasions, the constituent moment comes about due to an apocalypse such as in *The Gate to Women's Country* and in *The Wanderground* it is nature which generates the revolt.<sup>130</sup> The side-lining of the revolt might be a result of the conservative traditions, such as - marriage, gender roles, inheritance, race and class-hierarchies - that often prevent or suppress revolt, are absent in these narratives.

In contrast, in *The Power* and the *Broken Earth Trilogy*, the revolt itself is a key strand of the narrative. In 'The Conquest of Gola' resistance to the imposition of patriarchy is narrated directly. This right to revolt against oppression or 'stay[ing] and fight[ing]' as Jemisin outlines, is an essential element of obtaining a utopian vision. Vigilance to ensure an end to all forms of domination, and revolting against the return or re-assertion of patriarchy, of racism, or other harms is necessary.<sup>131</sup>

The feminist utopian narratives depict how governance systems can build around this right to revolt. Within the utopian science fiction, there is a motif of dispelling traditions and of facilitating and embracing change. The right to revolt, to call for change, is ever-present in

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<sup>125</sup> In William Morris' *News from Nowhere* (1890), there are no laws.

<sup>126</sup> O'Donoghue and Houghton (n 36).

<sup>127</sup> E Plonowska Ziarek, 'Right to Vote or Right to Revolt? Arendt and the British Suffrage Militancy' (2008) 19(5) *differences* 1, 22.

<sup>128</sup> *Ibid* 22.

<sup>129</sup> *Ibid*.

<sup>130</sup> *The Wanderground* (n 63) 158.

<sup>131</sup> For example, in opening of *The Wanderground*, Jacqua is concerned about the return of a man from the City. See *The Wanderground* (n 63) 2.

these shifting societies. In *Herland*, the women deny the role of the past with respect to law and governance. They actively dispel the hold of potential “foremothers”:

‘Have you no respect for the past? For what was thought and believed by your foremothers?’

‘Why, no’ she said, ‘why should we? They have all gone’.<sup>132</sup>

Theirs is a society of process. Moadine, a female mentor in the story, explains to the narrator: ‘We have no laws over a hundred years old, and most of them are under twenty’.<sup>133</sup> This commits them to non-entrenchment; it creates a space for constant change and reflection.

As noted above, in constitutional scholarship, constituent power can be understood as either exhausted or as dormant.<sup>134</sup> In *The Power*, the women feel the hum of electricity within them and this offers a palpable metaphor of non-exhaustible constituent power, which has the potential to demand change and flip the existing physical pre-eminence of the genders. The constant of Alderman’s power is various, demands relations between constituent and constituted power holders, and represents the potentiality of change. Any global feminist constitutionalism, to ensure the substantive nature of constituent and constituted power, would require an account which takes cognisance of the non-exhaustive, relational nature of constituent power that always contains the latent power of revolt. Instead of John Locke’s dormant constituent power in abeyance until revolt is a necessity, the discussion should facilitate other resistances and exchanges.<sup>135</sup>

As a genre, feminist science-fiction utopias are commonly works of ‘process-orientated feminist utopianism’.<sup>136</sup> Johns identifies five features of ‘process-orientated’ utopias: education and intellectual development; the malleability of human nature; ‘a gradualist approach to change, a cumulative approach to history and a shared approach to power’; the dynamism of the non-human world; and, pragmatism.<sup>137</sup> Such characteristics can be instrumental to a feminist approach to global constitutionalism. Examples such as the lack of binaries and the malleability of human nature were discussed in the context of *The Left Hand of Darkness*, and the cumulative approach to history and shared power were explored through *The Wanderland*.

Education, as a feature of ‘process-orientated’ utopia, underscores processes that facilitate change. In *Herland* there is a commitment to learning about the men’s country, their world and their experiences, whilst also ensuring that the men learn about *Herland* through books, tours, and conversations. Perkins Gilman subverts the visitor trope, which has traditionally been an ‘unmediated account [sic] of the merits of utopia’, and replaces it with the visitors’ responses contrasted with the inhabitants’ perceptions.<sup>138</sup> The women of *Herland* long to

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<sup>132</sup> *Herland* (n 39) 147; NK Jemisin ‘The One who Stands and Fights’ in *How Long ‘Til Black History Future Month* (Orbit, 2018).

<sup>133</sup> *Herland* (n 39) 83.

<sup>134</sup> See the discussion in (n 53).

<sup>135</sup> Locke (n 53) ch II, sec 222.

<sup>136</sup> Johns (n 26) 174.

<sup>137</sup> *Ibid* 178.

<sup>138</sup> See also the way in which *Herland* ‘encourages what most utopian fictions seek to suppress: an active critical participation on the part of the reader’. Ferns (n 78) 178–179.

learn more about the world, and moreover to understand difference. The women ask the visitors to

tell them about the big world outside, to draw sketches, maps, to make a globe, even, out of a spherical fruit, and show the size and relation of the countries, and to tell of the numbers of their people.<sup>139</sup>

This two-way education between visitors and inhabitants ensures 'genuine dialogue at places in the text', which contrasts with more 'unidirectional and monologic transmission of information' in traditional utopian narratives.<sup>140</sup> The longing to understand their new visitors is evocative of a new approach to governance, as it implies embracing otherness rather than rejecting it out of hand. The desire of the women of *Herland* to learn and understand the men before acting is a template for engagement as it is through learning and knowledge that relations are fostered and potential collaborative change occurs.

The ideal of being able to come together through a mutual process of learning is not necessarily a reality for marginalised groups. This is because racism and a process of 'othering' is pervasive in society. Hoda M Zaki argues that in her science fiction, Butler demonstrates the pervasiveness of 'othering' as she 'imagines humans seizing upon physical differences once again to assert an illusory superiority'.<sup>141</sup> The humans in the *Xenogenesis* series, 'seize upon biological differences between the two species to reassert, yet again, notions of inferiority and discrimination'.<sup>142</sup> For Butler, Zaki argues, there is a human need to alienate people who are different.<sup>143</sup> Jim Miller points to Lilith's call to indoctrination in *Adulthood Rites* as a way to overcome xenophobia.<sup>144</sup> The imposition that indoctrination connotes is suggestive of the sheer pervasiveness of racism and the challenge people of colour and minorities face overcoming it. Idealistic processes of learning from one another cannot just be assumed, as they are in *Herland*, but must be demanded.

The idea of unlearning biases is explored in *The Left Hand of Darkness*. The novel charts a process of unlearning where the male human visitor must unlearn his stereotypical preconceptions of gender and governance in an ambisexual society. His distrust of an ally is entirely based on that character's perceived feminine traits where the human is expecting a form of political acumen, which is entirely male. The search for the familiar bars other, unexpected voices from the discourse. In *The Left Hand of Darkness*, the society requires that you discuss everything on the basis of equality, which means they never 'mansplain'; however the human visitor misinterprets this as equivocation, wanting instead for constituent and constituted power holders to be combative in their deliberations.<sup>145</sup> The combative relationship is ingrained in liberal constitutionalism, where the separation of powers means that it identifies a form of aggressive and dominant authority which must be divided to hold in check any egotistical and avaricious overstretching by one set of

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<sup>139</sup> *Herland* (n 39) 61.

<sup>140</sup> Ferns (n 78) 183.

<sup>141</sup> HM Zaki, 'Review: Fantasies of Difference' (1988) 5(4) *The Women's Review of Books* 13, 14.

<sup>142</sup> Zaki (n 35) 241.

<sup>143</sup> *Ibid* 241.

<sup>144</sup> Miller (n 12) 342.

<sup>145</sup> This is known as *shifgrethor* in the novel.

constituted power holders over another, or indeed over constituents.<sup>146</sup> Yet, as shown above, this can be questioned.

Education, then, is a form of, or underpins, revolt and change. In 'The Conquest of Gola', initially the women do not see anything of worth that they could learn from the men and when they converse with them using the technology of Golan, this is confirmed. While the initial military successes of Detaxal's invasion could appear to be a form of knowledge imparted to the Golan, this is merely education in violence and competition which is ultimately defeated by the women's own knowledge and cooperation. *The Broken Earth Trilogy* also requires an unlearning. The core character must unlearn what she has been taught is inevitable about herself and her society. The entire society must unlearn their constructed history and governance that has led to enslavement, classed society, murder, distrust and the revolt of nature itself. Learning to live together and to co-operate takes time and is far from easy. Education and access to knowledge is itself part of the revolt. Global constitutionalism needs to depart from processes of "education" in the history of international law (i.e. civilisation missions) and facilitate deliberative, two-way listening and learning from each other.

International and constitutional law has experience in adopting a "scientific" attitude towards other cultures, where there was little interest in listening but rather in studying others as objects to be educated in the correct use of law. One such example is Vittoria's engagement with the Amerindians discussed above, where granting them protection under international law, led to 'legal' colonisation.<sup>147</sup> Such impositions are racist and can also be seen in the creation of state boundaries and nations under the Trusteeship and Mandate system,<sup>148</sup> or the processes of peace-making under Security Council 1325,<sup>149</sup> which demonstrates a failure to listen to those purported to be included. There is a desire to pass on knowledge but little wish to receive. The system that enables the imposition of constitutions largely written in Whitehall or New York or the allowing of states that had 'reached' a Western conception of civilisation into the international legal system would need to be dismantled rather than calcified through a process of constitutionalism.<sup>150</sup>

Reading these feminist narratives alongside the idea of 'a right to revolt', uncovers new perspectives on governance and constitutional change. The traditional constituent moment is critiqued in these narratives and in its stead are ideas of ongoing processes to facilitate change. Substantive engagement as constituent and constituted power holders requires learning, listening, engagement and knowledge, and any global feminist constitutionalism

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<sup>146</sup> O'Donoghue and Houghton (n 36).

<sup>147</sup> Anghie (n 122) 13; see also, Becker Lorca (n 123).

<sup>148</sup> U Natarajan, 'Creating and Recreating Iraq: Legacies of the Mandate System in Contemporary Understandings of Third World Sovereignty' (2011) 34 *Leiden Journal of International Law* 799.

<sup>149</sup> F Ní Aolain, 'Southern Voices in Transitional Justice: A Critical Reflection on Human Rights and Transition' in U Baxi, C McCrudden and A Paliwala (eds), *Law's Ethical, Global and Theoretical Contexts* (Cambridge University Press, Cambridge, 2018) 73.

<sup>150</sup> I Amadiume, *Afrikan Matriarchal Foundations: The Igbo Case* (University of Michigan, Ann Arbor Michigan 1987); Sophie Bryant, *Liberty, Order [and] Law Under Native Irish Rule: A Study in the Book of the Ancient Laws of Ireland* (Harding, London 1923); see also, C Turner and R Houghton, 'Constitution making and post-conflict reconstruction' in M Saul and JA Sweeney (eds), *International Law and Post-Conflict Reconstruction Policy* (Routledge, Abingdon Oxfordshire, 2015) 119.

must account for that in its processes. Where such engagement is absent, a feminist constitutionalism must be able to revolt.

## V. Homes: Public/Private Divide

'They had no exact analogue for our word "home", any more than they had for our Roman-based "family"'

(Charlotte Perkins Gilman, *Herland* (1915, Vintage, New York City, 2015) 125)

Underlying the alternative approaches to constituent power, constituent moments and community in feminist science fiction is a dismantling of the public/private divide. The *personal* violence experienced by the women becomes *political* – or part of their constitutional arrangements – as it is remembered. The ideas of community in the texts, building on respect and dialogue, are a manifestation of striking a balance between the individual/personal and the community/political. Fitting argues that there has been a shift within science-fiction writing, generated as a response to the feminist movements of the 1960s, which moves away from designing a society's laws and institutions, to exploring the 'lived reality of the characters'.<sup>151</sup> As a manifestation of 'the personal is political', these texts often focus on the everyday, exposing older dichotomies between the public and the private as well as labour divisions between the home and the workplace.<sup>152</sup> Indeed, an additional way in which the public/private divide is unpacked in the narratives is through the use of motherhood and home.

One prominent feature of the feminist science fiction texts is the dominance of motherhood. In *The Left Hand of Darkness* every individual can be both a mother and a father and often – defying the stereotypes held by the human visitor – will be both. Indeed, the human laughs when hearing that the King is pregnant but realises his reaction is based on the whole notion of a king – who *he* has constructed as male – being pregnant, whereas the Gethenians laugh because they think the King is too old.<sup>153</sup> Child-rearing is carried out as part of a strong family group in one nation and collectively in another, though no major character is shown undertaking childcare. When all can be mothers and fathers, any construction of one as functioning in the public and one in the private realm is unnecessary. The state has provision for the monthly *kemmer* where mating occurs – though not necessarily pregnancy – and again as everyone is subject to this monthly biological requirement, this is not private but part of society.

In *Herland* state governance becomes synonymous with motherhood. Perkins Gilman constructs motherhood as a collective enterprise.<sup>154</sup> Children are raised collectively, and the

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<sup>151</sup> Fitting (n 5) 148.

<sup>152</sup> Ibid.

<sup>153</sup> *The Left Hand of Darkness* 80, Le Guin uses the male pronoun throughout which has been a source of criticism.

<sup>154</sup> There is a personal anxiety around motherhood because she was criticised for sending her children to be raised by others, however in the text the characters seem perfectly at ease with collective child rearing. L West, 'Introduction' to *Herland* (Vintage, New York City, 2015) x.

enterprise of Herland is to raise the children: '[t]he children in this country are the one center and focus of all our thoughts. Every step of our advance is always considered in its effects on them – on the race. You see, we are Mothers'.<sup>155</sup> Motherhood is something desired, but partially this is because motherhood is not disruptive of the women's other roles in society as farmers or artisans or engineers and it is completely supported. The process by which they become mothers, which is asexual, means that pregnancy is always wanted. There is no divide between the public and the private; all are mothers, and all equally contribute to society. Problematically, the women are horrified by abortion, which is tied to Perkins Gilman's views of eugenics. The freedom of bodily autonomy that these women have is therefore somewhat threatened by Perkins Gilman's wider views of society. Which highlights that these narratives are offered as a starting point for discussions and not as blueprints.

The *Broken Earth Trilogy* further complicates the idealisation of motherhood. Jemisin writes about the central protagonist's initial rejection by her own mother, forced motherhood as public service, her effort to hide herself in the cloak of private everyday motherhood, and her attempts to teach about and hide her children's nature, a nature that could and does lead to death or enslavement. Here motherhood is part of the dystopian narrative where bearing a child into slavery is something that a protagonist initially accepts but eventually it forces her to make a devastating decision.<sup>156</sup> The mother – daughter relationship forms a significant element of the strive toward creating a future utopia, and the complications in the relationship signify the complexity of the world that must be taken apart and the variety of paths open to doing so.

In *Herland*, diplomatic practices, such as their response to the men, are interconnected with hospitality and activities traditionally viewed as within the home (such as cooking, cleaning, reading). In *Herland* the men are taken to a room with a bathroom and given a communal meal. As Phillips notes, 'The women return patient understanding, meting no punishments [initially]'.<sup>157</sup> Governance does not occur in a place apart; it happens everywhere. That one of the male characters argues that there is no home in Herland exposes the extent to which that divide between the home and the public sphere has been dismantled. This is confirmed when the other male character replies that there is nothing else but home:

"Home!" he sneered. "There isn't a home in the whole pitiful place."

"There isn't anything else, and you know it."<sup>158</sup>

The Roman ideal of a public active male figure also dominant in the private home, which the male visitors harken back to is replaced with an absence of specific sites of governance. Governance can and does happen everywhere in *Herland*. These utopian tracts explore how dismantling the public/private divide might manifest itself.

A common critique of feminist science fiction, and of the separatist societies created in some of the texts, is the essentialism of femininity that comes with a focus on motherhood. For example, there is potentially a 'fetishization of the virtues of Motherhood, its emphasis on

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<sup>155</sup> *Herland* (n 39) 88

<sup>156</sup> The impact of slavery on motherhood and the devastating decisions this forces on mothers is also reflected in Toni Morrison's *Beloved* which can be situated within the genre of horror, a sibling of science fiction. T Morrison, *Beloved* (Knopf, New York, 1987).

<sup>157</sup> Anne Phillips, *Feminism and Politics* (Oxford University Press, Oxford, 2009) 148.

<sup>158</sup> *Herland* (n 39) 131



the sacred duties of childcare, and its repeated stress on the purity and virtue of the utopian women'.<sup>159</sup> Susan Gubar argues that 'Gilman's strategy of [role] reversal threatens to invalidate her feminism by defining it in precisely the terms set up by the misogynists it would repudiate'.<sup>160</sup> Angelika Bammer argues that in these separatist narratives there is an 'unsettling convergence between a vision of what women, under utopian conditions, *could* be, and the normative definition of what a woman, according to the prevailing ideology *should* be'.<sup>161</sup> Butler is also criticised for her focus on motherhood,<sup>162</sup> but here we should reflect on the role of family in Butler's work; the non-nuclear families constructed by Butler challenge the *status quo*, and her black female protagonists 'create communities as a way to rescue and redefine humanity'.<sup>163</sup> Essentialism in a utopia can cause harm, but it is still relevant for the instructive work that community, home and motherhood are doing within the utopian narrative. These utopian texts offer possibilities, not blueprints; they serve to critique the present as much as they dream about the future.

International legal institutions have entirely failed to include women.<sup>164</sup> Most recently, we learnt that only 7 per cent of the International Law Commission's membership has been female. The public/private divide and the continued relegation of women in the later means that expertise, knowledge and experience are absent from public decision-making and will be absent from constitutional formation and evolution. Feminist international law scholars have already told us about needing to *question* the public/private divide.<sup>165</sup> The absence of women from the public sphere within international law necessitates a rethinking of the public/private divide before a feminist constitutionalist process can begin. Dismantling the public/private can, however, lead to essentialism, where ideas of the ideal woman as mother permeate. That these texts are haunted by essentialism in their attempts to highlight patriarchal oppression serve as a reminder that challenging the public/private divide in global constitutionalism must be mindful of harmful idealism.

## VI. "Ourworld": critiques

Whilst feminist utopias are useful for global constitutionalist scholarship, there are limitations. Utopian literature is critiqued by feminist scholars for offering unrealistic blueprints through 'end-state' narratives.<sup>166</sup> Moreover, feminist utopias written by white women have clear problematic relationships with questions of race and intersectionality. The critique of the end-state narrative highlights the need for constant re-evaluation, and the

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<sup>159</sup> Ferns (n 78) 186.

<sup>160</sup> S Gubar, 'She and *Herland*: Feminism as Fantasy' in GE Slusser, ES Rabkin and R Scholes (eds), *Coordinates: Placing Science Fiction and Fantasy* (Southern Illinois University Press, Carbondale, Illinois, 1983) 147 cited in Ferns (n 78) 186.

<sup>161</sup> A Bammer, *Partial Visions* (Routledge Abingdon Oxfordshire, 2012) 30.

<sup>162</sup> Allison (n 35) 478.

<sup>163</sup> Hairston (n 12) 293.

<sup>164</sup> P Pillai, 'Women in International Law: A Vanishing Act?' (2018) *OpinioJuris.org*, available at <<http://opiniojuris.org/2018/12/03/women-in-international-law-a-vanishing-act/>>

<sup>165</sup> See Charlesworth and Chinkin (n 13) 57–58; Charlesworth, Chinkin and Wright (n 15); D Otto, 'Feminist Approaches to International Law' in A Orford, F Hoffmann and M Clark (eds), *The Oxford Handbook of the Theory of International Law* (Oxford University Press, Oxford, 2016) 488.

<sup>166</sup> Johns (n 26) 174.

exclusion of and discrimination of women of colour in the narratives here, echoes the exclusions in global constitutionalist debates. Reading feminist utopian narratives can offer an embarkation point for feminist global constitutionalism but only if it inculcates these critiques and evolves beyond the limitations of both.

In contrast to the process-orientated feminist narratives that abound within feminist science fiction, *The Gate to Women's Country* and *The Wanderground* offer static, end-state models.<sup>167</sup> These end-state narratives have been criticised for offering an idealistic unattainable blueprint. This is particularly problematic from a feminist perspective, as Lucy Sargisson argues, the relationship between equality and difference should not be presented as closed.<sup>168</sup> Striving towards equality, whilst also accommodating difference is complex, it requires constant reassessment. The *Broken Earth Trilogy* and the work of Butler aptly sets out the necessity and potential processes for accommodating that difference before creating a utopian world. Likewise, striking the balance between the individual and a community is an ongoing process. With their fixed conclusions, end-state or blueprint narratives fail to fully embrace the need for discursive re-assessment. As the discussion on constituent power highlighted, there must always be scope for reflective practice and change.

As a utopian project, global constitutionalist debate should be awake to the problem of the fixed conclusions of the end-state narrative, as it hampers the need to constantly assess the relationships between groups of people. While the early calls for the recognition of an existing constitutional order has faded, such end-state narratives remain a constant in the global constitutionalist debate.<sup>169</sup> Aspects of global constitutionalism call for the scaling up of domestic constitutional practices or principles,<sup>170</sup> such as the rule of law and the separation of powers,<sup>171</sup> and yet feminist political scientists and theorists expose the gendered structures of these domestic constitutional principles and democratic processes.<sup>172</sup> Striving for the translation of domestic models as a conclusion merely replicates old hierarchies. Rather, global constitutionalism requires reflexivity if it wishes to build genuine capacity for changes to power structures.

Global constitutionalism, like elements of feminist scholarship and feminist science fiction, has insufficiently engaged with questions of race. Western-centric global constitutionalist debates need to consider their construction of the Global South.<sup>173</sup> TWAIL exposes international law's colonial foundations and by extension aspects of global constitutionalism that transpose those same foundations.<sup>174</sup> Vidya Kumar criticises those debates in which countries of the Global South are 'mentioned as an aside' and the power differentials

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<sup>167</sup> Ibid.

<sup>168</sup> L Sargisson, *Contemporary Feminist Utopianism* (Routledge Abingdon Oxfordshire, 1996) 73.

<sup>169</sup> B Fassbender, 'The United Nations Charter as Constitution of the International Community' (1998) 36 *Columbia Journal of Transnational Law* 529. For a variety of perspectives see AF Lang Jr., and A Wiener (eds), *Handbook on Global Constitutionalism* (Edward Elgar, Cheltenham, 2017).

<sup>170</sup> For a discussion on the problems with scaling up domestic approaches, see N Walker, 'Taking Constitutionalism Beyond the State' (2008) *Political Studies* 519.

<sup>171</sup> MacKinnon (n 15) 163; O'Donoghue and Houghton (n 36).

<sup>172</sup> e.g. K B Jones, *Compassionate Authority; Democracy and the Representation of Women* (Routledge, Abingdon Oxfordshire, 1992); IM Young, *Justice and the Politics of Difference* (Princeton University Press, Princeton, 2011).

<sup>173</sup> V Kumar, 'Towards a Constitutionalism of the Wretched' (Völkerrechtsblog, 27 July 2017); Oklopcic (n 70).

<sup>174</sup> U Natarajan, A Bhatia, J Reynolds, S Xavier (eds), *Third World Approaches to International Law* (Routledge, Abingdon Oxfordshire, 2017); A Anghie, 'Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law (1999) 40(1) *Harvard International Law Journal* 3, 6; Oklopcic (n 70).

between the Global North and South are taken as pre-determined, rather than as something being re-produced within global constitutionalism.<sup>175</sup> Using Boaventura de Souza Santos' 'sociology of absences',<sup>176</sup> Kumar argues that 'global constitutional theory by global constitutionalists involves the *active non-production of the Global South – as an object or as a subject – of the global legal order*'.<sup>177</sup> The Global South and its people are, Kumar and de Souza Santos argue, purposively constructed out of global constitutionalist narratives. Developing a Critical Race Theory approach to international law, Ruth Gordon argues that terms such as north/south used in TWAIL are 'preferred terms of reference', but that these can overlook explicit questions of race.<sup>178</sup> She focuses on the racist imperialist impulses that underpin international law projects, and she stresses that 'certain voices, usually colored voices, are silenced or ridiculed in the international system'.<sup>179</sup> Utilising western-centric feminist science fiction alone, as this article can rightly be criticised for doing, risks replicating the structures of international law, by failing to revolt against oppression and failing to engage with the experiences of *all* women.

Melzer notes the constructed invisibility of black writers and characters in science fiction.<sup>180</sup> Taking heed from Melzer, this article seeks to expose the silence around women of colour's voices in global constitutionalist literature; experiences from black women, women in the Global South and/or subaltern women are seldom heard. This article calls for global constitutionalist debates to ensure genuine space for the experiences of *all* women and moreover, to listen to them.<sup>181</sup> As two white women, from the Global North, constructing ourselves as representatives is an additional layer of oppression for those women constructed out of international legal debates.<sup>182</sup> Using silence to highlight a group's exclusion is controversial, as it can be understood as further excluding groups of people.<sup>183</sup> Highlighting a silence can, however, flag where groups have been excluded from political processes and discourses and operate as 'an indication of their presence',<sup>184</sup> silence can also be a mobilizing force, where the silence must be broken.<sup>185</sup> This article uses silences that need to be broken as an example of feminist practice in action to highlight how global constitutionalists' utopias will reconstruct existing power structures if we fail to listen to marginalised voices:<sup>186</sup>

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<sup>175</sup> Kumar (n 173).

<sup>176</sup> B de Sousa Santos, 'Public Sphere and Epistemologies of the South' (2012) XXXVII (1) *Africa Development* 43, 52.

<sup>177</sup> Kumar (n 173).

<sup>178</sup> R Gordon, 'Critical Race Theory and International Law: Convergence and Divergence' (2000) 45(5) *Villanova Law Review* 827, 830.

<sup>179</sup> *Ibid* 840.

<sup>180</sup> Melzer (n 8) 44.

<sup>181</sup> J Maggio, "'Can the Subaltern Be Heard?'" Political Theory, Translation, Representation and Gayatri Chakravorty Spivak (2007) 32 *Alternatives* 419, 421.

<sup>182</sup> GC Spivak, 'Can the Subaltern Speak?' in C Nelson and L Grossberg (eds), *Marxism and the Interpretation of Culture* (University of Illinois Press, Illinois, 1988) 271.

<sup>183</sup> B Parry, 'Problems in Current Theories of Colonial Discourse' (1987) 9(1/2) *Oxford Literary Review* 27, 35 (Parry is responding to GC Spivak's 'Can the Subaltern Speak?' (n 182)).

<sup>184</sup> S Dingli, 'We Need to Talk about Silence: Re-examining Silence in International Relations theory' (2015) 21(4) *European Journal of International Relations* 721, 724.

<sup>185</sup> Lorde (n 17) 42.

<sup>186</sup> These paragraph signs are there to acknowledge voices that are not always listened to within global constitutionalist discourse and it is impossible for us to articulate what others would say in this space.



## VII. Conclusion

To me the important thing is not to offer any specific hope of betterment but, by offering an imagined but persuasive alternative reality, to dislodge my mind, and so the reader's mind, from the lazy, timorous habit of thinking that the way we live now is the only way people can live. It is that inertia that allows the institutions of injustice to continue unquestioned.

(Ursula Le Guin, 'War Without Ends' from *Essays on More's Utopia* (Verso, London 2016))

Reading feminist science-fiction utopias offers a useful starting point for reconfiguring global constitutionalist debates towards feminist ideals. Science fiction and utopian narratives create fora to explore new political spaces and potential orderings, which can benefit women. Though they lack influence within political theory and legal studies, these feminist utopias offer political imaginaries, which should be read alongside those utopian narratives written by men that are perceived as key political texts. Global constitutionalism is an idealistic venture, but it disregards the sexist and racist oppression of the past, is built on old hierarchies, and seeks to reconstruct traditional gendered structures from the domestic for the international. Feminist utopianism, in the words of Le Guin, brings an end to this inertia and offers alternative approaches to community and governance.

The narratives explored in this article highlight the complexities of constructing constitutional communities and of identifying constituent power holders. The variety of approaches used in the narratives to create a sense of community challenge the traditional role of 'territory' as a basis for *demos* in international law. A common theme in the narratives is the role of non-nuclear familial ties and kinship as the basis for community, which place people, their experiences, and their inter-relations with one another as an alternative starting point for global constitutionalism. The public/private divide, which is fundamental to the liberal understanding of constitutionalism, is absent from these feminist science-fiction utopias. The home and mothering are public, shared experiences and in some instances forms of governance. Tensions created by the essentialisation of home and motherhood, are a reminder that whilst global constitutionalism can no longer ignore the private-sphere and must seek to include women in the public-sphere, it must be alert to different approaches to the private-sphere.

The constituent moment, an act of founding a community and its constitutional arrangements, is explicitly acknowledged as violent by feminist writers; the violence can be lived and re-played and is visceral. Yet, in addition to these founding moments, the feminist communities are in a constant state of reflection and change. Thus, decision-making within the feminist communities is undertaken deliberatively with *all* as constituent power holders. Individuals join discussions to solve problems, rather than relying on a constitutional order

granted to them by forefathers. Global constitutionalist debates should question the traditional narratives of both community construction and founding moments and should not replicate the exclusion from constitutional processes that plague domestic systems.

The feminist narratives explored in this article highlight the continued dismissal of questions of race in the genre. Implicit and explicit racism pervade science fiction. Feminist science fiction authors such as Jemisin, Butler and Gomez expose how common tropes within white feminist science fiction, such as the matriarchal society, can cause further oppression for women of colour by either operating in a post-race world, creating apparent white women only spaces and negating their experiences. Women of colour, and questions of race, are frequently marginalised within global constitutionalist debates, where the transferral of liberal constitutional practices and principles to the international level is prioritised. Heeding the lessons from these feminist science-fiction utopias that revolt against and survive through oppression, global constitutionalism must revisit its foundations. In addition, global constitutionalism should ensure that all women, and not just a select privileged few, are listened to. Recalling the manifesto for a feminist global constitutionalism, all women from all ethnicities and classes should be welcomed as constitutional agenda setters; they should have the right to reject constitutional change and retain their right of revolt; they should be active participants of both constituent and constituted power and co-authors of constitutions; and they should have substantive involvement in the evolution of the constitution. Global Constitutionalism should be rejected as a discourse if it fails to reflect the world and all its inhabitants lived experiences. Constitutionalism and international law have both been long critiqued for their exclusions and oppressions, there is no excuse for continuing these exclusions and oppressions in apparently new discourses.

Utopian narratives found in feminist science fiction, provide an insight into feminists' critiques of current governance structures and political orders. They are offered here as a way in which international law, as a discipline, can retheorize its foundations. The possibilities and the questions raised in feminist science fiction offer a way through which global constitutionalism can be reflexive and sufficiently acknowledge the iniquities of the past and present.

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