

Narrative Contingency and International Humanitarian Law

Crimes against Humanity in Cixin Liu's Post-Humanist Universe

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I. Introduction

International humanitarian law (IHL) is the term which names, and also conceptualises, the current regime of the laws of war. The name belongs to a particular narrative about the history and purposes of this regime. In the orthodox narrative that was built as this regime emerged in the 1990s, modern IHL was born when Dunant witnessed, with horror, the inhumanity of the Battle of Solferino. Dunant and the International Committee of the Red Cross went on to develop a humanitarian system of law, aimed at protecting the *hors de combat* and limiting the brutality of war.¹ One of the archetypal offences of this contemporary regime is crimes against humanity—that is assaults on civilian populations, whether they occur in international conflict or not. This offence makes the protection of civilians and the value of humanity a more powerful concern than the traditional respect for sovereignty in international law.²

The emergence of this humanitarian law of warfare and its shifting interpretation of crimes against humanity, from the Nuremberg Trials until the current day, has been dependent on the narratives that could be told about the law. These legal narratives are often informed by extra-legal discourses, such as strategic, moral, philosophical, or fictional narratives.³ As the narrative possibilities change, so too does the ethical and aesthetic framework of IHL and, consequently, the interpretation and implementation of the provisions of law. This can lead to dramatic, yet often invisible, changes to the laws of armed conflict.

Critical international lawyers have, overtly or obliquely, acknowledged the importance of narrative as a source of meaning that shapes the interpretation and practice of international law. In their genealogies of the discourses of international law, these lawyers have argued that, although the prevailing narratives make universal claims, they are predominantly Western—arising from Western interests and facilitating Western hegemony.⁴ Human

¹ See Amanda Alexander, 'A Short History of International Humanitarian Law' (2015) 26 *European Journal of International Law* 109.

² Ruti Teitel, *Humanity's Law* (OUP 2011) 50–60.

³ Amanda Alexander, 'The "Good War": Preparations for a War against Civilians' (2019) 15 *Law, Culture and the Humanities* 227; Amanda Alexander, 'International Humanitarian Law, Postcolonialism and the 1977 Geneva Protocol I' (2016) 17 *Melbourne Journal of International Law* 15.

⁴ See, eg, Prabhakar Singh, 'International Law's Intimate Animosity' in Abdulqawi Yusuf (ed), *African Yearbook of International Law Volume 18* (Brill 2010) 223, 224; Chris af Jochnick and Roger Normand, 'The Legitimation of

rights and humanitarianism have not been exempted from this critique.⁵ They are described as a language which has been shaped by Western concerns and imposed on others,⁶ a language which legitimates some subjects of history and erases others,⁷ while justifying imperialist and neo-imperial projects.⁸ As a result, an important part of the critical approach to international law has involved challenging these dominant narratives with alternative accounts and interpretations of international law.⁹ Some critical lawyers have sought a form of emancipation in such work—but many are less hopeful.¹⁰ They have warned that attempts at counternarratives will always be undermined or co-opted by existing power arrangements.¹¹ Moreover, they have questioned whether it is even possible to shape new narratives within international law without adopting Western structures and liberal values.¹²

The difficulty of developing new forms of narratives is not just a problem for international law. It affects even the possibilities of the histories that underpin law and legal theory. In Hayden White's narrative theory of history, the possibilities of historical narratives are limited; only certain humanist approaches will count as 'History'.¹³ Thus, IHL may be contingent on narrative possibilities, but it is hard to see these narratives, hard to change them, and even harder to imagine a different range of aesthetic and ethical possibilities.

Cixin Liu's science fiction epic, *Remembrance of Earth's Past*,¹⁴ however, gives us an unusual opportunity to explore a vision of what such an alternative international law might look like if it were not based on Western narratives or humanist thinking. Science fiction provides an opportunity to create new worlds and, in Liu's case, to present new aesthetic forms.¹⁵ Yet, even these new worlds are still a reflection of existing concerns and

Violence: A Critical History of the Laws of War' (1994) 35 *Harvard International Law Journal* 49, 50; Mohsen al Attar, 'Reframing the "Universality" of International Law in a Globalizing World' (2013) 59 *McGill Law Journal* 95, 111; Balakrishnan Rajagopal, 'International Law and its Discontents: Rethinking the Global South' (2012) 106 *Proceedings of the Annual Meeting (American Society of International Law)* 176, 176.

⁵ Sébastien Jodoin and Katherine Lofts, 'What's Critical about Critical International Law? Reflections on the Emancipatory Potential of International Legal Scholarship' in Prabhakar Singh and Benoit Mayer (eds) *Critical International Law: Postrealism, Postcolonialism, and Transnationalism* (OUP 2014) 326, 330; Balakrishnan Rajagopal, 'Counter-Hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy' (2006) 27 *Third World Quarterly* 767, 768.

⁶ Makau Mutua, *Human Rights Standards: Hegemony, Law, and Politics* (State University of New York Press 2016) 167.

⁷ Joseph R Slaughter, *Human Rights, Inc: The World Novel, Narrative Form, and International Law* (Fordham University Press 2007) 5.

⁸ David Kennedy, 'Reassessing International Humanitarianism: The Dark Sides' in Anne Orford (ed), *International Law and its Others* (CUP 2006) 133; Mutua (n 6) 165; Frédéric Mégret, 'From "Savages" to "Unlawful Combatants": A Postcolonial Look at International Humanitarian Law's "Other"' in Anne Orford (ed), *International Law and Its 'Others'* (CUP 2006) 265; Slaughter (n 7) 5.

⁹ Jodoin and Lofts (n 5) 328.

¹⁰ Ben Golder 'Beyond Redemption? Problematising the Critique of Human Rights in Contemporary International Legal Thought' (2014) 2 *London Review of International Law* 77; al Attar (n 4) 123; Rajagopal (n 5) 780.

¹¹ Ruth Buchanan, 'Writing Resistance Into International Law' (2008) 10 *International Community Law Review* 445, 446.

¹² Jodoin and Lofts (n 5) 334; John D Haskell, 'TRAIL-ing TWAIL: Arguments and Blind Spots in Third World Approaches to International Law' (2014) 27 *Canadian Journal of Law & Jurisprudence* 383, 403; Vasuki Nesiiah, 'Resistance in the Age of Empire: Occupied Discourse Pending Investigation' (2006) 27 *Third World Quarterly* 903, 918.

¹³ Hayden White, *The Content of the Form: Narrative Discourse and Historical Representation* (Johns Hopkins University Press 1987) 13. This is discussed further below.

¹⁴ The trilogy consists of the books: *The Three-Body Problem* (Ken Liu tr, Head of Zeus 2015); *The Dark Forest* (Joel Martinsen tr, Head of Zeus 2015); and *Death's End* (Ken Liu tr, Head of Zeus 2016).

¹⁵ Darko Suvin, 'Narrative Logic, Ideological Domination, and the Range of Science Fiction: A Hypothesis with a Historical Test' (1982) 9 *Science Fiction Studies* 1, 4.

concepts;¹⁶ they can therefore be studied as a way of developing or playing with themes that are latent in reality.¹⁷ This can be seen in *Remembrance of Earth's Past*, which presents law, crimes against humanity, and humanity itself in a way that feels very foreign—not just culturally, but aesthetically and theoretically. Liu rejects the individualistic, Kantian narratives of conventional Western thought, drawing instead from the post-humanist, non-anthropocentric theories that are beginning to emerge in various forms of ethical and environmental inquiry. These approaches may not be mainstream theories—but they are not completely marginal either. Their proponents hope that they will usher in a paradigm shift in law and ethics.¹⁸ Such a shift may never come to pass, but in *Remembrance of Earth's Past* we can see what many feared impossible—a description of what a different law, dependent on alternative narratives, might look like.

II. Narratives and IHL

The importance of narratives for investing law with meaning has been demonstrated forcefully by scholars examining both domestic and international law. As Cover argued, no set of legal institutions or prescriptions exist apart from the narratives that give them meaning, the histories and teleologies that locate them.¹⁹ These narratives, Cover states, entail a moral point.²⁰ Law, considered in this way, can be seen as not just a set of propositions or provisions, but, variously, a rhetorical system, a 'way of imagining the real',²¹ of constituting possibilities, of 'apologising' for power,²² justifying privilege,²³ and projecting an imagined future upon reality.²⁴

The histories that are told about IHL give meaning to it as a system while shaping the interpretation of particular provisions. The orthodox history, which could be read in Hayden White's typology of historical narratives as a 'romance'²⁵ about the progress of IHL towards increasing protection for civilians and humanitarian values, means that the current legal regime is read as demanding a narrow interpretation of military necessity, a strict view of proportionality, and an overriding concern with the protection of civilian populations.²⁶ Orthodox international lawyers might not acknowledge the role of narrative, but they are practised in calling upon these histories and values of humanitarian law to interpret

¹⁶ *ibid* 1; Fredric Jameson, *Archaeologies of the Future: The Desire Called Utopia and Other Science Fictions* (Verso 2005) 345.

¹⁷ Mitchell Travis, 'Making Space: Law and Science Fiction' (2011) 23 *Law and Literature* 241, 252.

¹⁸ Lorraine Code, *Ecological Thinking: The Politics of Epistemic Location* (OUP 2006) 61; J Baird Callicott, 'How Ecological Collectives are Morally Considerable' in Stephen M Gardiner and Allen Thompson (eds), *The Oxford Handbook of Environmental Ethics* (OUP 2017) 113–14.

¹⁹ Robert M Cover, 'The Supreme Court, 1982 Term—Foreword: Nomos and Narrative' (1983) 97 *Harvard Law Review* 4, 4.

²⁰ *ibid* 6.

²¹ James Boyd White, *When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community* (University of Chicago Press 2012) 2–4; James Boyd White, 'Legal Knowledge' (2002) 115 *Harvard Law Review* 1396, 1398–99 quoting Geertz.

²² Cover (n 19) 7.

²³ *ibid* 7.

²⁴ Robert M Cover, 'Violence and the Word' (1985–1986) 95 *Yale Law Journal* 1601, 1604.

²⁵ Hayden White, *Metahistory: The Historical Imagination in Nineteenth-Century Europe* (Johns Hopkins University Press 1973) 8–9.

²⁶ Alexander (n 1) 112–13.

provisions. Indeed, this is a normal technique in the development of customary international law.²⁷

Critical international lawyers are well aware of the ability of such legal histories to shape and legitimise law.²⁸ Their accounts of international humanitarian law, however, present a law that has always been shaped by power, rather than humanitarianism.²⁹ It is a law that is, and has always been, contingent on the interests of Western states and on Western imaginaries of warfare.³⁰ Even the most fundamental crimes, such as crimes against humanity, have been shaped by these interests and stories.³¹

Although some critics have sought to unsettle these existing narratives by creating alternative histories of international law,³² many have remained dubious about any real escape from the prevailing politics and narratives of international law.³³ International law might, according to this approach, be contingent, but its histories, narratives, and enactments tend to be shaped and reshaped in predictable and inescapable forms. The possibility of change, whether conceptual or practical, is, therefore, limited. These critical narratives could be associated with another of White's historical plots—the satire: 'a drama of diremption, a drama dominated by the apprehension that man is ultimately a captive of the world rather than its master'.³⁴

However, there are some observers of the role of narrative in law who have suggested that there may be some scope for new narratives to change law—and new words to create new worlds.³⁵ Morgan and Slaughter have both pointed to the possibility of discourses from outside law leading to shifts in the interpretation of international law.³⁶ These writers suggest that novels and literary works may be especially important in creating new aesthetic and ethical frameworks for law.³⁷ Slaughter describes the relationship between novels and the law as:

[M]utually enabling fictions: each projects an image of the human personality that ratifies the other's idealistic visions of the proper relations between the individual and society and the normative career of free and full human personality development.³⁸

At one point Slaughter suggests that these possibilities are positive, the source of the emancipatory potential of international law.³⁹ Yet, even while he argues for the potential of

²⁷ See, eg, Janet Halley, 'Rape at Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Criminal Law' (2008–2009) 30 *Michigan Journal of International Law* 1, for an account of this sort of remaking of international law.

²⁸ See, eg, Walter Rech, 'International Law, Empire, and the Relative Indeterminacy of Narrative' in Martti Koskeniemi et al (eds), *International Law and Empire: Historical Explorations* (OUP 2017) 57.

²⁹ Chris af Jochnick and Roger Normand, 'The Legitimation of Violence: A Critical History of the Laws of War' (1994) 35 *Harvard International Law Journal* 49, 50.

³⁰ Mégret (n 8) 268.

³¹ Claire Nielsen, 'From Nuremberg to the Hague: The Civilizing Mission of International Criminal Law' (2008) 14 *Auckland University Law Review* 81, 93.

³² Jodoin and Lofts (n 5) 327.

³³ *ibid* 341, 342.

³⁴ White (n 25) 9.

³⁵ Boyd White, *When Words Lose Their Meaning* (n 21) 4.

³⁶ Ed Morgan, *The Aesthetics of International Law* (University of Toronto Press 2007); Slaughter (n 7).

³⁷ Morgan (n 36) 5. See also, Lisa Rodensky, *The Crime in Mind: Criminal Responsibility and the Victorian Novel* (OUP 2003) about the influence of literary fiction on the development of the domestic criminal justice system.

³⁸ Slaughter (n 7) 4.

³⁹ *ibid* 16.

narrative, Slaughter notes that literature has historically favoured and enabled some formulations of the law.⁴⁰ For Slaughter, like many critical lawyers, this literature and the law that it facilitates, can be understood as part of an imperialist vision that ‘legitimizes particular forms and subjects of history and subjugates or erases others.’⁴¹ Thus, despite a moment of optimism, Slaughter returns to the critical stance that the possibilities of law, both in narrative and doctrine, are limited by existing power relationships and particular imaginaries.

The constraints of existing narratives, and particular approaches to history are not just a problem for lawyers, seeking an escape from an imperialist vision of law. Even Hayden White’s accounts of narrative history articulate this problem. Although White may, at first, appear to give the historian choices in how to emplot and, therefore, give meaning to, the events of history, White attributes these choices of plot to precognitive ways of seeing the world—ways which are often shaped by the historian’s own historical milieu.⁴² This precognitive commitment will affect all the other narrative choices the historian makes.⁴³ Moreover, the whole process of creating narrative history is described by White as a subconscious desire to turn a meaningless reality into an imaginary order of coherence and integrity.⁴⁴

The desire for this closure, this creation of an imaginary order, which constitutes historical narrativity for White, is linked with a concept of a legal system—which is itself an imaginary or symbolic order.⁴⁵ The main story of narrative history—indeed the necessary story—is humanity’s relationship with the legal order. Narrative histories are, in White’s account, ultimately stories about authority, power, and legitimacy acting on a certain understanding of the human.⁴⁶

White felt that modern history, which was by its nature narrative history, could not escape this type of account of humanity and law. There had, he acknowledged, been those who had tried, like Braudel and other members of the *Annales* school.⁴⁷ These historians had attempted to bypass a history of individuals and ‘events’ and replace them with a history of structures, groups, and social categories.⁴⁸ Braudel had even produced a geo-history, focused on the Mediterranean.⁴⁹ These historians had tried to express a different form of temporality—a *longue durée*, a geographical time.⁵⁰ The history of individuals was, for the *Annales* school, a superficial history.⁵¹ As Braudel wrote:

The question is not to deny the individual on the grounds that he is the prey of contingency, but somehow to transcend him, to distinguish him from the forces separate from him, to react against a history arbitrarily reduced to the role of quintessential heroes. We do not believe in this cult of demigods, or to put it even more simply, we are against Treitschke’s proud and unilateral declaration: ‘Men make history.’⁵²

⁴⁰ *ibid* 10–11.

⁴¹ *ibid* 5.

⁴² White (n 25) 38.

⁴³ *ibid* 29.

⁴⁴ White (n 13) 25.

⁴⁵ *ibid* 14.

⁴⁶ *ibid* 13.

⁴⁷ *ibid* 31–33.

⁴⁸ Paul Ricoeur, *Time and Narrative, Volume 1* (University of Chicago Press 1984) 102.

⁴⁹ *ibid* 103.

⁵⁰ *ibid* 103.

⁵¹ *ibid* 103.

⁵² Fernand Braudel, *On History* (Weidenfeld and Nicolson 1980) 10.

Yet, White, together with Ricoeur, considered that Braudel had not succeeded in avoiding a story of fragile human works and dramatic events.⁵³ Braudel was forced, they argue, to put entities and events on stage.⁵⁴ As such, he was not able to resist a narrative mode of discourse showing humans acting as agents.⁵⁵ Indeed, White suggested that a scientific history of structures, such as Braudel had hoped for, could never be more than ‘quasi-history’.⁵⁶

In this understanding of narrative history, it will always be forced to return to human agents and their encounter with a legal order. Critical and orthodox lawyers have worked within such limitations, telling histories of the law as a tool for human progress, or a constraint on human freedom. But must international law always be constrained by these aesthetic and theoretical commitments? What if there were other narrative forms? How might international law look if it were not Western, not humanist, not bound to a range of predetermined historical tropes, and a limited temporality?

III. *Remembrance of Earth’s Past*

Cixin Liu has provided us with an example of what such a law could look like in his science fiction epic, *Remembrance of Earth’s Past*. The advantage of science fiction in imagining difference is its ability to create new and strange worlds; a *novum*, in Darko Suvin’s terms.⁵⁷ The science fiction writer can go where ‘others will not, might not, dare not go,’⁵⁸ playing with alternate social and legal systems and with different ways of being human.⁵⁹ Moreover, science fiction does all this in a format that resembles historical narrative,⁶⁰ turning our present into the past.⁶¹ For Cixin Liu, the genre also allows the exploration way of producing a historical narrative. Indeed, I will go on to suggest that Liu has achieved something of the anti-humanist narrative that White and Ricoeur thought impossible.

Liu’s trilogy consists of three books: *The Three-Body Problem*,⁶² *The Dark Forest*,⁶³ and *Death’s End*.⁶⁴ These books were published between 2006 and 2010 in China to increasing interest and acclaim. The last volume, *Death’s End* was on the bestseller lists in China and the topic of nationwide discussions.⁶⁵ The trilogy has also achieved unprecedented success for a Chinese writer outside China.⁶⁶ *The Three-Body Problem* was been translated into twenty languages,⁶⁷ including English in 2014. In 2015 it became the first work by an Asian author to receive the prestigious Hugo Award for the best science fiction novel.⁶⁸ It has garnered

⁵³ White (n 13) 175.

⁵⁴ Ricoeur (n 48) 217.

⁵⁵ White (n 13) 174.

⁵⁶ *ibid* 174.

⁵⁷ Suvin (n 15) 4.

⁵⁸ Tom Moylan, *Scraps of the Untainted Sky: Science Fiction, Utopia, Dystopia* (Perseus Books Group 2000) 4.

⁵⁹ Travis (n 17) 242.

⁶⁰ Jeffrey C Kinkley, *Visions of Dystopia in China’s New Historical Novels* (Columbia University Press 2015) 3; Istvan Csicsery-Ronay Jr, *The Seven Beauties of Science Fiction* (Wesleyan University Press 2008) 81–84.

⁶¹ Jameson (n 16) 288; Moylan (n 58) 25–27.

⁶² Liu, *The Three-Body Problem* (n 14).

⁶³ Liu, *The Dark Forest* (n 14).

⁶⁴ Liu, *Death’s End* (n 14).

⁶⁵ Mingwei Song, ‘After 1989: The New Wave of Chinese Science Fiction’ (2015) 101 *China Perspectives* 7, 10.

⁶⁶ Stephen Dougherty, ‘Liu Cixin, Arthur C. Clarke, and “Repositioning”’ (2019) 46 *Science Fiction Studies* 39.

⁶⁷ Gwennaël Gaffric and Will Peyton, ‘Liu Cixin’s Three-Body Trilogy and the Status of Science Fiction in Contemporary China’ (2019) 46 *Science Fiction Studies* 21.

⁶⁸ *ibid*.

acclaim from science fiction writers and generalist readers.⁶⁹ Reviewers have drawn connections between Liu's work and science fiction classics by Asimov and Arthur C Clarke.⁷⁰ Liu himself cites the influence of Arthur C Clarke.⁷¹ Yet, even while the *Remembrance of Earth's Past* has been placed within this canon of science fiction, it has quite a different tone to both classic and contemporary Western works of science fiction.⁷² Indeed, the narrative suggests a distinctive understanding of the universe, humanity, and law.

The Three-Body Problem begins with the story of a Chinese astrophysicist, Ye Wenjie, who is disillusioned with humanity after witnessing the Cultural Revolution and environmental destruction. When Ye Wenjie makes contact with an alien civilisation, she is warned not to reply, or her planet will be located and invaded by the Trisolarans.⁷³ The Trisolarans are unfortunate enough to inhabit a planet with an unstable, chaotic orbit, and are seeking a safer home. Ye Wenjie replies that humanity has lost the ability to deal with its problems and invites the invasion.⁷⁴

Humanity soon learns that it is faced with an existential threat. In 400 years, the technologically advanced Trisolarans will arrive and they will almost certainly defeat and destroy humanity. One possible response, a response that would not be unusual in the science fiction genre, would be to ensure the survival of part of humanity by sending them out into the universe. Cixin Liu, however, suggests that humanity's laws will prohibit this possibility. In *The Dark Forest*, he has a special session of the United Nations General Assembly pass a resolution declaring 'Escapism' to be a violation of international law:

In strong language, the resolution condemned the division and turmoil that Escapism has created within human society, and described Escapism as a crime against humanity in the eyes of international law.⁷⁵

The Chinese delegate supports this resolution, pointing to the principle 'recognised by the international community, that all humanity has an equal right to survival.'⁷⁶ This seemingly odd definition of crimes against humanity is further explained by one of the characters:

Put a little thought into it, and you'll realize that escape into the cosmos was never going to work. The critical question is who gets to leave, and who has to stay. This isn't ordinary inequality. It's a question of survival, and no matter who gets to leave – elites, the rich, or ordinary people – so long as some people get left behind, it means the collapse of humanity's fundamental value system and ethical bottom line. Human rights and equality have deep roots. Inequality of survival is the worst sort of inequality, and the people and countries left behind will never just sit and wait for death while others have a way out. There will be

⁶⁹ *ibid.*

⁷⁰ Peter Suderman, 'The Hidden Mind: A Best-selling Chinese Science Fiction Series on How to Survive Aliens and Authoritarians comes to America' (2017) 48 *Reason* 50, 50.

⁷¹ Liu Cixin (Holger Nahm and Gabriel Ascher trs), 'Beyond Narcissism: What Science Fiction Can Offer Literature' (2013) 40 *Science Fiction Studies* 22, 23.

⁷² Nick Richardson, 'Even What Doesn't Happen is Epic' (2018) 40 *London Review of Books* <www.lrb.co.uk/v40/n03/nick-richardson/even-what-doesnt-happen-is-epic> accessed 1 June 2020, 34; Suderman (n 70); Dougherty (n 66) 40.

⁷³ Liu, *The Three-Body Problem* (n 14) 296.

⁷⁴ *ibid.* 300.

⁷⁵ Liu, *The Dark Forest* (n 14) 55.

⁷⁶ *ibid.* 55.

increasingly extreme confrontations between the two sides until there's world chaos, and then no one goes! The UN resolution is quite wise.⁷⁷

Throughout the novels, every time a solution is suggested that will favour one part of humanity, it too is dismissed as a crime against humanity. Late in the trilogy, when humanity believes that their destruction will be brought about through an attack on the sun, Earth's population relocates to space stations past Jupiter. At this point in humanity's technological development, it might again be possible to give part of humanity a better option, by sending them out into the universe in lightspeed spaceships. All of humanity would still be saved, but some would be saved to live in better conditions. The construction of lightspeed ships would make humankind 'grand'⁷⁸ but it would also lead to manifest inequality and a threat to social stability.⁷⁹ The construction of lightspeed ships is, therefore, proscribed.

Yet, at the same time, many horrific acts of violence throughout the novels are not called crimes against humanity.⁸⁰ There is one incident when 'crimes against humanity' is invoked in what appears as a more appropriate setting. The crew of one spaceship is tried for crimes against humanity for killing (and consuming) all the members of another spaceship. Yet, the author clearly regards this as an unjust decision, and an inappropriate application of the law to a chaotic, survival situation.⁸¹ Escapism may be a crime against humanity's values, but cannibalism is understandable when stranded in an amoral universe.

Thus, in Cixin Liu's universe, no individual can hope to make their own heroic escape, even while science cannot do much to prevent the eventual destruction of the species. Fortunately, a sociological breakthrough forestalls the arrival of the Trisolarians. Before her death, Ye Wenjie inspires Luo Ji to develop a field of cosmic sociology, suggesting the first two axioms:

First, survival is the primary need of civilisation. Second, civilisation continuously grows and expands, but the total matter in the universe remains constant.⁸²

She also suggests adding the concepts of chains of suspicion and technological explosion. That is, the difficulties of interstellar communication mean that no civilisation can predict whether another civilisation is a danger to it. Even if a civilisation seems benevolent it may consider you malicious. Moreover, any civilisation, even a weak civilisation, could have a sudden technological explosion and become a threat. As such, letting another civilisation exist, or letting it know you exist are both dangerous and violate the first axiom.⁸³

Luo Ji uses these concepts to develop the theory of the universe as a dark forest: 'Every civilization is an armed hunter stalking through the trees like a ghost, gently pushing aside branches that block the path and trying to tread without sound.'⁸⁴ This discovery allows Luo

⁷⁷ *ibid* 55–56.

⁷⁸ Liu, *Death's End* (n 14) 491.

⁷⁹ *ibid* 473, 535.

⁸⁰ Some examples: the use of nanotechnology to slice a ship and its crew into strips; the Trisolarian relocation of the entire population of Earth to Australia, without food supplies, with the intention of reducing the human population through cannibalism; the reduction of our solar system to two dimensions.

⁸¹ Song (n 65) 11.

⁸² Liu, *The Dark Forest* (n 14) 6.

⁸³ *ibid* 517–20.

⁸⁴ *ibid* 521.

Ji to institute a system of mutually assured destruction: a threat to reveal the location of both Earth and Trisolaris to the universe if Trisolaris does not desist.

Luo Ji's reinvention of mutually assured destruction successfully deters the Trisolarans for a couple of centuries, but eventually it fails. Earth and Trisolaris are exposed. Trisolaris is destroyed first; one of its suns is blown up. The population of Earth retreats to space stations past Jupiter to avoid the same fate but the galaxy is reduced to two-dimensional space as, we discover, many others have been. Humanity becomes just another extinct species in the dark forest universe. Cixin Liu allows a few characters to survive to witness, over the course of 18 billion years, the death and rebirth of the universe.

In this way, Cixin Liu's epic narrative displays a vision of crimes against humanity, and humanity itself, that feels odd and even jarring. It is not unusual for the term 'crimes against humanity' to be invoked in situations that seem inappropriate to an international lawyer, but Liu's account seems more than the misuse of a legal or moral term. Why should escapism, which in many other narratives might seem like a good choice, an individual right or a heroic pursuit of autonomy seem so problematic? And why, at the same time, should Liu appear so cynical about the nature of civilisation, so accepting of a will to survive, and yet so dispassionate about the ultimate demise of humanity?

IV. Crimes against humanity in a harmonious society

The ability of science fiction to depict a different world is part of its distinctive appeal and importance. In this case, Cixin Liu's creation of such an original narrative is particularly interesting, given the limitations that seem to constrain the possibilities of law and narrative. Yet, for many commentators on science fiction, its true significance lies not in the invention of a *novum* but in the way in which the imagined world speaks to contemporary concerns, while shaping the way we understand the present and future.⁸⁵ Darko Suvin argued that the imaged world 'for all its displacements and disguises, always corresponds to the wish dreams and nightmares of a specific sociocultural class of implied addressees'.⁸⁶ Jameson suggested, in similar terms, that the true subject of science fiction is the historical present.⁸⁷ Even the most 'energetic imaginative leaps into radical alternatives', he states, are 'little more than the projections of our own social moment and historical or subjective situation'.⁸⁸ As such science fiction is often studied for insight into contemporary beliefs and anxieties, and occasionally as a source of socio-political critique.⁸⁹ For law and literature practitioners, this approach to science fiction tends to be directed towards its ability to imply a critique of law,⁹⁰ or think about how law might deal with new legal issues.⁹¹

Many reviewers and commentators have already sought these types of insights from Liu's work. They have pointed to the differences between Liu's writing and the Western canon of

⁸⁵ Suvin (n 15) 1.

⁸⁶ Moylan (n 58) 48.

⁸⁷ Jameson (n 16) 345.

⁸⁸ *ibid* 211.

⁸⁹ Hua Li, 'The Political Imagination in Liu Cixin's Critical Utopia: China 2185' (2015) 42 *Science Fiction Studies* 519, 519.

⁹⁰ Travis (n 17) 251.

⁹¹ *ibid* 252; Orna Ben-Naftali and Zvi Triger, 'The Human Conditioning: International Law and Science-Fiction' (2018) 14 *Law, Culture and the Humanities* 6, 13.

science fiction and explained these differences by reference to Liu's socio-historical situation.⁹² As such, they have tended to see in Liu's work a representation of current concerns in China,⁹³ such as ecological crisis,⁹⁴ rapid technological development,⁹⁵ and geopolitical tensions.⁹⁶ His work has also been situated against the background of recent Chinese history.⁹⁷ Mingwei Song observes the 'spectres' of communism, collectivism, and Maoism at play in his work.⁹⁸

Thus, while *Remembrance of Earth's Past's* narrative and construction of an alternative law may hold some interest even when viewed as an unsituated fantasy, Liu's vision of law might be even more significant if it can be regarded as a translation of strands of thought that are already immanent in the world. Liu's concept of crimes against humanity may seem preposterous but I will suggest that, despite its originality, it does draw upon some existing ideas and narratives. These ideas clearly extend beyond any local narratives and concerns, as I will discuss in the next section on posthumanism. Nevertheless, in this section I, like other commentators, will consider whether Liu's work could be seen as reflecting Chinese narratives and concerns—although, for my purposes, I focus on rights discourse. I do not mean to suggest here that Liu is putting forward a Chinese position, official or otherwise. I am simply interested in the extent to which there may be elements of a particular, local understanding of rights within Liu's narrative.

Liu's assertions of crimes against humanity are extremely odd when considered within the prevailing legal and philosophical paradigm of crimes against humanity. Yet, despite the universal claims of concepts like crimes against humanity, the contemporary understanding is based on a specific narrative about rights and law. Within this narrative, individuals have rights because of their special human status. These rights are intended to uphold the autonomy and agency of the individual.⁹⁹ Rights, Ignatieff explains, are a language of individual empowerment—they allow individuals to define themselves, to decide what they will live and die for.¹⁰⁰ Rights will place limitations on the state, when necessary to protect the autonomy of the individual. This means that the values of liberty and autonomy will sometimes be more important than values of order.¹⁰¹ Moreover, when a state allows crimes against humanity to violate this 'core humanity that we all share and that distinguishes us from other natural beings',¹⁰² it is increasingly argued that the state may have surrendered the privileges of sovereignty.¹⁰³

⁹² Richardson (n 72); Suderman (n 70) 50; Dougherty (n 66) 40.

⁹³ Li (n 89) 522.

⁹⁴ Dougherty (n 66) 48.

⁹⁵ Jiayang Fan, 'Liu Cixin's War of the Worlds' (*The New Yorker*, 17 June 2019) <www.newyorker.com/magazine/2019/06/24/liu-cixins-war-of-the-worlds> accessed 1 June 2020.

⁹⁶ *ibid.*

⁹⁷ Song (n 65) 10; Li (n 89) 522; Dougherty (n 66) 53.

⁹⁸ Song (n 65) 10.

⁹⁹ Louis Henkin, 'The Universality of the Concept of Human Rights' (1989) 506 *The Annals of the American Academy of Political and Social Science* 10, 11.

¹⁰⁰ Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton University Press 2003) 57.

¹⁰¹ Henkin (n 99) 11.

¹⁰² David Luban, 'A Theory of Crimes Against Humanity' (2004) 29 *Yale Journal of International Law* 85, 87.

¹⁰³ See, eg David J Scheffer, 'Toward a Modern Doctrine of Humanitarian Intervention' (1992) 23 *University of Toledo Law Review* 253; Francis M Deng, 'Frontiers of Sovereignty: A Framework of Protection, Assistance, and Development for the Internally Displaced' (1995) 8 *Leiden Journal of International Law* 249; Alex J Bellamy and Ruben Reike, 'The Responsibility to Protect and International Law' (2010) 2 *Global Responsibility to Protect* 267, 270.

This narrative has traditionally been associated with Western, liberal thought.¹⁰⁴ Both the universality of the narrative and the particular form it takes have been questioned—from a variety of Western and non-Western positions. As Chan puts it, ‘human rights are not inherent in a person because of his or her being a human; they are recognised under particular national, historical, political, economic and socio-cultural circumstances at a given time and then, and only then, defined and protected by law.... evolve over time.’¹⁰⁵ The individualism of rights in the dominant narrative has been a perennial question,¹⁰⁶ while the growing priority of rights over sovereignty has become a more recent issue.¹⁰⁷ Even the tautological association of rights with humanity is starting to be questioned in some circles—an approach which will be discussed in the next section.

As China’s international profile has grown, observers have become increasingly interested in the extent to which China might accept or seek to change the orthodox concepts of rights and principles of international law.¹⁰⁸ Although some have questioned the existence of ‘Chinese values’, or the possibility of expressing general views about their nature,¹⁰⁹ other scholars have held that China’s vision of rights and the international order does diverge in some important ways from the dominant Western interpretations.¹¹⁰ This divergence is variously attributed to recent Chinese history,¹¹¹ the experiences of imperialism,¹¹² and the values of Confucianism.¹¹³ The result, according to Peerenboom, is an understanding of rights that could be seen by liberals as a ‘dangerous threat to the legitimacy of human rights’ or by supporters as a ‘necessary corrective to the hegemony of liberalism and the neo-imperialistic tendencies of the Western-centric human rights movement.’¹¹⁴

In the international sphere, this difference can be seen in China’s insistence on a traditional—or perhaps even more absolute¹¹⁵—view of sovereignty in the face of the increasing liberal emphasis on rights.¹¹⁶ China has expressed discomfort with the idea of humanitarian intervention and the imposition of human rights standards as tools of imperialism and hegemony.¹¹⁷ Human rights, from a Chinese perspective, are internal matters

¹⁰⁴ Slaughter (n 7) 5; Henkin (n 99) 12.

¹⁰⁵ Phil CW Chan, *China, State Sovereignty and International Legal Order* (Brill 2015) 168.

¹⁰⁶ Mutua (n 6) 169; Henkin (n 99) 11–12.

¹⁰⁷ BS Chimni, ‘Sovereignty, Rights, and Armed Intervention: A Dialectical Perspective’ in Hilary Charlesworth and Jean-Marc Coicaud (eds), *Fault Lines of International Legitimacy* (CUP 2010) 303; Sibylle Scheipers, *Negotiating Sovereignty and Human Rights: International Society and the International Criminal Court* (Manchester University Press 2009) 6–9; Roda Mushkat, ‘China’s Multi-Layered Attitude towards State Sovereignty: Theory, Practice and Broad Implications’ (2017) 47 *Hong Kong Law Journal* 659, 671.

¹⁰⁸ Chan (n 105) 14–15; Mushkat (n 107). Anthea Roberts, *Is International Law International?* (OUP 2017) 15; Jonathan E Davis, ‘From Ideology to Pragmatism: China’s Position in Humanitarian Intervention in the Post-Cold War Era’ (2011) 44 *Vanderbilt Journal of Transnational Law* 217.

¹⁰⁹ See, eg Marina Svensson, *Debating Human Rights in China: A Conceptual and Political History* (Rowman & Littlefield 2002) 7.

¹¹⁰ Randall Peerenboom, *China Modernizes: Threat to the West or Model for the Rest?* (OUP 2008) 6; Chan (n 105) 132; Pinghua Sun, *Human Rights Protection System in China* (Springer 2014) 130.

¹¹¹ Davis (n 108) 278.

¹¹² Peerenboom (n 110) 164; Davis (n 108) 277.

¹¹³ Chan (n 105) 110; James C Hsiung, *China into Its Second Rise: Myths, Puzzles, Paradoxes, and Challenge to Theory* (World Scientific Publishing 2012) 272–73.

¹¹⁴ Peerenboom (n 110) 85.

¹¹⁵ Andrew Coleman and Jackson Nyamuya Maogoto, ‘“Westphalian” Meets “Eastphalian” Sovereignty: China in a Globalized World’ (2013) 3 *Asian Journal of International Law* 237, 254.

¹¹⁶ Roda Mushkat, ‘The Anatomy of China’s Human Rights Regime: A Behaviourally Underpinned Analytical and Evaluative Account’ (2014) 8 *Vienna Journal on International Constitutional Law / ICL Journal* 131, 136; Coleman and Maogoto (n 115) 244.

¹¹⁷ Davis (n 108) 217–28; Peerenboom (n 110) 87.

for a state.¹¹⁸ Moreover, it is suggested that, in the Chinese understanding, such rights are not something that are opposed to the state but something inseparable from the prosperity and dignity of the state.¹¹⁹

As such, China has stressed collective social and economic rights over what is perceived as a Western, liberal preoccupation with individual choices and liberties.¹²⁰ For example, the Chinese government's 1991 White Paper, in response to the Tiananmen Square massacre, puts forward a view of citizens' rights as deriving from the right of the nation to survive, develop, and increase wealth.¹²¹ The nation, in this approach, creates and gives effect to the rights enjoyed by its citizens, and the development and survival of the nation is more important than individual paths.¹²²

More recently, the introduction of the 'harmonious society' idea, by Hu Jintao in 2005, has further emphasised the importance of the stability of the whole society. The harmonious society policies were intended to ameliorate public anger in China about inequality, problems of basic livelihood, and environmental pollution.¹²³ In the quest for a harmonious society, instability and disorder are seen as serious dangers to society. Biddulph argues the prioritisation of harmony in China means that rights are balanced against the need to prevent disorder and protect social stability.¹²⁴

The importance of harmony in the understanding of rights is also shown by other writers. Pinghua Sun asserts the idea of a fourth generation of rights, described as the 'right to harmony'.¹²⁵ This would cover a series of new rights, such as environmental rights and the rights of future generations.¹²⁶ When considering rights from the perspective of harmony, the rights of abstract individuals should not take precedence. Rather these are rights that function in the context of particular social relations and require coordination among various individuals, between various nations and cultures, between those who exist and those who are still to be born.¹²⁷ Harmony, Sun states, is the highest wisdom for the existence of the world:¹²⁸

Harmony, tolerance, benevolence, rites, virtue, morality, concern with others, and so on will play an important role in correcting ultra-individualism, egomania and antagonism contained in Western traditional human rights and in reconstructing the theory of international human rights discourse.¹²⁹

Weiwei Zhang explains further that happiness, rights, freedom, and dignity are all considered individual values in the West but, in China:

¹¹⁸ Chan (n 105) 121.

¹¹⁹ *ibid* 111; Peerenboom (n 110).

¹²⁰ Ann Kent, *Between Freedom and Subsistence: China and Human Rights* (OUP 1993) 10; Weiwei Zhang, *The China Wave: Rise of a Civilizational State* (World Century Publishing Corporation 2012) 126; Peerenboom (n 110) 86; Chan (n 105) 113.

¹²¹ Sarah Biddulph, *The Stability Imperative: Human Rights and Law in China* (UBC Press 2015) 22–23.

¹²² *ibid* 22–23.

¹²³ *ibid* 4; Litao Zhao and Tin Seng Lim, *China's New Social Policy: Initiatives for a Harmonious Society* (World Scientific Publishing 2009) 1.

¹²⁴ Biddulph (n 121) 1.

¹²⁵ Sun (n 110) 15.

¹²⁶ *ibid*.

¹²⁷ *ibid*.

¹²⁸ *ibid*.

¹²⁹ *ibid*.

these values are both individual and collective, linked with the peace and stability of the nation, in part because China experienced too many chaos and wars in its long history, and people tend to view “peace under the heaven” as the top mandate of any competent central government.¹³⁰

Remembrance of Earth's Past does not directly reflect these approaches, either philosophically or politically. Indeed, observers have found it hard to determine Liu's political position. Some consider that Liu Cixin's work reveals his distance from the state's ideology,¹³¹ while others note his expression of illiberal views.¹³² It is not my intention to assess his position, still less to reduce his *novum* to official or scholarly attitudes. Nevertheless, as fantastic as his work may be, it can be understood as indirectly playing with many of the ideas and concerns found in these broader discourses. The dangers of instability, the difference between a chaotic and a stable state is a constant theme running throughout *Remembrance of Earth's Past*. *The Three-Body Problem* is largely concerned with the problem of Trisolaris' unstable orbit, which means that it suddenly lurches into a chaotic state. Earth and humanity also descend, at various points in the books into terrifying chaotic eras, where there is no law. The importance of stability for both technological development and the happiness of humanity is repeatedly stressed.

If harmony, stability, and equality are prioritised over individual choices and self-determination, and entities like the environment, society, or future generations are granted some moral standing alongside individuals, then it becomes less odd to see escapism as an offence. Escapism, in the traditional rights perspective, looks like an individual right. Yet it showcases inequality; it causes social disorder, instability, and human unhappiness. A system committed to equality and harmony might consider escapism as a crime against both these values and its perception of humanity as a collective. Thus, by situating Liu's work within this wider discourse, his perception of crimes against humanity appears less nonsensical and fantastic. Rather, Liu's *novum* starts to suggest how an international law shaped by alternative, although already existing, discourses of rights and humanity might make sense within its own philosophical and aesthetic paradigm.

V. Crimes against post-humanity

Those writers who tried to posit a Chinese vision of rights suggested the possibility of attributing value to entities such as society or the environment. Liu, however, goes far beyond any such cautious, local, suggestions. His work engages with a much more radical criticism of traditional Kantian or Cartesian rights discourse, which can be found in post-humanist and biocentric ethical theories. Liu references environmental literature and he has spoken of his commitment to non-anthropocentric narratives.¹³³ In Mingwei Song's description, Cixin Liu is a 'cold blooded' critic of the rationalism and self-determination of humanism, and a surveyor of the post-human.¹³⁴ As such, *Remembrance of Earth's Past* offers an opportunity

¹³⁰ Zhang (n 120) 126.

¹³¹ Gaffric and Peyton (n 67) 31; Li (n 89) 523.

¹³² Fan (n 95).

¹³³ Liu (n 71) 22.

¹³⁴ Song (n 65) 12.

to not just consider how a different cultural view might inform the concept of crimes against humanity, but how an alternative theoretical and temporal paradigm might change the perception of humanity and the possibilities of international humanitarian law.

Cixin Liu has described his work as ‘hard science fiction.’¹³⁵ He distinguishes this approach from mainstream literature, which, he says, focuses on humanity. Much like Hayden White, Liu argues that the traditional ‘history of human society is the history of humanity’s social development. From Spartacus brandishing his sword in the arena to the French revolutionaries shouting for rights, brotherhood, and equality, humanity’s capabilities have helped to determine its goals.’¹³⁶ For Liu, such literature simply seems to indulge an ‘intense anthropocentric narcissism.’¹³⁷

This literary narcissism, Liu argues, is just a fleeting reflection of a short period in humanity’s history. Liu claims that the narrative about humanity’s internal experience only arose in the Renaissance. Before that, literature concerned the relationship between humans and the natural world or natural phenomena presented in the form of gods.¹³⁸ Now, Liu says, the anthropocentric narrative is even less plausible, since science has undermined humanity’s status:

Once we were formed by God as the wisest of all creatures and all other things in the universe were tools for our use; now no essential differences separate us from the other animals. Taking an even broader perspective, we become nothing more than irrelevant bacteria on a grain of sand in a remote corner of the universe.¹³⁹

From this position, Liu attempts to replace the humanist narrative with a science fiction that attends to macro-detail, that ‘allows authors to sweep across time and space, crossing billions of years and tens of billions of light-years with a simple stroke of the pen, leaving the world and the history described in mainstream literature to appear as nothing more than a tiny grain of dust, hardly worth mentioning.’¹⁴⁰

Liu goes a long way towards achieving such a macro-narrative in *Remembrance of Earth’s Past*. He cannot completely avoid using individual characters, but their characterisation is weak and they are increasingly used as ciphers to relate a larger narrative.¹⁴¹ He uses various devices of the genre to extend his characters’ life span so that he can transform them into observers of the passing of tens of billions of years, thereby reducing individual events and the story of humanity to insignificance.

This vision of a narrative that is not about humanity, a history that takes place over an extended time frame—a truly *longue durée*—recalls the *Annales* school attempts to write the history of structures. It also echoes the calls by some ecocentric environmentalists to rewrite a history of the Earth in geological time—a history in which humanity is just another species and a fairly new arrival at that.¹⁴² The connection between this kind of environmental philosophy and Liu’s posthumanism is made clear in *The Three-Body Problem*. In

¹³⁵ Liu (n 71) 22.

¹³⁶ *ibid* 27.

¹³⁷ *ibid* 22.

¹³⁸ *ibid* 27.

¹³⁹ *ibid* 27.

¹⁴⁰ *ibid* 25.

¹⁴¹ Suderman (n 70) 50.

¹⁴² Paul W Taylor, *Respect for Nature: A Theory of Environmental Ethics* (Princeton University Press 1986) 112.

its English translation, the first part of *The Three-Body Problem* is titled 'Silent Spring'—a clear reference to the foundational text by Rachel Carson that inspired the environmental movement. This section describes the depredations of the Cultural Revolution. These depredations are not, however, limited to humanity's violence towards humanity. Liu depicts humanity's assault on the environment in equally, if not more, censorious terms. Ye Wenjie, after witnessing the brutal murder of her father, joins the Production and Construction Corps. Here she experiences another expression of human evil:

And so, under their chain saws, vast seas of forests turned into barren ridges and denuded hills. Under their tractors and combine harvesters, vast tracts of grasslands became grain fields, then deserts.¹⁴³

Ye Wenjie grieves for the destruction of the trees. A reporter, Bai Mulin, recognises and shares her feelings. He calls attention to the smallness, the briefness of human experience compared to these ancient trees:

More than three hundred years! A dozen generations. When this tree was but a shrub, it was still the Ming Dynasty. During all these years, can you imagine how many storms it had weathered, how many events it had witnessed? But in a few minutes you cut it down.¹⁴⁴

Bai gives Wenjie a copy of *Silent Spring*.¹⁴⁵ It is this book, even more than the death of her father, which will later compel her decision to invite and assist the Trisolarans in their invasion of Earth.

More than four decades later, in her last moments, Ye Wenjie would recall the influence *Silent Spring* had on her life. The book dealt only with a limited subject: the negative environmental effects of excessive pesticide use. But the perspective taken by the author shook Ye to the core. The use of pesticides had seemed to Ye just a normal, proper—or, at least, neutral—act, but Carson's book allowed Ye to see that, from Nature's perspective, their use was indistinguishable from the Cultural Revolution, and equally destructive to our world. If this was so, then how many other acts of humankind that had seemed normal or even righteous were, in reality, evil?¹⁴⁶

Silent Spring, the book which prompted Ye Wenjie's complete disillusionment with humanity, had a critical influence on an environmental movement and an environmental ethics that, in its most radical forms, attempts to completely change the foundation of modern ethics, to reimagine the place of humanity in the world and to acknowledge alternative forms of temporality.¹⁴⁷ *Silent Spring* may just, as Ye Wenjie noted, have been a disturbing account of 'the direct killing of birds, mammals, fishes, and, indeed, practically

¹⁴³ Liu, *The Three-Body Problem* (n 14) 20.

¹⁴⁴ *ibid* 21.

¹⁴⁵ Rachel Carson, *Silent Spring* (Penguin 1965).

¹⁴⁶ Liu, *The Three-Body Problem* (n 14) 24.

¹⁴⁷ Clare Palmer, 'An Overview of Environmental Ethics' in Andrew Light and Holmes Rolston III (eds), *Environmental Ethics: An Anthology* (Blackwell Publishing 2002) 15; Jason Kawall, 'A History of Environmental Ethics' in Stephen M Gardiner and Allen Thompson (eds), *The Oxford Handbook of Environmental Ethics* (OUP 2017).

every form of wildlife by chemical insecticides indiscriminately sprayed on the land,¹⁴⁸ but it introduced a shift in perception. It showed that human progress was not always beneficial and that humanity was not separate to its environment; there was no split between man and nature.¹⁴⁹ As such, it sparked an interest in ecologies¹⁵⁰ and pointed to the importance of the species over the individual, even amongst humans: 'For mankind as a whole, a possession infinitely more valuable than individual life is our genetic heritage, our link with past and future.'¹⁵¹

Within the environmental movement that emerged in the decades following the publication of *Silent Spring*, many advocates pointed to the importance of protecting the Earth for the benefit of humanity and future generations. Others, however, tried to move away from these anthropocentric arguments and create new ethical models that assigned value to other forms of life.¹⁵² These environmental ethicists questioned the philosophical foundations for the belief in the superiority of humanity, such as the Judeo-Christian hierarchy of beings or Cartesian dualism.¹⁵³ They also dismissed the idea that rationality somehow made humans more valuable than other entities.¹⁵⁴ As Taylor argues, humans think that our aesthetic expression, our autonomy and self-determination are valuable in some way that makes us superior to other life forms.¹⁵⁵ But they are only valuable to us as humans because we have assigned value to them from a human point of view.¹⁵⁶

In ecocentric or biocentric environmental ethics, there are other ways of assigning and understanding value or a valuable form of life. There are philosophical differences between how this value is justified, but biocentric thinkers tend to hold that all forms of life have some state of flourishing, a form of goal-directedness that has a value that can be protected.¹⁵⁷ This approach can apply to individual entities, but also to whole species or ecosystems. In *A Sand County Almanac*,¹⁵⁸ Aldo Leopold made biotic communities, species and ecosystems the subject of ethical consideration¹⁵⁹ by describing a 'land ethic' which 'enlarges the boundaries of the community to include soils, waters, plants and animals.'¹⁶⁰ His conclusion, much admired by environmental ethicists is that: 'A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise.'¹⁶¹

¹⁴⁸ Carson (n 145) 87.

¹⁴⁹ Margaret Atwood, 'Rachel Carson's Silent Spring, 50 Years On' *The Guardian* (London, 8 December 2012) <www.theguardian.com/books/2012/dec/07/why-rachel-carson-is-a-saint> accessed 1 June 2020.

¹⁵⁰ Joshua Schuster, *The Ecology of Modernism: American Environments and Avant-Garde Poetics* (University of Alabama Press 2015) 139.

¹⁵¹ Carson (n 145) 185.

¹⁵² See, eg, Taylor (n 142); Arne Naess, 'The Shallow and the Deep, Long-Range Ecology Movement. A Summary' (1973) 16 *Inquiry* 95; Nicholas Agar, *Life's Intrinsic Value: Science, Ethics, and Nature* (Columbia University Press 2001).

¹⁵³ Agar (n 152) 14–15; Taylor (n 142) 145.

¹⁵⁴ Taylor (n 142) 145.

¹⁵⁵ *ibid* 129.

¹⁵⁶ Paul W Taylor, 'The Ethics of Respect for Nature' in Andrew Light and Holmes Rolston III (eds), *Environmental Ethics: An Anthology* (Blackwell Publishers 2002) 74, 79.

¹⁵⁷ Anna Wienhues, 'Sharing the Earth: A Biocentric Account of Ecological Justice' (2017) 30 *Journal of Agricultural and Environmental Ethics* 367, 377; Naess (n 152) 96; Taylor (n 142) 100.

¹⁵⁸ Aldo Leopold, *A Sand County Almanac: And Sketches Here and There* (OUP 1989); Palmer (n 147) 23.

¹⁵⁹ Callicott (n 18) 118–19.

¹⁶⁰ Palmer (n 147) 24.

¹⁶¹ Leopold (n 158) 224–25; Callicott (n 18) 119.

Other environmental ethicists, such as J Baird Callicott and Holmes Rolston III, have continued to develop this holistic approach, arguing that the interests of the land community, species or ecosystem are not reducible to the interests of individuals and should take priority.¹⁶² Rolston argued that the species is a bigger event than the individual¹⁶³—it defends a particular form of life, resists extinction, and maintains a normative identity over time.¹⁶⁴ Indeed, Rolston says that an individualist view of environmental ethics will struggle, because of ‘the fact that natural selection is rather careless with individuals; the test to which it puts them is whether they can pass on the historical lineage.’¹⁶⁵

In the same way, these authors would sacrifice some species or members of species for other species. Rolston asks if we ought to save nature if this results in people going hungry or dying and he answers that, regrettably, sometimes, the answer is yes.¹⁶⁶ Callicott also argued that to sustain the health of the biological community of which human beings are a part, some individuals may have to be sacrificed for the whole. He suggests that it would be more important to save the most essential species, such as pollinating bees, over higher mammals that are less important in the biological community.¹⁶⁷

Many of these ideas are echoed in *Remembrance of Earth's Past*, which displays a scepticism towards humanitarianism, a carelessness for individuals and, eventually, indifference towards humanity as a whole. When the impending destruction of Earth, together with disregard for the environment, leads to a civilisational breakdown—the ‘Great Ravine’—the population is much reduced, but, Liu suggests, ultimately humanity is strengthened and improved.¹⁶⁸ Later, when five spaceships escape a devastating Trisolaran attack and find themselves alone in a dark universe, it soon becomes clear that one spaceship must destroy and plunder the others if any are to survive. Zhang Beihai, the acting captain of the ship *Natural Selection* and one of the wisest characters in the trilogy, is the first to realise this. He gives the rest of the crew time to come to the same realisation, affectionately watching over them as they busy themselves negotiating a political structure for their starship civilisation.¹⁶⁹ He only interjects occasionally to comment: ‘Facing a disaster like the encounter with the Trisolaran menace, a society built upon principles of humanism is fragile, especially when our world needs the sacrifice of a part of it for the good of the whole.’¹⁷⁰

Zhang Beihai knows that with this new civilisation will come a new morality and a new kind of human. Yet, despite his wisdom, Zhang Beihai waits a fraction too long to begin his attack on the other spaceships. As he is about to initiate his strike, *Natural Selection* is targeted by another ship—*Ultimate Law*. Zhang Beihai acknowledges his mistake, his humanist delay, somewhat ruefully, but he is not distressed. In fact, in the moment before destruction, he smiles at a colleague and says, ‘It doesn’t matter. It’s all the same.’¹⁷¹ Zhang has no more concern for his individual survival than Liu feels for his characters. In an extreme

¹⁶² Gary E Varner, *In Nature's Interests? Interests, Animal Rights and Environmental Ethics* (OUP 2001) 11.

¹⁶³ Holmes Rolston III, ‘Value in Nature and the Nature of Value’ in Andrew Light and Holmes Rolston III (eds), *Environmental Ethics: An Anthology* (Blackwell Publishing 2002) 147.

¹⁶⁴ *ibid* 148.

¹⁶⁵ *ibid*.

¹⁶⁶ *ibid* 159.

¹⁶⁷ As discussed in Palmer (n 147) 24.

¹⁶⁸ Liu, *The Dark Forest* (n 14) 391–95.

¹⁶⁹ *ibid* 475.

¹⁷⁰ This quote is cited by Song (n 65) 10. My translation of the text states ‘humanitarian’ rather than humanist.

¹⁷¹ Liu, *The Dark Forest* (n 14) 491.

situation, it is the survival of the biological species that is important—not its individuals, nor its morality, nor even its understanding of what it means to be human.

This incident reaffirms what Ye Wenjie learnt in the Cultural Revolution: humans have no special moral standing. The luxuries of humanism and self-determination can only be maintained in a stable era. In a crisis or extreme situation, it is the survival of the species that matters. Yet, even the biological survival of humanity is not that important to Liu. He is just as understanding of the use of violence by other species. The Trisolarans, who threaten Earth and occasionally carry out acts of extreme and devastating violence, are not presented unsympathetically. After all, humans are just ‘bugs’ to the Trisolarans, who have their own advanced civilisation and survival imperative. When another alien civilisation destroys both Trisolaris and Earth, this is described as a straightforward, understandable, bureaucratic decision. The need for each of these civilisations to survive is given equal weight—humans are not given any sort of special priority. Indeed, Liu shows appreciation for a bio-community without humans. When the Earth is left almost uninhabited at the end of the trilogy, he comments on its beauty and tranquillity.¹⁷² The magnificence of the universe, long before and after human civilisation, is also noted. Although Liu uses three books to outline humanity’s struggles to survive in the dark forest of the universe, its ultimate demise is not presented as an unusual tragedy, but just one of a series of extinctions.

In this way, Liu is able to use a post-humanist, biocentric approach, together with an extended view of temporality, to produce a narrative which dismisses the compressed human life of individual choices and self-determination. Instead he produces a vast narrative of species and structures in an amoral universe. By using these approaches, Liu has gone a long way in realising a very different narrative form—the sort of non-anthropocentric narrative that White and Ricoeur thought was an untenable form of history.

Moreover, it is through this unlikely form of narrative that Liu was able to introduce what seemed to be such a peculiar account of crimes against humanity. Yet, it may be that, within this ethical landscape and this narrative form, Liu’s construction of crimes against humanity makes some sense. White thought that a traditional, humanist narrative history was an account of humanity’s relationship with a ‘Law’ that constituted their individuality. But in Liu’s macro-history, where humanity is just another species in a vast ecology of species, and the ‘Law’ that humanity confronts is a set of brutal Darwinian axioms, then the narrative becomes an account of a species’ relationship with a ‘Law’ that constitutes its species’ purpose. In this understanding of humanity and law, any desire to save individuals or allow them to follow their personal paths becomes less important. Indeed, if humanity is seen as a species, rather than a conglomeration of individuals endowed with personal rights and valuable autonomy, then the escapists’ attempts to assert such autonomy, to separate from the species, could be seen not just as unimportant but as a crime against this concept of the human. In this way, Liu’s post-humanist, macro-history facilitates a radically different account of humanity, law and, therefore, crimes against humanity.

¹⁷² Liu, *Death’s End* (n 14) 520–21.

VI. Conclusion

The ecocentric dispersion of value through a biotic community is not a mainstream view. Yet, at the same time, the move away from anthropocentric theories is not peculiar to environmental ethics; doubts about the value and nature of humanity have informed a variety of theories from the twentieth century to the present. As was shown above, some of the Chinese discourse suggested a similar approach, although in a much gentler form. More extreme, Western scholars have even explored the possibility of a non-anthropocentric jurisprudence—an Earth Jurisprudence that recognises the roles and rights of non-human entities and aims to strengthen the Earth community.¹⁷³ Scholars in these traditions have suggested that their views could introduce a paradigm shift¹⁷⁴ as significant as the Kantian paradigm shift that moved “man” to the center of the philosophical conceptual universe.¹⁷⁵ Philippe Sands is quoted as saying, in response to Earth Jurisprudence, that ‘experience teaches us that what may seem as over-reaching at one time soon becomes conventional wisdom.’¹⁷⁶

I do not mean to suggest that this will come to pass, nor am I advocating for such a change. Unlike Slaughter, I do not think that the existence of alternative possibilities in international law is always hopeful or emancipatory.¹⁷⁷ I have simply tried to show that there are other ethical and narrative schemas available, from alternative cultural and theoretical positions, and that once these are deployed it is possible to envisage law, humanity, and crimes against humanity quite differently. Liu’s work should not be seen as a direct application of these schemas, nor as the only possible way to imagine their development. It does, however, show one way to play with these ideas, to draw out their possibilities in the extreme circumstances of his *novum*, and to use them to develop a new form of narrative. Thus, by exploring Liu’s vision of law, it is easier to see how contingent the prevailing view of international humanitarian law is on the narratives that are told about it and within it, and to understand how it could potentially transform into something quite different.

¹⁷³ See, Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* (Green Books 2003).

¹⁷⁴ Callicott (n 18) 113–14.

¹⁷⁵ Lorraine Code, *Ecological Thinking: The Politics of Epistemic Location* (OUP 2006) 3.

¹⁷⁶ Ian Mason, ‘One in All: Principles and Characteristics of Earth Jurisprudence’ in Peter Burden (ed), *Exploring Wild Law* (Wakefield Press 2011) 44.

¹⁷⁷ See, Alexander, *The Good War*, (n 3) for an example of an ethical shift that facilitated aerial bombardment of civilians.