

RECENT BOOKS ON INTERNATIONAL LAW

EDITED BY JEFFREY L. DUNOFF

REVIEW ESSAY

JUST ABOUT TIME: INTERNATIONAL LAW'S TEMPORALITIES AND OUR MOMENT IN HISTORY

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International Law and Time: Narratives and Techniques. Edited by Klara Polackova Van der Ploeg, Luca Pasquet, and León Castellanos-Jankiewicz. Cham, Switzerland: Springer, 2022. Pp. xii, 473.

The Times and Temporalities of International Human Rights Law. Edited by Kathryn McNeilly and Ben Warwick. Oxford, UK: Hart, 2022. Pp. xiii, 232. Index.

I. INTRODUCTION

Time is a Pandora's box that international lawyers have long been reluctant to fully open. Perhaps unwilling to tackle the complexities this elusive concept presents, or loath to confront past wrongs and future threats that might arise from the fabled box, international jurists have left core questions of time and international law largely underexplored. In so doing, however, they have overlooked time and temporality as useful analytical lenses through which to gain new and deeper understandings of international law as a discipline and governance system. After all, international law is entangled with time in various and multifaceted ways. International law does not simply exist in time, having its own past, present, and future. Rather, like law generally, international law is constantly being shaped, organized, and reconstructed by time, while also creating, embedding, and perpetuating temporal standards and understandings. Yet, whereas domestic law scholars have in recent decades devoted considerable attention to the complex time-law relationship,¹ international lawyers have so far investigated this relationship in only a limited

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¹ See e.g., *TIME, LAW, AND CHANGE: AN INTERDISCIPLINARY STUDY* (Sofia Ranchordás & Yaniv Roznai eds., 2020); *LAW AND TIME* (Sian Beynon-Jones & Emily Grabham eds., 1st ed. 2019); Rebecca R. French, *Time in the Law*, 72 U. COLO. L. REV. 663 (2001).

manner, focusing primarily on doctrinal and procedural questions,² while leaving many theoretical issues unaddressed.³

Two recent books commendably seek to start filling this gap in the international legal sphere, while pivoting away from the disciplinary tendency to take time for granted, as if it was merely a background setting against which international law naturally operates and evolves. The first book, *International Law and Time: Narratives and Techniques* (hereinafter *Narratives*), co-edited by Klara Polackova Van der Ploeg of the University of Nottingham, Luca Pasquet of Utrecht University, and León Castellanos-Jankiewicz of the Asser Institute for International and European Law, explores the relationship between time and international law from a broad disciplinary outlook.⁴ The book strives to challenge and problematize the mainstream view of international law as temporally neutral (or atemporal), arguing that this view obscures the fraught temporal paradigms and assumptions underlying international rules, institutions, and practices.⁵ Against this backdrop, the book's twenty-one chapters are organized into five parts, each of which addresses central segments of the relationship between international law and time, including the meanings of time in international law; time's role in the creation, operation, and interpretation of international law; and the dynamics of change and continuity in international law. When read together, the book's chapters reveal "time" as a profoundly multifaceted notion in the discipline, "which appears on the scene of international law dressed in many different clothes: sometimes as an instant, sometimes as a duration, . . . sometimes as sequence, sometimes as synchronicity, . . . sometimes as continuity, sometimes as timelessness and so on."⁶ The book's contributions also reveal a wide diversity in the understanding of the relationship between international law and time, in which the latter forms "an ordering principle," "a dimension of law-making," and "an instrument of power and control."⁷ This diversity notwithstanding, the book suggests that international law engages with time in two main ways: through the construction of narratives (e.g., the linearity of time) and the development of legal techniques (e.g., the intertemporal rule).⁸ The book shows that such narratives and techniques, though often presented as neutral, in fact involve "temporal assumptions and preferences, the adoption of which promotes and protects particular values and interests."⁹

² See, e.g., Steven Wheatly, *Revisiting the Doctrine of Intertemporal Law*, 41 OXFORD J. LEGAL STUD. 484 (2021); Nick Gallus, *The Temporal Jurisdiction of International Tribunals* (2017); Ulf Linderfalk, *The Application of International Legal Norms Over Time: The Second Branch of Intertemporal Law*, 58 NETH. INT'L L. REV. 147 (2011); Rosalyn Higgins, *Time and the Law: International Perspectives on an Old Problem*, 46 INT'L & COMP. L. Q. 501 (1997).

³ For notable exceptions, see Kathryn McNeilly, *Are Rights Out of Time? International Human Rights Law, Temporality, and Radical Social Change*, 28 SOC. & LEGAL STUD. 817 (2019); Deborah Whitehall, *A Time-Map for International Law*, 7 CAMB. INT'L L.J. 4 (2018); Geoff Gordon, *Imperial Standard Time*, 29 EUR. J. INT'L L. 1197 (2018); Julia Dehm, *International Law, Temporalities and Narratives of the Climate Crisis*, 4 LONDON REV. INT'L L. 167 (2016); Fleur Johns, *The Temporal Rivalries of Human Rights*, 23 IND. J. GLOB. LEGAL STUD. 39 (2016).

⁴ INTERNATIONAL LAW AND TIME: NARRATIVES AND TECHNIQUES (Klara Polackova Van der Ploeg, Luca Pasquet & León Castellanos-Jankiewicz eds., 2022) [hereinafter *NARRATIVES*].

⁵ Klara Polackova Van der Ploeg & Luca Pasquet, *The Multifaceted Notion of Time in International Law, in NARRATIVES*, *supra* note 4, at 1, 7.

⁶ *Id.* at 17.

⁷ *Id.* at 17–18.

⁸ *Id.* at 18–22.

⁹ *Id.* at 21.

The second book, *The Times and Temporalities of International Human Rights Law* (hereinafter *Temporalities*), co-edited by Kathryn McNeilly of Queen's University Belfast, and Ben Warwick of the University of Birmingham, explores the time-law relationship in the specific field of international human rights law (IHRL).¹⁰ Through an investigation of this field's diverse temporal concepts and modalities, or "timepieces" (e.g., quotidianity, emergency, or timelessness), the book's twelve chapters recount the temporal dynamics featured in the creation, evolution, and implementation of IHRL.¹¹ Echoing *Narratives'* criticism of the purported temporal neutrality of international law, *Temporalities* unmask the politically loaded assumptions underlying IHRL's temporal modalities and the ways in which they intensify the discrepancies between IHRL's promises and its actual work in the world. In particular, the book highlights diverse temporal paradigms and notions that serve to hinder the protection of women, LGBTs, Indigenous people, and other disadvantaged groups for whom the absence of rights is still a daily reality. By so conceptualizing human rights and their international legal protection as temporally contingent, the book's contributions invite us to contest and reimagine the field of IHRL with a view to ensuring that time is not used "to disempower and disenfranchise" but rather "as a potent force in human rights and a tool for . . . emancipation."¹²

Both *Narratives* and *Temporalities* thus treat time as an intangible yet powerful force in international law that warrants rigorous scrutiny and theorization. Together, they advance the hitherto limited debate about the times that make up international law, rendering time more visible and palpable in the discipline.¹³ In so doing, the books convincingly show that "law and time thinking should not be regarded as the purview of lawyers at the domestic level alone" and that the "international legal system too is a location ripe for temporal analysis and discussion."¹⁴

It is just about time, we believe, for the research efforts carried out in *Narratives* and *Temporalities*. As the books instructively illustrate, international law has its own rhythms and temporalities, which play a decisive role in the discipline, as much as international law itself serves an important function in shaping and experiencing time globally. Still, we argue, while efforts to untangle the relationship between time and international law are always pertinent, they are especially important at this specific moment, when the world is undergoing a period of immense and accelerated change, and the international legal order is reaching an inflection point, facing challenges and opposition along various fronts.

The two edited books, however, dedicated as they are to the investigation of international law and time, do not pay much attention to the issue of timing, that is, to the moment in which they have emerged and their positioning in history. Thus, neither book contextualizes its collective research endeavor against broader evolving global changes and trends, nor situates its assemblage of analyses of international law's temporal modalities within the present reality of backlash facing the discipline. Additionally, while the books' diverse chapters provide significant insights into the intimate interplay between time and international law, as

¹⁰ THE TIMES AND TEMPORALITIES OF INTERNATIONAL HUMAN RIGHTS LAW (Kathryn McNeilly & Ben Warwick eds., 2022) [hereinafter *TEMPORALITIES*].

¹¹ Kathryn McNeilly & Ben Warwick, *Introduction*, in *TEMPORALITIES*, *supra* note 10, at 1.

¹² Mary H. Hansel, *From Crisis to Quotidian: Countering the Temporal Myopia of Jus Cogens*, in *TEMPORALITIES*, *supra* note 10, at 195, 196, 210.

¹³ McNeilly & Warwick, *supra* note 11, at 8.

¹⁴ *Id.* at 10.

edited volumes they do not go further to offer an integrative, cross-cutting account of the lessons derived and the work needed, moving forward, at the interface between time and international law.

Against this backdrop, this essay strives to place the valuable discussion of time and international law undertaken in *Narratives* and *Temporalities* in a wider temporal context; examine how key temporal patterns and concepts identified in the two books feed into the challenges international law is currently facing; and point to some alternative temporal approaches that could serve international law at this crucial stage for both the discipline and the world. To these ends, Part II briefly positions the investigation of time and international law in our unusual moment in world history, a moment of accelerated transformation in which international law and institutions are much needed but themselves experiencing a period of turmoil. Part III analyzes dominant temporal paradigms in international law as gleaned from the two books, showing how these paradigms subtly skew the discipline and weave into the vehement criticisms leveled against it. Drawing the main lessons emerging from this analysis, Part IV concludes with a preliminary discussion of potential trajectories along which international law may recalibrate its temporalities so it can stand up to the challenges presented to the world and the discipline at this moment and to those challenges yet to come.

II. WHY TIME AND INTERNATIONAL LAW NOW?

A. *Our Moment in Time*

We live at an unusual period that involves an extraordinary amount and an accelerated rate of change.¹⁵ Compared to the past, the present era is remarkable in that every decade we live through sees an extremely unusual number and pace of technological, environmental, economic, and social changes.¹⁶ Thus, the rate of technological progress over the past century is unprecedented in human history and this pace continues to increase, especially in areas such as communications, artificial intelligence, biotechnology, and space exploration.¹⁷ In the environmental domain, too, significant changes in climate, the biosphere, or the supply of natural resources are happening on timescales that measure in decades, a pace much faster than the one exhibited throughout the geological past.¹⁸ And not only does technological and environmental change unfold more rapidly; rates of demographic change, geopolitical power shift, and economic growth, for example, are quickening as well.¹⁹ Under such conditions of accelerated change, the future is becoming increasingly less like the past and, as Jaye Ellis in *Narratives* underscores, the “relevance of accumulated wisdom and experience is called into doubt.”²⁰ Moreover, when the rate of change accelerates, the time available for

¹⁵ WILLIAM MACASKILL, *WHAT WE OWE THE FUTURE: A MILLION YEAR REVIEW* 26–28 (2022). On social acceleration, see HARTMUT ROSA, *SOCIAL ACCELERATION: A NEW THEORY OF MODERNITY* (2013).

¹⁶ MACASKILL, *supra* note 15, at 26–28.

¹⁷ Francois Retief et al., *Global Megatrends and Their Implications for Environmental Assessment Practice*, 61 *ENVTL. IMPACT ASSESSMENT REV.* 52, 54 (2016).

¹⁸ Martin Rees, *Navigating the Next Century's Challenges*, in *THE LONG VIEW* 29, 41 (Natalie Cargill & Tyler M. John eds., 2021).

¹⁹ *Id.* at 30–31; MACASKILL, *supra* note 15, at 27.

²⁰ Jaye Ellis, *Change and Adaptation in International Environmental Law: The Challenge of Resilience*, in *NARRATIVES*, *supra* note 4, at 357, 361.

comprehension, deliberation, and intervention is significantly reduced,²¹ thus requiring new modes of thinking, planning, and regulating through time and into the future.

However, it is not merely the rapid pace of global change that makes this period unusual but also its magnitude and wide-ranging implications, with some evolving changes having the potential to positively or negatively impact the whole course of the future.²² Thus, many positive social, scientific, and technological trends currently underway may generate enormous value in the future by enabling humanity to cure difficult diseases or ensure food and energy security, to name a few examples.²³ At the same time, evolving threats, such as those associated with advanced artificial intelligence, engineered pathogens, biodiversity loss, or rising nuclear powers may put this potential at risk, by threatening to curtail positive trends and by creating unprecedented disvalue or even endangering the very future.²⁴

The scale, depth, and accelerated pace of global changes characterizing our era, commentators assert, mean that we are now at a critical point in time where we can meaningfully affect how these changes unfold in the coming decades and beyond.²⁵ The world's future depends to a considerable extent on the actions we take and choices we make today. And while we do not yet know exactly what problems we will face and when, there are some challenges that we can predict and, despite lingering uncertainty, guard against them and ensure that preparedness for them is properly resourced, regulated, and coordinated.²⁶ Indeed, it is argued, if there is one lesson that the mounting climate crisis teaches us, it is that “things happen fast . . . [a]nd, before you know it, they're out of control”; hence, the time for thinking about new challenges is “when there is still some chance at getting a handle on them.”²⁷ Crucially, we are currently at such “a moment of great plasticity,” where many of the global challenges and developments lying ahead are still malleable and can take one of many forms, so that change could be effectuated in a way that produces a positive long-term trajectory for the world.²⁸

International law and institutions, in turn, can and should play an important role in shaping the future's path in a fast-changing world. This is due to the inherently global nature of the pressing challenges on the horizon and the fact that most of the ways to reduce the negative and increase the positive effects of these challenges require coordinated collective action on a global scale, which may be facilitated through international law and institutions. As we now turn to elaborate, however, this critical need for global collective action in a world marching at an accelerated tempo arises at a time when international law and institutions are experiencing grave trials that may undermine their ability to address rapidly emerging global problems. And as we show thereafter, these grave trials are informed, in part, by international law's own temporalities, thus calling for some temporal rethinking and reorientation in the discipline.

²¹ *Id.*

²² MACASKILL, *supra* note 15, at 41.

²³ Christopher Winter et al., *Legal Priorities Research: A Research Agenda* 15 (2021), at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3931256.

²⁴ *Id.* at 15–16.

²⁵ MACASKILL, *supra* note 15, at 27–28.

²⁶ *Id.* at 6–7.

²⁷ Interview with Bill McKibben, cited in *id.* at 43.

²⁸ *Id.* at 40–43.

B. *International Law at a Time of Grave Trials*

As many have observed, the international legal order nowadays stands at “a particularly fractious juncture in history: a moment when the modern internationalist vision of multilateral cooperation and global governance is widely understood to be under assault and unravelling.”²⁹ In view of various epochal health, security, environmental, and economic developments, scholars, governments, and other actors have voiced growing skepticism about the capacity of international law and institutions to fulfill their promise of promoting greater prosperity, security, and stability and to tackle complex transnational problems.³⁰ The recent experience with COVID-19 is illustrative, revealing a growing drift toward protectionist, unilateral national responses in the face of the failure of international law and institutions to mitigate the spread of the fast-moving pandemic and to deliver a timely and effective global response.³¹ Other developments, like the wars in Ukraine and Gaza, have made the normative, structural, and political vulnerabilities of international law and institutions all the more apparent, raising further doubts as to whether, in their current modus operandi, they are well-versed and temporally fit to catch up with the rapidly changing global realities and the challenges they bring along.

In tandem with such misgivings about international law and institutions and their fitness-for-purpose under the prevailing global conditions, additional forces are currently at play that fundamentally challenge the effectiveness and legitimacy of the liberal international legal order, arguably pushing it toward an inflection point. Notable among these forces is the recent wave of populist backlash against international law and institutions. Portraying the international legal establishment as an anti-democratic rule of technocratic “elites” alienated from the “people,”³² populist movements often call for disengagement from international legal regimes—e.g., trade, investment, immigration, and human rights³³—arguing that they ignore national interests, widen economic inequality, and diminish job security for the working class.³⁴ They also blame such regimes for imposing overly progressive norms that may “lead[] to the break-up of national cultures”³⁵ and undermine long-honored values and traditions.³⁶ In so attacking the international legal order and nurturing nostalgic

²⁹ Peter G. Danchin, Jeremy Farrall, Shruti Rana & Imogen Saunders, *The Pandemic Paradox in International Law*, 114 AJIL 598, 599 (2020); see also *IS THE INTERNATIONAL LEGAL ORDER UNRAVELING?* (David L. Sloss ed., 2022).

³⁰ For a concise presentation of this sentiment, see Daniel Bethlehem, *Project 2100—Is the International Legal Order Fit for Purpose?*, EJIL: TALK! (Nov. 29, 2022), at <https://www.ejiltalk.org/project-2100-is-the-international-legal-order-fit-for-purpose>.

³¹ Danchin, Farrall, Rana & Saunders, *supra* note 29; Sivan Shlomo-Agon, *Farewell to the F-word? Fragmentation of International Law in Times of the COVID-19 Pandemic*, 72 U. TORONTO L.J. 1 (2021).

³² Heike Krieger, *Populist Governments and International Law*, 30 EUR. J. INT'L L. 971 (2019); Eric A. Posner, *Liberal Internationalism and the Populist Backlash*, 49 ARIZ. ST. L.J. 795 (2017).

³³ See, e.g., Erik Voeten, *Populism and Backlashes Against International Courts*, 18 PERSP. POL. 407 (2020); Janne E. Nijman & Wouter G. Werner, *Populism and International Law: What Backlash and Which Rubicon?*, 49 NETH. Y.B. INT'L L. 3 (2018); Philip Alston, *The Populist Challenge to Human Rights*, 9 J. HUM. RTS. PRACTICE 1 (2017).

³⁴ Peter G. Danchin et al., *Navigating the Backlash Against Global Law and Institutions*, 38 AUSTRALIAN Y.B. INT'L L. 33, 36 (2020).

³⁵ Anne Orford, *The Crisis of Liberal Internationalism and the Future of International Law*, 38 AUSTRALIAN Y.B. INT'L L. 3, 12 (2020).

³⁶ THORSTEN WOJCZEWSKI, *THE INTER- AND TRANSNATIONAL POLITICS OF POPULISM: FOREIGN POLICY, IDENTITY, AND POPULAR SOVEREIGNTY* 143–203 (2023).

sentiments, populists thus often turn to temporal argumentation and rhetoric, suggesting that “the nation’s present is in peril, with answers to its future lying in its past.”³⁷ They wish to revive “a bygone era when borders were watertight” and global norms and institutions had less influence on domestic affairs.³⁸

In addition to such populist forces, the liberal international legal order is also being challenged by a range of post-colonial, feminist, and other critical voices depicting international law as a regime of political and economic domination that sustains the subordination of non-Western countries, women, Indigenous populations, LGBTs, and other marginalized groups.³⁹ This it does despite its much hailed promise for equality and universal freedom, nurtured in particular by IHRL.⁴⁰ Seeking to unveil international law’s subtle modes of domination and to deconstruct its myth of universalism and equality, these critics disclose how imperial and other exclusionary practices from the past are transmuted into international rules and institutions in ways that lead them to downplay the interests of weaker states and populations in the present.⁴¹ Amidst this growing discontent with the international legal order, recent years have also seen the withdrawal of some developing states from international regimes and institutions (e.g., the International Criminal Court and International Centre for the Settlement of Investment Disputes (ICSID)) that allegedly perpetuate past hierarchies and exploitation⁴²—suggesting that on this front too, opposition to international law is often imbued by temporal notions and reasoning.

It follows, then, that international law, on its various regimes and institutions, currently faces significant challenges and attacks from different directions, which put its effectiveness, resilience, fairness, and legitimacy to the test. And although criticism and pushback along these lines are nothing new, this moment of backlash and rupture in international law “seems to differ from other periods of . . . contestation” in its “scale and intensity.”⁴³ Indeed, some assume that “we have reached a watershed moment in the evolution of the . . . rules-based international order.”⁴⁴ Significantly, while many commentators have sought to better understand this moment, they have hardly attended to the temporal elements that contribute to the misgivings and criticisms culminating at this critical juncture. However, as insinuated in this part of the essay, and as detailedly demonstrated in the next part in dialogue with *Narratives and Temporalities*, some of the temporal paradigms and patterns ingrained in

³⁷ Iza Ding, Dan Slater & Huseyin Zengin, *Populism and the Past: Restoring, Retaining, and Redeeming the Nation*, 56 *STUD. COMP. INT’L DEV.* 148, 149 (2021).

³⁸ Danchin et al., *supra* note 34, at 36.

³⁹ See, e.g., Antony Anghie, *Rethinking International Law: A TWAIL Retrospective*, 34 *EUR. J. INT’L L.* 7 (2023); QUEERING INTERNATIONAL LAW: POSSIBILITIES, ALLIANCES, COMPLICITIES, RISKS (Dianne Otto ed., 2018); SUNDHYA PAHUJA, *DECOLONISING INTERNATIONAL LAW: DEVELOPMENT, ECONOMIC GROWTH AND THE POLITICS OF UNIVERSALITY* (2011).

⁴⁰ See, e.g., RATNA KAPUR, *GENDER, ALTERITY AND HUMAN RIGHTS: FREEDOM IN A FISHBOWL* 153 (2018); STEPHEN HOPGOOD, *THE ENDTIMES OF HUMAN RIGHTS* (2013).

⁴¹ Luis Eslava, Michael Fakhri & Vasuki Nesiiah, *The Spirit of Bandung*, in *BANDUNG, GLOBAL HISTORY, AND INTERNATIONAL LAW: CRITICAL PASTS AND PENDING FUTURES* 3 (Luis Eslava, Michael Fakhri & Vasuki Nesiiah eds., 2017).

⁴² See, e.g., Antonius R. Hippolyte, *ICSID’s Neoliberal Approach to Environmental Regulation in Developing Countries: Lessons from Latin America*, 19 *INT’L CMTY. L. REV.* 401, 437–40 (2017).

⁴³ Orford, *supra* note 35, at 7.

⁴⁴ David L. Sloss, *Introduction: Preserving a Rules-Based International Order*, in *IS THE INTERNATIONAL LEGAL ORDER UNRAVELING?* 1 (David L. Sloss ed., 2022).

the thinking, development, and operation of international law, while often invisible, also play a role in the grave trials this legal system has come to face. Untangling these temporalities and their limitations, we argue, can provide international law with valuable analytical lenses to deal with its loaded past, navigate through its contested present, and enhance its ability to address complex global problems lying in the future.

III. UNTANGLING INTERNATIONAL LAW'S TEMPORALITIES

International law, as noted, is often presented as temporally neutral, with time constituting merely a basic dimension of the physical world within which this legal system is naturally situated.⁴⁵ However, as *Narratives* and *Temporalities* aptly illustrate, international law is in fact imbued by temporal frameworks and patterns with far-reaching operative, normative, and distributive implications. In what follows, we recount some prominent temporal paradigms featured in international law as revealed by the two books under discussion. We highlight key limitations associated with these temporal paradigms and their underlying assumptions, showing how they inform contemporary critiques directed at international law and risk rendering the discipline temporally unfit at this critical moment in time.

A. *Linearity of Time*

Recounting international law's temporal modalities through *Narratives* and *Temporalities*, linearity of time soon reveals itself as the dominant temporal paradigm in mainstream international legal practice and thinking. Within this paradigm, Van der Ploeg and Pasquet note, international law is understood to move in a unidirectional, incremental fashion, "progressive[ly] unfolding through clearly identifiable and separable past, present and future."⁴⁶ Inspired by modern Western thinking, the linear paradigm assumes that through its gradual and chronological development along successive events, international law essentially brings about constant improvement over time.⁴⁷ The formation, implementation, and operation of international legal norms and mechanisms, according to this view, is portrayed as an accumulated process of bettering the present and future in light of past failures; a process of "unstoppable progress" achieved through "linear regeneration," as Bérénice Schramm puts it.⁴⁸

Through their contributions, *Narratives* and *Temporalities* point to the various developmental, operational, rhetorical, and conceptual dimensions along which the linear temporal paradigm is manifested in international law. Thus, for example, focusing on the evolution of the law on forcible displacement, Rob Grace shows how the linear paradigm is featured in the step-by-step development of international legal frameworks over long periods of time through the piecemeal creation and interpretation of international norms, the gradual expansion of the norms' substance and scope, and the incremental "hardening" of soft and informal norms.⁴⁹

⁴⁵ Van der Ploeg & Pasquet, *supra* note 5, at 4–6.

⁴⁶ *Id.* at 19.

⁴⁷ León Castellanos-Jankiewicz, *Overlooking Continuity: National Minorities and "Timeless" Human Rights*, in *NARRATIVES*, *supra* note 4, at 421, 424–27.

⁴⁸ Bérénice K. Schramm, *Interstellar Justice Now: Back to the Future of International Law*, in *NARRATIVES*, *supra* note 4, at 71, 80–81.

⁴⁹ Rob Grace, *Incrementalism in International Lawmaking: The Development of Normative Frameworks of Protection for Forcibly Displaced Persons*, in *NARRATIVES*, *supra* note 4, at 135.

Such incrementalism in international law's development, according to Grace, allows its makers and operators to slowly build consensus and reach understandings around contested issues in the politically charged international system.⁵⁰

Beyond this incrementalism in international law's development and operation, the linear temporal paradigm, as Tommaso Soave underscores, is vividly reflected in the discipline's "routine rhetoric . . . of perpetual improvement."⁵¹ This "rhetoric of progress, . . . so perfectly embedded in international law's everyday life," is mirrored in "[m]any widely known international instruments [that] justify the [norms] they bring about by way of opposition to a darker, unregulated past."⁵² This narrative of progress, Anthony Langlois adds, is particularly noticeable in IHRL, whose history is often told as one of "hard fought gains" won along the path of linear time, with "one incremental gain happening after another."⁵³ Such legal gains, Paul O'Connell similarly notes, are commonly celebrated as a story of movement in IHRL from a "barbarous past" to a brighter human rights future, a story that "leans heavily on a progressive, forward moving teleology."⁵⁴

Hence, as Julia Dehm concludes, the linear temporal paradigm carries with it a vigorous "celebratory teleological account" of universal and uniform "progress in and through law."⁵⁵ In line with this account, international law is often conceptualized as moving toward some exalted "teleological destination . . . be it world peace, the triumph of human rights, economic prosperity, or the very establishment of the international rule of law itself."⁵⁶ In this respect, the linear temporal paradigm may be understood to imbue international law with an intrinsic sense of meaning and purpose, providing direction and a source of motivation for its actors.

Yet, while the linear paradigm provides international law with "a clear teleological horizon . . . [and] a sequential trajectory" by which to orient its development and operation, this paradigm is considered by various contributors in *Narratives* and *Temporalities* to be "partial, biased, incomplete or otherwise flawed."⁵⁷ One such notable flaw concerns the step-by-step evolution of international law entailed by this paradigm, which threatens to make the discipline unsynchronized with real-life developments and needs. Indeed, Grace notes, because of "the gradual, incremental process of international lawmaking," "international law often lags behind reality."⁵⁸ This problem of misalignment between international law's linear temporality and social and physical reality, we argue, becomes especially acute in our accelerated era, which is marked by ever more rapid, non-incremental global changes. As Ellis exemplifies in the context of international environmental law, while "the pace of . . . ecological change has accelerated rapidly in recent decades," the law's pace of "adaptability and innovation . . . has not kept up," so that time is now "running out to address problems such as

⁵⁰ *Id.* at 137.

⁵¹ Tommaso Soave, *The Politics of Time in Domestic and International Lawmaking*, in *NARRATIVES*, *supra* note 4, at 153, 166.

⁵² *Id.* at 165.

⁵³ Anthony J. Langlois, *Queer Temporalities and Human Rights*, in *TEMPORALITIES*, *supra* note 10, at 159, 164.

⁵⁴ Paul O'Connell, *Human Rights Futures*, in *TEMPORALITIES*, *supra* note 10, at 211, 215–16.

⁵⁵ Julia Dehm, *The Temporalities of Environmental Human Rights*, in *TEMPORALITIES*, *supra* note 10, at 33, 36, 44, 52.

⁵⁶ Soave, *supra* note 51, at 153, 166.

⁵⁷ Van der Ploeg & Pasquet, *supra* note 5, at 19.

⁵⁸ Grace, *supra* note 49, at 136.

biodiversity loss and climate change.”⁵⁹ Notably, since this asynchrony between the temporality of global problems and the timescales of international law is not expected to recede but rather to exacerbate in future years, international law’s “normative capacity” might be increasingly challenged.⁶⁰

The linear temporal paradigm, however, risks more than leaving some future global challenges inadequately regulated. With its emphasis on unidirectional progress from a dark past to a separate, enlightened present and future, this paradigm at times leaves the past behind, thereby allowing past wrongs, such as those associated with colonial domination and gender discrimination, to remain unsettled and unaccounted for.⁶¹ Furthermore, by dismissing the past and its interconnectedness with the present, the linear paradigm serves to mask the continuous effects of past injustices on the lives of many today and to conceal the ways in which contemporary international law sustains these prolonged effects.⁶² As Philipp Kastner states when discussing dealing with the past in international peacemaking: “the dominant, linear Western understanding of time” often leads international law to dismiss wrongdoings from the distant past and to treat them as irrelevant to the present and the future, although such grievances can be seen as “constituting some of the root causes of many armed conflicts in the Global South, and for which the Global North and, to some extent, international law itself might be responsible.”⁶³

Notably, in so illuminating how the linear paradigm allows past injustices to project onto the present, critics further point to the alleged fallacy of this paradigm’s overarching narrative of universal and uniform progress, suggesting that the incremental evolution of international law does not necessarily entail progress over time, or, as is often the case, that it brings progress for some but not for others. As Langlois exemplifies in his critique of IHRL’s “simple progress narrative” in the context of LGBT rights: if we “chang[e] our spatial focus from the West or North to the whole globe,” we see that “the ‘history of injury’ . . . [of] gender diverse people is [still] very much a present of marginalisation and abjection” in many quarters of the world.⁶⁴ Dehm similarly highlights the harmful effects of international law’s narrative of progress in the environmental domain. She argues that “the continual reproduction of such myths of progress presents a barrier to producing viable solutions to increasing inequality” between those who benefit from global economic growth and those who suffer from the environmental destruction it has caused, particularly in the Global South.⁶⁵ Finally, from a quite different perspective, populist critics likewise contest international law’s narrative of universal progress.⁶⁶ In their view, international legal developments promoting economic integration and immigration, among others, often induce regression rather than progression in workers’ wages and job opportunities,⁶⁷ whereas the universalist agenda advanced by IHRL

⁵⁹ Ellis, *supra* note 20, at 364.

⁶⁰ Klara Polackova Van der Ploeg, *International Law Through Time: On Change and Facticity of International Law*, in NARRATIVES, *supra* note 4, at 313, 328.

⁶¹ Kay Lalor, *Gender, Temporality, and International Human Rights Law: From Hidden Histories to Feminist Futures*, in TEMPORALITIES, *supra* note 10, at 103, 114–15; Philipp Kastner, *Peace Agreements Between Rupture and Continuity: Mediating Time in International Law*, in NARRATIVES, *supra* note 4, at 405, 418–19.

⁶² Lalor, *supra* note 61, at 104.

⁶³ Kastner, *supra* note 61, at 418.

⁶⁴ Langlois, *supra* note 53, at 165, 175.

⁶⁵ Dehm, *supra* note 55, at 44–45.

⁶⁶ Krieger, *supra* note 32, at 976–78.

⁶⁷ Stefanie Walter, *The Backlash Against Globalization*, 24 ANN. REV. POL. SCI. 421, 428–29 (2021).

undermines the ability of states to govern according to their local values and traditions as grounded in their national past.⁶⁸

Taken together, this thread of critiques more generally spotlights the rigidity of international law's linear temporality. By setting a singular, universal, and unidirectional trajectory of movement through time for international law, this paradigm sometimes leads the discipline to overlook the multiple temporal rhythms and trajectories of its regulated subjects and phenomena. As shown below, this tendency to flatten the "plural temporalities of our 'inherently multitemporal' world"⁶⁹ is also featured in other temporal patterns and modalities at work in the international legal sphere.

B. *Crisis-Orientation and Reactiveness*

Resonating with the linear paradigm and its emphasis on the gradual, sequential development of international law is another set of temporal frameworks, grounded in the event- or crisis-oriented approach around which the international legal discipline is modeled.⁷⁰ As Bérénice Schramm in *Narratives* and Mary Hansel in *Temporalities* write, both of them drawing on Hilary Charlesworth,⁷¹ international law since its emergence has paid inordinate attention to events and situations characterized as crises.⁷² "[S]tarting with the great crisis leading to the Westphalia treaty and building up on two other major world conflicts and . . . similar, humanitarian catastrophes in the twentieth century and until now,"⁷³ international law has routinely developed in response to specific incidents and challenges.⁷⁴ International law, as Schramm notes, "is therefore reactive, if not reactionary," in its governance of international affairs,⁷⁵ often addressing *ex-post* observed problems and shortcomings.

Recounting the temporalities of change in international law, Van der Ploeg similarly argues that "the normative responsiveness of international law to social reality" and to socially significant phenomena "has defined the functioning and transformations of international law throughout its history."⁷⁶ This focus on observed occurrences to which international law must react, she asserts, importantly works to safeguard the discipline's efficacy and legitimacy by ensuring its close connection to, and grounding in, real-life needs and realities.⁷⁷ This crisis-oriented temporal discourse, Soave adds, also constitutes "one of the most popular techniques to promote fast regulatory action . . . as it strikes close to the guts of the public and helps break the ranks of the opposition."⁷⁸ Moreover, in line with the linear paradigm, such a focus on crises provides an engine for international law's incremental development and

⁶⁸ *Id.* at 429–30.

⁶⁹ Dehm, *supra* note 55, at 65.

⁷⁰ Hilary Charlesworth, *International Law: A Discipline of Crisis*, 65 MOD. L. REV. 377 (2002).

⁷¹ *Id.*

⁷² Schramm, *supra* note 48, at 71, 90; Hansel, *supra* note 12, at 196–97.

⁷³ Schramm, *supra* note 48, at 90.

⁷⁴ Michal Saliternik & Sivan Shlomo-Agon, *Proactive International Law*, 75 UC L.J. 661 (2024).

⁷⁵ Schramm, *supra* note 48, at 90.

⁷⁶ Van der Ploeg, *supra* note 60, at 313, 320, 323.

⁷⁷ *Id.* at 323–24.

⁷⁸ Soave, *supra* note 51, at 161.

continual renewal over time,⁷⁹ while also “allow[ing] international lawyers the sense that their work is of immediate, intense relevance.”⁸⁰

Drawing upon these notions of immediacy and urgency, Hansel explains that crises are events and situations “when there is a perceived . . . dearth of time. Crises are characterised by . . . the urgent, the right now.”⁸¹ Hence, the temporal scheme that governs the crisis paradigm “is termed ‘emergency time.’”⁸² This temporal scheme, Hansel argues, plays a particularly critical role in IHRL.⁸³ It is responsible for IHRL’s peripatetic tendency to respond to “each crisis at the point of eruption and then abruptly move on to the next, once the emergency seems to be quelled.”⁸⁴ More fundamentally, this temporal scheme is central to how different international human rights are given value and meaning,⁸⁵ creating a hierarchy between civil and political rights—whose violations are usually associated with crises and which are thus endowed with an aura of urgency—and economic, social, and cultural (ESC) rights which are cast as quotidian, less exigent, and potentially deferrable.⁸⁶

This last observation regarding the latent normative work of the reactive, crisis-oriented temporal paradigm, in turn, insinuates to the “need to ‘provoke international lawyers . . . to think about time not just as functional, but as an analytical framework with which to examine international law.’”⁸⁷ When so used, as Schramm emphasizes, “various problematic crisis-related features of the discipline become manifest.”⁸⁸ To begin with, the reactive temporal scheme, by which international law evolves in response to sporadic incidents as they unfold in time, often results in the adoption of narrowly tailored, patchwork solutions,⁸⁹ which limit the discipline’s prospects for analytic progress so emphasized by its dominant linear paradigm. Similarly, international law’s patterns of ex-post reactions and adjustments to previously observed problems further exacerbate the law’s tendency to lag behind the social reality it seeks to regulate.

Yet, we argue, the reactive approach with its myopic focus on recent events further turns international law rather backward-looking, hindering its capacity to play an effective role in solving unfamiliar yet foreseeable problems that are yet to come. More concretely, this approach gives rise to international legal arrangements that are informed and shaped by yesterday’s crises, based on the assumption that past occurrences serve as good predictors of the future. But as Ellis points out, the acceleration of time characterizing our era “challenges the conception of legal rules as rooted in the knowledge and wisdom of the past and bearing capacity to shape the future.”⁹⁰ In such an accelerated world, where the future is increasingly less like the past, devising international rules and institutions primarily in light of past crises

⁷⁹ Charlesworth, *supra* note 70, at 377, 391.

⁸⁰ *Id.*

⁸¹ Hansel, *supra* note 12, at 200.

⁸² *Id.*

⁸³ *Id.* at 196–97.

⁸⁴ *Id.* at 200.

⁸⁵ *Id.* at 197.

⁸⁶ *Id.* at 197–98.

⁸⁷ Schramm, *supra* note 48, at 90.

⁸⁸ *Id.*

⁸⁹ Hansel, *supra* note 12, at 197.

⁹⁰ Ellis, *supra* note 20, at 357.

and experiences undermines the resilience and adaptability of international law in the face of novel, ever-more complex global challenges.

Beyond such limitations, critics claim that the crisis-oriented approach “impoverishes the discipline of international law” by obscuring deep structural issues of global justice that underpin everyday life.⁹¹ This is particularly notable, Hansel submits, in the field of IHRL, where the “absence of a crisis rubric makes everyday human rights concerns, including ESC rights and many feminist priorities, appear less urgent and less deserving of redress than human rights issues driven by crisis,” mostly civil and political rights.⁹² Hansel shows, for example, how *jus cogens* determinations prioritize norms linked to crisis and governed by emergency time (e.g., the prohibition on torture), while obfuscating and marginalizing quotidian issues, including ESC rights and gender-based discrimination that do not operate on emergency time.⁹³ Hence, she argues, teasing out and questioning the temporal assumptions on which IHRL is predicated “is a critical project in ensuring that systemic, quotidian issues are not marginalised by crisis.”⁹⁴

In a similar spirit, Schramm stresses the crisis model’s silencing and disempowering side effects with regards to the everyday impact of international law on vulnerable populations, particularly women and LGBTs. At the same time, she underscores the temporal model’s empowering effects with regard to the white male “heroes” from the Global North who generally constitute key actors in moments of international crises, carrying out urgent interventions in the name of international law and institutions.⁹⁵ This account of the crisis-oriented temporal scheme consequently makes clear how international law, by “regarding ‘crises’ as its . . . engine of progressive development . . . becomes simply a source of justification for the status quo.”⁹⁶ More generally, this account serves to illustrate how international law, through its underlying temporal paradigms and assumptions, may work to maintain existing power structures and hinder social change in a way that fuels current criticisms and backlash against the international legal order.

C. Short Time Horizons

Another temporal modality to be considered revolves around the “time horizons,” as Soave dubs it, with which international law and institutions conceive and formulate policy. That is, the short/long term perspective that international lawmakers and decisionmakers use when devising legal arrangements.⁹⁷ As Soave notes, different actors ascribe different values to near and distant interests, problems, and consequences, and orient their political preferences and demands through short- or long-term regulatory timeframes accordingly.⁹⁸

Reading closely through *Narratives* and *Temporalities*, several contributions reveal a somewhat elusive tendency of international law to focus in many occasions on near-term problems and

⁹¹ Charlesworth, *supra* note 70, at 377, 391.

⁹² Hansel, *supra* note 12, at 197.

⁹³ *Id.* at 203.

⁹⁴ *Id.* at 201.

⁹⁵ Schramm, *supra* note 48, at 90.

⁹⁶ Charlesworth, *supra* note 70, at 391.

⁹⁷ Soave, *supra* note 51.

⁹⁸ *Id.* at 157.

concerns, and thus to think and regulate through rather short time horizons, often to the neglect of matters of the far future or the distant past.⁹⁹ Thus, for example, the focus on here-and-now problems emerges from Van der Ploeg's discussion of the "facticity of international law—i.e., the normative responsiveness of international law to social reality"—which regularly leads international norms to "reflect the . . . concerns of *the day*."¹⁰⁰ The disciplinary inclination to work through short regulatory timeframes is further echoed in Dehm's discussion of environmental human rights, in which she suggests that international law, embedded as it is in the modern global economy, is "moored in the present and immediate."¹⁰¹ As such, its legal structures and arrangements are shaped through rather short timescales, which are often at odds with the expansive timescales of life and nature that stretch "from the distant past to the long-term future."¹⁰²

Governing through short-term regulatory timescales along these lines is clearly not without reason. And, indeed, it is also common in other governance structures,¹⁰³ most notably in domestic legal systems, where electoral cycles often dictate short-term regulatory timeframes.¹⁰⁴ Although international decisionmakers, as Soave notes, are less affected by the vagaries of national electoral cycles¹⁰⁵ (though they are not entirely immune to them), they too face a range of factors that may lead them toward short-termism. Among others, in an international setting with limited resources and budgets, it may not only be simpler but also more efficient for international regulators to focus on present-day concerns and to avoid spending resources on distant problems from the past or future that fall beyond their direct realm of perception and apprehension. For legitimacy reasons too, it may be more palatable for international lawmakers—who operate on shakier grounds of legitimacy than their national counterparts—to justify regulatory actions that are grounded in near-term problems as opposed to issues rooted in the remote past or the far (and uncertain) future. And such urge for near-termism may further intensify in the presence of populist forces seeking to limit international law to modest interventions that manage the present.¹⁰⁶ Finally, also contributing to the tendency to devise international legal arrangements through short time horizons is the discipline's fixation with crises and emergencies, which, as Hansel notes, "impel[s] 'an immediate protective reflex'" and results in short-term, quick-fix legal measures.¹⁰⁷ At the same time, however, as Hansel importantly highlights, this mode of governance is "afflicted by a form of temporal myopia," often leading international law to ignore the larger historical context and the past root causes of global problems, as well as to avoid "a sober quest for long-term solutions."¹⁰⁸ As a result, more than once the distant past and the long-term future are left at the margins of international law's regulatory timeframe.

⁹⁹ Though Soave seems to suggest that certain features of international law may make it more long-term oriented as compared to domestic legal systems heavily influenced by short election cycles. *Id.* at 165–67.

¹⁰⁰ Van der Ploeg, *supra* note 60, at 320–22 (emphasis added).

¹⁰¹ Dehm, *supra* note 55, at 35 (citing Benjamin Richardson).

¹⁰² *Id.*

¹⁰³ Alan M. Jacobs, *Policy Making for the Long Term in Advanced Democracies*, 19 ANN. REV. POL. SCI. 433 (2016); Halina Ward, *Beyond the Short Term: Legal and Institutional Space for Future Generations in Global Governance*, 22 Y.B INT'L ENV'T'L L. 3 (2011).

¹⁰⁴ Soave, *supra* note 51, at 163.

¹⁰⁵ *Id.* at 166.

¹⁰⁶ Krieger, *supra* note 32, at 996.

¹⁰⁷ Hansel, *supra* note 12, at 197, 200.

¹⁰⁸ *Id.* at 197, 200.

These temporal dynamics as they play out with respect to the remote past are aptly illustrated in Kastner's analysis of international peacemaking and transitional justice mechanisms. While international law requires post-conflict societies to establish responsibility for recently committed crimes, Kastner argues, its calls for accountability does not reach beyond that near-term past.¹⁰⁹ Within this narrow timeframe, international law consequently allows more distant forms of past injustices standing at the heart of many armed conflicts, "such as a colonial past or stark inequalities and exploitation," to be "forgotten, and amnestied," often to the detriment of the societies most affected by armed conflicts.¹¹⁰

A similar critical tone is apparent when we shift attention from the past to the future, as illustrated in a recent speech by the UN secretary-general, in which he denounced the "bias . . . for the short-term" and the lack of "long-term thinking" in the international arena, where "decisionmakers are hobbled by . . . a preference for the present," acting as if the "future is someone else's problem."¹¹¹ In today's reality, the secretary-general stressed, "[t]his near-term thinking is not only deeply irresponsible" but "self-defeating" and "immoral."¹¹² It is "irresponsible" because in an accelerated world, the short regulatory timeframe risks rendering international law ill-positioned to effectively tackle rapidly evolving global challenges. Indeed, the inadequate global response to COVID-19—an illustration of the insufficient preparation for a long-term threat about which experts had warned—has demonstrated the weaknesses of short-termism that left international law and institutions ill-prepared to what has befallen. The COVID-19 case further shows how short-termism can also be "self-defeating," making the global problems that eventually arise—problems previously seen as distant and uncertain—"more intractable, more divisive, and more dangerous," with the costs of last-minute response far exceeding the costs of early action and preparedness.¹¹³ Finally, in some circumstances, short-termism may also prove "immoral," as the high costs it imposes often do not spread equally around the world. As seen in COVID-19, while richer states were able to (unilaterally) maneuver in the absence of a coordinated international response, poorer states found themselves struggling in the universal scramble for medical supplies and were disproportionately affected by the global economic downturn.

It thus follows that the short time horizons often guiding international decision making have significant political and distributive consequences. For this reason, among others, the time horizons used to devise legal arrangements, Soave notes, "are never purely objective or purely technical: rather, they are the site of a fierce power struggle between the actors involved."¹¹⁴ Prevailing in this struggle—that is, imposing one's shorter or longer time perspective on others—"means securing authority over policy, establishing priorities" among competing problems and needs.¹¹⁵ The time horizon that prevails will then be "presented

¹⁰⁹ Kastner, *supra* note 61, at 418.

¹¹⁰ *Id.* at 418–19.

¹¹¹ UN Secretary-General's Briefing to the General Assembly on Priorities for 2023 (Feb. 6, 2023), at <https://www.un.org/sg/en/content/sg/speeches/2023-02-06/secretary-generals-briefing-the-general-assembly-priorities-for-2023>.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Soave, *supra* note 51, at 158.

¹¹⁵ *Id.*

as the sole rational way to address the governance issues at stake, thereby obscuring the underlying conflict and ‘naturalizing’ the position of the winners.”¹¹⁶

D. Timelessness

One last prominent temporal paradigm emerging from *Narratives* and *Temporalities*, particularly associated with IHRL, is that of timelessness. Within this paradigm, human rights are commonly depicted as timeless, or as “a-temporal, plastic, and useful at any time by anyone,” in the words of Stephen Young.¹¹⁷ Christos Marneros further adds that human rights as enshrined in international treaties and declarations and as enforced by international courts are often taken to be based on “eternal values” that “stand above or ‘out of time’” as indisputable truth.¹¹⁸ Similarly, Samuel Moyn concludes that “[m]ost regularly, human rights are considered as reflecting eternal moral truths about permanent human interests” and, as such, they are “rooted outside time.”¹¹⁹

By so evoking a sense of “timeless presence” and “temporal dislocation,” IHRL’s doctrine and discourse work to cast human rights as essentially incontestable and universal,¹²⁰ and as transcending both time and place.¹²¹ This conceptualization, in turn, is often assumed not only to entrench the normative force of human rights but also to underline their enduring relevance and eternal applicability across eras and cultures.¹²² Furthermore, the depiction of human rights as timeless may plausibly enhance the acceptance of the IHRL project since, as Juhana Mikael Salojärvi explains, such a temporalization that emphasizes the “ancient origins and . . . broad cultural basis” of human rights may give those rights “more legitimacy than if they are portrayed as a recent Western innovation.”¹²³

Despite its appeal and intuitiveness, the prevalent understanding of human rights as timeless is descriptively and normatively untenable, according to several authors in the two books. Thus, it is argued, human rights cannot be seen as timeless, or as immune from time, because “nothing human exists beyond time.”¹²⁴ Human rights exist in a world of “never-ending becoming”¹²⁵—a world of constant evolution and transformation where the only permanent fact is that “everything changes sooner or later.”¹²⁶ In such a world, international human rights norms, the social values informing them, and the mechanisms protecting them are all bound to be dynamic and evolving, and therefore should be seen not as static but rather as contingent and open to revision.¹²⁷

¹¹⁶ *Id.* at 170.

¹¹⁷ Stephen Young, *The Temporal Trap of Human Rights*, in *TEMPORALITIES*, *supra* note 10, at 67, 75.

¹¹⁸ Christos Marneros, *Against the Eternal Law(s) of Human Rights: Towards a Becoming-Chaotic of Time*, in *TEMPORALITIES*, *supra* note 10, at 179, 180–84.

¹¹⁹ Samuel Moyn, *Afterword: Between the Times*, in *TEMPORALITIES*, *supra* note 10, at 229, 231.

¹²⁰ Johns, *supra* note 3, at 54.

¹²¹ McNeilly, *supra* note 3, at 818.

¹²² Moyn, *supra* note 119, at 231.

¹²³ Juhana Mikael Salojärvi, *Human Rights in Time: Temporalization of Human Rights in Historical Representation*, in *NARRATIVES*, *supra* note 4, at 51, 53.

¹²⁴ Moyn, *supra* note 119, at 231.

¹²⁵ Marneros, *supra* note 118, at 180 (emphasis original).

¹²⁶ Moyn, *supra* note 119, at 231.

¹²⁷ *Id.*

A useful example of such change is provided by León Castellanos-Jankiewicz, who discusses the distinct conceptions of IHRL prevailing before and after WWII.¹²⁸ Whereas the main goal guiding the inclusion of rights and freedoms in international treaties during the League of Nations period was to provide collective protection to national minority groups, the human rights framework developed in the UN era has been predicated on individualist, dignity-based concepts.¹²⁹ According to Castellanos-Jankiewicz, although this development toward an enhanced protection of individual rights is not in itself a problem, the presentation of these rights as timeless in contemporary IHRL is nevertheless problematic. This not least because it “has sidelined the heritage of the interwar protection of minorities,” overlooked its contribution to the emergence of individual human rights, and undermined the status of group-based rights under IHRL.¹³⁰

Beyond its descriptive inaccuracy and potential weakening of certain human rights protections, however, the most problematic aspect of the perception of human rights as timeless and unvarying, Marneros observes, is that it forestalls critical thinking and leads to stagnation.¹³¹ When human rights and their underlying values are seen as eternal, indispensable, and indisputable, little room is left for serious reconsideration of existing IHRL norms and practices and for the initiation of significant reforms. Drawing on Gilles Deleuze, Marneros explains that in this situation, “any potential for human rights to create something innovative and radical that takes into account our temporalities as ongoing becomings vanishes.”¹³² Consequently, the most that can be expected under the timelessness paradigm is minor changes and adaptations to IHRL, whereas what is really needed at this moment in time, according to several critics, is “fundamental rethinking of the nature of the international human rights regime.”¹³³

In that spirit, Michele Tedeschini and Paul O’Connell argue that pressing global problems like economic inequality—problems giving rise not only to Marxist criticisms but also to “reactionary populism”—cannot be mitigated unless the ideological underpinnings of IHRL, which these authors identify as global capitalism, liberalism, and individualism, along with the temporal paradigms that sustain them, such as timelessness and the linear narrative of progress, are seriously revisited and radical actions are taken.¹³⁴ Along similar lines, Kathryn McNeilly maintains that in order to address the heated criticisms currently being leveled against IHRL and to retain its ability “to make a meaningful difference in contemporary contexts of financial collapse, changing patterns of migration, war, and terror,” the underlying temporalities of this international legal regime must be reimagined and reshaped.¹³⁵ Yet, while Tedeschini and O’Connell appear rather pessimistic about the prospects for fundamental ideological or temporal changes that will save IHRL from its “likely grim future,”¹³⁶ McNeilly presents a more optimistic vision for breaking through the current

¹²⁸ Castellanos-Jankiewicz, *supra* note 47.

¹²⁹ *Id.*

¹³⁰ *Id.* at 421–22, 435.

¹³¹ Marneros, *supra* note 118, at 183.

¹³² *Id.* at 184.

¹³³ O’Connell, *supra* note 54, at 227.

¹³⁴ Michele Tedeschini, *Human Rights After Fukuyama*, in *TEMPORALITIES*, *supra* note 10, at 142, 145–46; O’Connell, *supra* note 54, at 220–26.

¹³⁵ McNeilly, *supra* note 3, at 818, 822.

¹³⁶ O’Connell, *supra* note 54, at 212.

impasse in IHRL, suggesting that new temporal frameworks may be devised to foster “a productive future for this area of law in facilitating radical social change.”¹³⁷

We share McNeilly’s sentiment that the current backlash against IHRL does not necessarily mean that its time is up.¹³⁸ The current turbulent moment of contestation and rupture in IHRL, as in international law more generally, may suggest instead that the discipline is nowadays caught “between the times,” as Moyn puts it, with “new possibilities, not just new threats,” lying ahead.¹³⁹ Proceeding from this standpoint, in the subsequent closing part we draw on the main insights derived from the above analysis to start contemplating the work that can be done in and through the temporalities of international law in this state of in-betweenness.

IV. WHAT NOW FOR INTERNATIONAL LAW AND TIME?

Recounting time and international law in dialogue with *Narratives* and *Temporalities* and the dominant temporal paradigms they bring to the fore, several insights emerge, with important implications for international law going forward. First, the juxtaposition of the various temporal paradigms examined attests to the diverse temporalities at work in international law, the important functions they play in the discipline, and the multifaceted relations between them. These temporal patterns are at times interconnected, as in the case of the linear paradigm and the crisis-oriented approach, which both channel international law into a gradual mode of development through successive events as they unfold over time. At other times, the temporal paradigms seem to pull in different, perhaps even opposing, directions. Thus, while short-termism illustrates international law’s tendency to focus on here-and-now interests and concerns, the timelessness paradigm featured dominantly in IHRL suggests that certain interests and concerns are eternal and beyond time. The different temporal paradigms further uncover the complex relations that international law maintains with specific dimensions of time. For instance, when considering international law’s treatment of the past, one can see that international law utilizes recent past events and failures as a major source for informing and improving its present legal arrangements, yet at times it neglects to address the deeper root causes of such failures or to assign responsibility for them, thereby permitting its past to continue haunting its present.

Second, an integrative view of the temporal paradigms examined here foregrounds how—despite their plausible rationales and the useful functions they serve in international law—they jointly contribute to systemic problems in the discipline, some of which lie at the heart of the current moment of rupture it faces. Illustrative in this respect is the way the different temporal patterns operate together to exacerbate the problem of desynchronization between international law and real-life developments in an accelerated world, threatening to render this governance system unfit to tackle rapidly evolving global problems. Most notably, the linear paradigm with its slow-paced incremental legal progress, the crisis-oriented model with its reactive, backward-looking orientation, and the short-term modality with its limited regulatory time horizon all work to undermine international law’s resilience and

¹³⁷ McNeilly, *supra* note 3, at 817.

¹³⁸ *Id.* at 818.

¹³⁹ Moyn, *supra* note 119, at 232.

its ability to anticipate, prepare for, and adapt to future global changes. In so doing, these temporalities more generally risk undermining the critical role international law can play at this point in ensuring that global changes are effectuated in ways that enact a positive long-term future trajectory for the world.

Furthermore the various temporal paradigms gleaned from the two books are revealed as contributing to enduring problems of global injustice by steering international law's development and operation in ways that work to marginalize the past, present, and future experiences and interests of those less-well off in both the Global South and North. Thus, the linear paradigm, with its urge to move on from a gloomy past to a better future, at times leaves deep-rooted past grievances associated with such issues as colonialism, environmental exploitation, and global economic growth unresolved and unaccounted for. The crisis-oriented approach, in turn, with its focus on emergency time, tends to obscure many everyday inequalities and struggles experienced in the present by women, migrants, or the working class. Still, the short-term regulatory horizon of international law, while potentially harmful to all states and societies, is likely to be particularly detrimental to those lacking the resources to devise effective last-minute responses to future predicaments such as climate-induced disasters or engineered pandemics whenever they may materialize. At last, the timelessness paradigm—by portraying the values standing at the heart of IHRL and the international liberal order more generally as universal, eternal, and indispensable—allegedly forestalls critical thinking and hinders legal change that could possibly mitigate ongoing problems of global injustice, thereby further inflaming resentment and contestation against international law.

Third, and most critically, by so illuminating a range of different ways in which international law's temporal paradigms skew the discipline and feed into systemic problems of effectiveness, resilience, justice, and legitimacy, our reading of *Narratives* and *Temporalities* prompts a call for some temporal rethinking and reorganization in international law at this critical juncture. Such temporal work should seek, above all, to dissolve the rigidity and, at times, simplicity, featured in international law's dominant temporal frameworks and patterns. This, with a view to accommodating the plurality of rhythms with which different states and communities experience the world, as well as the multiple temporal trajectories along which diverse global problems and changes unfold. As Dehm stresses, such “an openness to multiple temporalities . . . is necessary to disrupt and resist” the tendency of law to “assimilate . . . temporalities” and “flatten ‘heterochrony’”¹⁴⁰—a tendency that must be countered if international law is to become more attuned to the world's increasingly complex political, social, technological, and ecological conditions.

Notably, this call for temporal reorientation by no means dictates binary solutions that completely repudiate the dominant temporalities that have so far prevailed in the discipline. Obviously, in a highly heterogenic international system, there would always be issues that should be addressed in a linear fashion through gradual consensus building, as much as there would clearly be circumstances where a focus on the short-term for the benefit of certain populations or interests would be entirely justified. As explained throughout this essay, however, it is more and more the case that such temporal paradigms sit at odds with the current state of the discipline and the world, and thus, in appropriate circumstances, they must be complemented and balanced more vigorously by other temporal approaches and tools.

¹⁴⁰ Dehm, *supra* note 55, at 65.

Along these lines, international law should, for example, be made more capable of following non-incremental temporal patterns that allow for legal change within a compressed period of time. This in order to ensure that international law is better aligned with the accelerated rate and magnified scale of emerging challenges such as advanced artificial intelligence, global demographic transformations, or commercial space exploitation, which are evolving exponentially rather than in slow, linear steps. Moving in this direction would require, first and foremost, greater flexibility, adaptability, and expediency in the creation, modification, and operation of international law, potentially achieved through simplified treaty amendment procedures, increased delegation to subsidiary decision-making bodies, and broader reliance on soft and informal lawmaking mechanisms, among other strategies.

Furthermore, based on the recognition that under current conditions of rapid change the future represents uncharted waters and cannot be adequately predicted based on past events,¹⁴¹ international law must more systematically supplement its reactive, crisis-driven, and backward-looking temporal paradigms with proactive and forward-looking approaches. In line with these approaches, international law should act in anticipation of future changes and needs, taking control of potential problems and developments. In this framework, it should be geared at preventing and preparing for relevant risks well in advance, as well as at seizing opportunities opened up by technological, social, demographic, and political changes in an increasingly interconnected world.

Finally and relatedly, international law should also work to appease its tendency to focus on near-term concerns and, where appropriate, extend its regulatory lens further into the future—decades and, in some areas (e.g., nuclear waste), even centuries ahead. Given the strong incentives and forces pulling toward short-termism in the international arena, extending international law's time horizon would require various reforms with a view to strengthening the long-term fit of international institutions, expanding international decision-makers' knowledge about long-term trends, and enhancing their motivation to account for future problems and needs. In that spirit, Frances Stewart, for example, has suggested the creation of a new UN agency designated with the task of representing the interests of future generations, alongside the reform of existing international organizations (such as the WHO and UNEP) so that they each have a unit focused on the future.¹⁴² Others have suggested the establishment of "futures research institutions" with the express purpose of information-gathering and information-sharing about issues of long-term importance,¹⁴³ or the creation of "futures labs" tasked with conducting future impact assessments of major policies and programs and promulgating periodical reports on long-term global megatrends and risks.¹⁴⁴

These interrelated temporal recalibrations thus all denote that a shift in mind and action should be effectuated whereby, as Ellis puts it, international law is to be "understood as a central component in planning for the future."¹⁴⁵ No doubt, such a shift is likely to face

¹⁴¹ Ellis, *supra* note 20, at 357–58.

¹⁴² Frances Stewart, *Overcoming Short-Termism: Incorporating Future Generations into Current Decision-Making*, 31 IRISH STUD. INT'L AFF. 171, 185 (2020).

¹⁴³ Cf. Tyler M. John & William MacAskill, *Longtermist Institutional Reform*, in THE LONG VIEW: ESSAYS ON POLICY, PHILANTHROPY, AND THE LONG-TERM FUTURE 45, 50–51 (Natalie Cargill & Tyler M. John eds., 2021).

¹⁴⁴ UN, *Our Common Agenda: Report of the Secretary-General 45* (2021), at https://www.un.org/en/content/common-agenda-report/assets/pdf/Common_Agenda_Report_English.pdf [hereinafter *Our Common Agenda*].

¹⁴⁵ Ellis, *supra* note 20, at 361.

international law and institutions with considerable challenges. That said, this shift is not only essential in today's world but, in some respects, also more feasible as we now have the capacity to plan and "think for the longer term more than ever before," with "[t]echnological, climate, and demographic modelling offer[ing] us empirically backed scenarios reaching until the end of the twenty-first century and beyond."¹⁴⁶ Clearly, our ability to so think and plan for the future is not unlimited, among other things, because our actions in the past and present have already generated certain effects that may constrain future possibilities.¹⁴⁷ Yet, the recognition that the future is not entirely open-ended, as Dehm notes in her discussion of climate change, only underscores "the importance and stakes of struggles" for building the best "still possible future" in "an already damaged planet."¹⁴⁸

In conjunction with the temporal recalibrations outlined above, the reorganization of time in international law may take place along additional dimensions, as elaborated by some of the authors in *Narratives* and *Temporalities*. In this vein, Hansel, for example, suggests introducing into the discipline a more historically oriented temporal approach referred to as "Time of Regression"—an approach that is "more retrospective" in nature and thus allows "greater consideration of root causes" of present injustices and inequalities embedded in the past.¹⁴⁹ Such a temporality may help alleviate the much criticized tendency of international law's linear paradigm and short-term modality to leave some past wrongs behind, neglected and unsettled. Tedeschini, for her part, discusses in the context of the impasse facing IHRL the somewhat related temporal theme of "reversal." This theme suggests a return to historical time before the "global spread of neoliberal economics" gave rise to "a skyrocketing . . . material inequality" and before human rights were "a set of tools wielded by powerful actors to preserve an imbalanced economic order."¹⁵⁰ As opposed to the narratives of linear universal progress and of timeless and indisputable human rights—two temporal paradigms that are claimed to mask and depoliticize the distributive effects of the existing international liberal order—the reversal temporality, it is stressed, calls for "[re]politicising distributional questions" so as to "bring about a more equitable order."¹⁵¹ Finally, in an attempt to counter the temporal bias of the crisis-oriented approach that marginalizes quotidian human rights issues, Hansel suggests embracing the temporality of "Time as Repetition."¹⁵² This "cyclical and infinitely recurrent" temporality spotlights the routines of everyday life and, as such, it is argued, could reorient the focus of IHRL from crisis and emergency time, which are closely associated with civil and political rights, toward everyday human-rights concerns related to the economic and social conditions of women and other marginalized groups.¹⁵³

These are only a few brief possible directions for rethinking some of the temporalities of international law. They thus should be taken as an invitation for further investigation into the multifaceted relationship between international law and time and the temporal recalibration required in the field at this moment in history. What is clear, however, when reading time and

¹⁴⁶ Our Common Agenda, *supra* note 144, at 44.

¹⁴⁷ Dehm, *supra* note 55.

¹⁴⁸ *Id.* at 63–64.

¹⁴⁹ Hansel, *supra* note 12, at 206.

¹⁵⁰ Tedeschini, *supra* note 134, at 150, 152.

¹⁵¹ *Id.* at 153.

¹⁵² Hansel, *supra* note 12, at 207–08.

¹⁵³ *Id.* at 208.

international law through *Narratives* and *Temporalities*, is that any such recalibration endeavor should be guided by a genuine commitment of international lawyers to embrace temporal complexity, a “refusal to remain static,” and, in that sense, an openness to some measure of temporal “chaos” in the discipline.¹⁵⁴

¹⁵⁴ Marneros, *supra* note 118, at 193.