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# Dystopian Dreams, Utopian Nightmares: AI and the Permanence of Racism

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# AI and the Permanence of Racism

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*This Essay draws connections between Octavia Butler's* Parable *series (*Parable of the Sower *and* Parable of the Talents*), HBO's* Westworld, *and Derrick Bell's* Faces at the Bottom of the Well: The Permanence of Racism *to highlight how the reconfiguration and transmutation of race through technological change is facilitated by corresponding shifts in legal doctrine, theory, policy, and practice. It takes the overlapping threads from these three sources, which struggle with the idea of change within larger systems of unavoidable, repetitive destruction, and ties them to the law's role in helping to shield race through the storms of change by being similarly nimble, flexible, and perseverant. The Essay identifies a theme found in both the selected Afrofuturistic works and in tech-centered legal doctrine, regulation, and theory that illuminate the law's role in reconstituting the fraught relationship between race and technology: the promise of utopia. The Essay explores this concept in the context of emerging debates on the function, utility, and harm of generative artificial intelligence (AI), which has been promoted as the latest tool toward a transhumanist future devoid of the trappings of humanity's biggest flaws. It proposes four emanating values, Ustopia, Sankofa, Data Justice, and Data Power, which should help guide advocacy, policymaking, and resistance in an increasingly AI dominated future. It ultimately concludes that an Afrofuturistic lens is not only important for understanding the potential harms of AI and developing regulatory frameworks but also necessary for imagining how such technologies could serve the interests of radical Black futures. The Essay contributes to a burgeoning literature using Afrofuturism—which situates the Black struggle in persistent yet continuously changing structural disparities and power relations—as an important departure point for expressing data precarity and reimagining new modes of data protection.*

TABLE OF CONTENTS

## Introduction

### *There Are Black People in the Future*[1]

There is a scene in Marlon James's novel *Black Leopard, Red Wolf* where the main character, Tracker, comes upon a startling discovery.[2] While on an adventurous journey with a small band of friends to save a child, whose fate may alter the world, they go to a seemingly marvelous and technologically advanced queendom, Dolingo.[3] Upon arrival, members of the group watch in awe as levers and pulleys operating various modes of transportation all seem to work on their own.[4] When they reach their accommodations, the doors open automatically.[5] When they go to sit down, chairs slide over for them to sit, and tables move accordingly.[6] It is the most advanced society they have ever encountered.[7] They even begin to joke about how the presence of this utopia could only be explained by some form of magic.[8] However, after spending a day there, Tracker begins to question why he has never seen any children, or even any slaves like in all the other kingdoms in the North and South.[9] While in his room, Tracker smells what he believes to be a person sweating behind one of the walls.[10] He and his friend begin tearing at the wall to open it. What they discovered nearly floored them. Behind the wall was a young boy who had his mouth stuffed, and "[e]very limb—legs, feet, toes, arms, hands, neck, and each finger—was tied to, and pulled, a rope."[11] It was never magic that made everything move, but rather an army of child slaves hidden behind the walls and beneath the floorboards.[12] While trying to figure out what to do with the child who likely spent most, if not all, their days behind the walls, the child escaped and leapt from the balcony to his death.[13]

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1. On March 3, 2018, a billboard designed by the artist Alisha B. Wormsley was erected in the East Liberty neighborhood of Pittsburgh. The billboard's message was simple: "THERE ARE BLACK PEOPLE IN THE FUTURE." *See* Sarah Rose Sharp, *Artist's Billboard Declaring "There Are Black People in the Future" Taken Down by Landlord*, Hyperallergic (Apr. 9, 2018), https://hyperallergic. com/436763/alisha-wormsley-the-last-billboard-pittsburgh-there-are-black-people-in-thefuture [https:// perma.cc/237J-XYUD]. These words caused a significant controversy and led to the building owner demanding that it be removed just weeks later. *See id.* The message was particularly poignant in the East Liberty neighborhood, which was once predominantly Black and has experienced significant forced removals and hypergentrification. *See id.* When asked about the project, Wormsley said that the work was in the spirit of Afrofuturism. *See id.*

2. Marlon James, Black Leopard, Red Wolf 433–34 (2019).

3. *See id.* at 409–12.

4. *See id.*

5. *Id.* at 422.

6. *See id.* at 423–24.

7. *See id.* at 410.

8. *See id.* at 418–23.

9. *See id.* at 426.

10. *Id.* at 434.

11. *Id.*

12. *See id.* at 435, 454–56.

13. *See id.* at 436–37.

As I watched video clips from the United Nations "AI for Good" Global Summit in Geneva, Switzerland, in July 2023,[14] I could not help but think about Tracker and the Dolingo magic. Nine generative AI-powered humanoid robots stood over an interview table at the press conference ready to answer questions.[15] As journalists proceeded to ask the robots very serious questions, like how to solve global poverty and inequality, while being dazzled and delighted by the robots' presumed ability to respond on their own,[16] it seemed as if something was missing. At a time when many countries around the world were engaged in critical debates about the best ways to regulate current and emerging AI technologies,[17] lining up robots in wigs and individual outfits appeared misguided, if not flippant, considering the U.N.'s hefty aim of reaching its sustainable development goals.[18] Even more, there was no significant discussion of how generative AI cannot work without the labor of thousands of often exploited and hidden workers[19] nor of how human biases in design and development continue to plague the deployment of generative AI technology.

Watching those robots reminded me of an epiphany I recently had one evening while catching up on the last season of HBO's *Westworld*. Several months had gone by since the season aired, and I was anxious to see how it all ended. The premise of the show is that we are in a not-so-distant future where humans have figured out how to create AI robots, called "Hosts," that are so well made that it is hard to tell who is human or not.[20] These Hosts are made to do and indulge in whatever humans desire, leading to them being subjected to violence, sexual exploitation, and all other sorts of deviant manipulation.[21] To secure this twisted arrangement, the Hosts are prevented from harming humans or even fully

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14. *See AI Robot Panel Tells UN Press Conference They Could Be Better World Leaders than Humans*, NBC4 WASH. (July 7, 2023, 2:24 PM), https://www.nbcwashington.com/news/national-international/ai-robot-panel-tells-un-press-conference-they-could-be-better-world-leaders-than-humans/3380816/ [https://perma.cc/YW86-QWZS].

15. *See id.*

16. *See id.*

17. *See* Mathew Ingram, *The World Grapples with How to Regulate Artificial Intelligence*, COLUM. JOURNALISM REV. (Nov. 2, 2023), https://www.cjr.org/the_media_today/artificial_intelligence_biden_order_uk_summit.php [https://perma.cc/AL22-B3ZG]; Adam Satariano, *Europeans Take a Major Step Toward Regulating A.I.*, N.Y. TIMES (June 14, 2023), https://www.nytimes.com/2023/06/14/technology/europe-ai-regulation.html; Theara Coleman, *How Countries Around The World Are Trying to Regulate Artificial Intelligence*, YAHOO (July 4, 2023), https://news.yahoo.com/countries-around-world-trying-regulate-090106330.html [https://perma.cc/5NT3-9Y46].

18. *See Transforming Our World: The 2030 Agenda for Sustainable Development*, U.N., https://sdgs.un.org/2030agenda [https://perma.cc/H2LW-RE4V] (last visited June 10, 2024).

19. Matteo Wong, *America Already Has an AI Underclass*, ATLANTIC (July 26, 2023), https://www.theatlantic.com/technology/archive/2023/07/ai-chatbot-human-evaluator-feedback/674805/; Adrienne Williams, Milagros Miceli & Timnit Gebru, *The Exploited Labor Behind Artificial Intelligence*, NOEMA (Oct. 13, 2022), https://www.noemamag.com/the-exploited-labor-behind-artificial-intelligence/ [https://perma.cc/5LB6-AVFH].

20. *See* Ashley Hoffman, *Everything You Need to Know About* Westworld, TIME (Sept. 30, 2016, 10:29 AM), https://time.com/4508809/westworld-hbo-premise/ [https://perma.cc/X98K-QGYQ].

21. *See id.*

grasping what is happening to them.[22] There is a corporation, Delos, that creates a sort of theme park, Westworld, where the wealthy can pay to have free reign over these Hosts in a staged environment modeled after the old American West.[23] The early storyline begins with one of the original engineers for Delos providing an update to the system of these robots, which allows them to become fully sentient beings, free to retaliate.[24] Everything slowly unwinds and explodes from there, leading to an all-out war between humans and Hosts in the ensuing seasons, setting up the last season where the roles are completely reversed—the Hosts run the world and the humans do their bidding.[25]

In one of the final episodes that I binge watched that evening, there was a scene where one of the main characters, William, who became a notoriously violent and obsessed guest within the theme park, is confronted by a Host that is made in his identical image.[26] The Host William says to the real William, "I'm not you."[27] The real William replies, "Well, you might as well be. You can't fix a few millennia of broken DNA with a . . . hard drive." Host William answers, "You're right." The real William smugly notes:

> Of course, I am. Civilization is just the lie we tell ourselves to justify our real purpose. We are not here to transcend. We are here to destroy . . . . You have a piece of me inside of you, and its spreading like a cancer. You can feel it running through your veins, infecting your mind, why you want answers from me. . . . [Y]ou *are* me.[28]

At the time I reacted like the now infamous meme of Leonardo DiCaprio, taken from the film *Once Upon a Time in Hollywood*, where he excitedly leans forward out of his seat to point at the television screen.[29] For years I had been watching *Westworld*, knowing that there was something drawing me to it, but I could never articulate the reason. That exchange revealed for me the overlap between my sci-fi interests and my academic pursuits as a race, technology, and privacy scholar. The show articulated one of the central claims in the field of critical race and digital studies: that technology is sociocultural, often encoding points

22. *See id.*

23. *See* Kim Renfro, *9 Hidden Easter Eggs from the* 'Westworld' *Website That Reveal More About the Park*, BUS. INSIDER (Oct. 24, 2016, 12:30 PM), https://www.businessinsider.com/best-westworld-website-easter-eggs-2016-10; *see also* Hoffman, *supra* note 20.

24. *See* Kim Renfro, *Everything You Need to Remember Before Watching* 'Westworld' *Season 2*, BUS. INSIDER (Apr. 19, 2018, 2:19 PM), https://www.businessinsider.com/westworld-season-one-recap-spoilers-2018-4.

25. Erik Kain, 'Westworld' *Should Have Ended Last Week, Before the Disappointing Season 4 Finale*, FORBES (Aug. 15, 2022, 2:29 AM), https://www.forbes.com/sites/erikkain/2022/08/15/westworld-should-have-ended-last-week-before-the-disappointing-season-4-finale/?sh=1bf8358d5487.

26. *See Westworld: Metanoia* (HBO broadcast Aug. 7, 2022).

27. *Id.*

28. *Id.* (emphasis added).

29. Justin Kirkland & Adrienne Westenfeld, *Celebrate Leonardo DiCaprio's Birthday with the Best of the Internet's Leo Memes*, ESQUIRE (Nov. 11, 2021, 4:10 PM), https://www.esquire.com/entertainment/a34643519/best-leonardo-dicaprio-memes/ [https://perma.cc/YE74-CPGE].

of bias, such as race, and reproducing existing inequities.[30] Thus, its critique of the idea that a technology could be developed in a way that is not shaped by those that design, develop, and deploy it resonated deeply.

The focus on inescapable, destructive desire and action upon the backdrop of a future with advanced technological change immediately made me think of Octavia Butler's *Parable of the Sower*,[31] the first book in Butler's *Parable* series, and Derrick Bell's *Faces at the Bottom of The Well: The Permanence of Racism*.[32] In Butler's book, her central character, Lauren Olamina, finds herself in a future chaotic world in which she has little control: a post-apocalyptic Los Angeles consumed with violence, inequality, powerful drugs, and new exploitative technologies.[33] To make sense of it, she develops a new spiritual philosophy, Earthseed, that centers on the one truth: "All that you touch You Change. All that you Change Changes you."[34] The irony is that while her world continues to change, the one thing that does in fact remain the same is humanity's drive for differentiation and destruction.[35] In Derrick Bell's book, through a series of creative essays, he highlights how race has found ways to remain despite all the other changes—"racism is an integral, permanent, and indestructible component of this society."[36] Thus, even when the contours of race shift and reassemble, like a

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30. There is a significant body of scholarship that examines connections between race and technology throughout history. Race has even been theorized as a form of technology, as a tool that wields the myth of biological difference to further the notion of White superiority. Ytasha Womack, author of *Afrofuturism: The World of Black Sci Fi & Fantasy Culture*, has referred to racialized bodies as "technological sites," where racism acts to dehumanize and subjugate Black people for the purpose of experimentation in furtherance of medical research and scientific innovation. *Afrofuturism and Black Literature*, NAT'L MUSEUM AFR. AM. HIST. & CULTURE, https://www.searchablemuseum.com/writing-new-worlds [https://perma.cc/QT9V-MDTP] (last visited June 11, 2024). In recent years, however, there has been a growing critical discourse on the intersection of race and advancing big-data technology. This multidisciplinary work has fused concepts from both critical race theory and critical tech theory into a cohesive canon, often referred to as critical race and digital studies. One of the significant claims that emerges from this work, that has and continues to challenge traditional technology studies, is that technology is sociocultural, often encoding race and reproducing existing inequities. *See generally, e.g.*, SAFIYA UMOJA NOBLE, ALGORITHMS OF OPPRESSION: HOW SEARCH ENGINES REINFORCE RACISM (2018); RUHA BENJAMIN, RACE AFTER TECHNOLOGY: ABOLITIONIST TOOLS FOR THE NEW JIM CODE (2019); SIMONE BROWNE, DARK MATTERS: ON THE SURVEILLANCE OF BLACKNESS (2015); CHANDA PRESCOD-WEINSTEIN, THE DISORDERED COSMOS: A JOURNEY INTO DARK MATTER, SPACETIME, & DREAMS DEFERRED (2021); ALONDRA NELSON, THE SOCIAL LIFE OF DNA: RACE, REPARATIONS, AND RECONCILIATION AFTER THE GENOME (2016); ANDRÉ BROCK JR., DISTRIBUTED BLACKNESS: AFRICAN AMERICAN CYBERCULTURES (2020); Desmond Upton Patton, Jamie MacBeth, Sarita Schoenebeck, Katherine Shear & Kathleen McKeown, *Accommodating Grief on Twitter: An Analysis of Expressions of Grief Among Gang Involved Youth on Twitter Using Qualitative Analysis and Natural Language Processing*, BIOMEDICAL INFORMATICS INSIGHTS, Apr. 3, 2018, at 1; CHARLTON D. MCILWAIN, BLACK SOFTWARE: THE INTERNET & RACIAL JUSTICE, FROM AFRONET TO BLACK LIVES MATTER (2019).

31. OCTAVIA E. BUTLER, PARABLE OF THE SOWER (Seven Stories Press 2016) (1993).

32. DERRICK BELL, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM (1992).

33. *See* Gloria Steinem, *Introduction to* BUTLER, *supra* note 31, at 5, 5–7.

34. BUTLER, *supra* note 31, at 13.

35. *See* Alix Olson, *Parables of Resilience: Promising Pessimism, Octavia Butler's 'Purpose', and the Making of Worlds*, FEMINIST THEORY, Oct. 17, 2023, at 1, 9–13.

36. BELL, *supra* note 32, at ix.

Rubik's Cube, the core remains unscathed. The connection of Bell's work to *Parable of the Sower* and *Westworld* is particularly salient in his chapter *The Space Traders*. Originally published in 1992, *The Space Traders* is set in the future in the year 2000, when extraterrestrial life forms visit Earth and propose a trade to the United States: hand over all of America's Black population in exchange for wealth and advanced technology.[37] Like the *Parable* series, *The Space Traders* takes readers on a journey where the Black central character wrestles with a future where past vows toward equality and justice have gone unfulfilled, technology betrays progress, and the suffering of the most vulnerable deepens to satisfy the thirst for privilege of others.

*Parable of the Sower* and *The Space Traders* are Afrofuturistic literary works. Afrofuturism challenges mainstream depictions of sci-fi futures devoid of Black life by not only declaring the presence of Black people but also situating them as beautiful architects and visionary developers of the future.[38] Yet Afrofuturistic literature, art, and media are just as dedicated to their political messaging as they are to aesthetic contributions.[39] Afrofuturism is often a vehicle for challenging current circumstances, elevating the importance of past histories' impact on the future, exploring science and technology as conduits for both power and peril, and leveraging the Black imaginary to inspire toward and construct liberatory futures.[40] As Lisa Yaszek notes:

> [Afrofuturistic historical recovery projects] demonstrate how African slaves and their descendants experienced conditions of homelessness, alienation, and dislocation that anticipate what philosophers like Nietzsche describe as the founding conditions of modernity. Thus, Afrodiasporic histories insist both on the authenticity of the black subject's experience in Western history and the way this experience embodies the dislocation felt by many modern peoples.[41]

Although Afrofuturism was coined in the 1990s, work as early as the mid-nineteenth century has used looking forward as a way to navigate and understand current realities of race in America.[42] Yet, in recent years, we have witnessed an

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37. DERRICK BELL, *The Space Traders*, *in* FACES AT THE BOTTOM OF THE WELL, *supra* note 32, at 158, 158–94.

38. *See, e.g.*, *id.* at 158–94; *see also* I. Bennett Capers, *Afrofuturism, Critical Race Theory, and Policing in the Year 2044*, 94 N.Y.U. L. REV. 1, 13 (2019); Taylor Crumpton, *Afrofuturism Has Always Looked Forward*, ARCHITECTURAL DIG.: CLEVER (Aug. 24, 2020), https://www.architecturaldigest.com/story/what-is-afrofuturism.

39. Lisa Yaszek, *Afrofuturism, Science Fiction, and the History of the Future*, SOCIALISM & DEMOCRACY, Nov. 2006, at 41, 42, 47.

40. *See id.* at 47–48.

41. *Id.* at 48 (citation omitted).

42. *See generally* MARTIN R. DELANY, BLAKE; OR THE HUTS OF AMERICA (Beacon Press 1970) (1859); Charles W. Chesnutt, *The Goophered Grapevine*, ATL. MONTHLY, Aug. 1887, at 254; E. A JOHNSON, LIGHT AHEAD FOR THE NEGRO (1904); W. E. BURGHARDT DU BOIS, *The Comet*, *in* DARKWATER: VOICES FROM WITHIN THE VEIL 253 (1920).

expansion in art, media, and literature in this genre.[43] While *Westworld* would not be considered an Afrofuturistic show, as noted earlier, its heavy use of racial justice themes and imagery in examining the impact of technological change in the future certainly puts it in conversation with such works. For example, the dehumanization, exploitation, and acts of resistance and rebellion by the Hosts map onto slave narratives in North and South America.[44] The fashioning of Hosts as property devoid of feeling or experiencing pain echoes enduring myths from enslavement that Black people hold higher tolerance levels for pain.[45] Even more, three of the show's most important and powerful formerly enslaved Hosts—Maeve, Bernard, and Charlotte—are portrayed by Black actors, aligning many of the overarching concepts connected to race to direct visual cues.[46] *Westworld* is particularly important because it is within the realm of new media, like Netflix's *Black Mirror*, that takes on the dystopian aspects of the pursuit of artificial general intelligence (AGI)—a level where AI systems can wield beyond-human intelligence, operate autonomously in dynamic environments, and tackle complex issues without the need for human input or assistance.[47]

Literature, television, and film have always been powerful tools for examining current and future social dilemmas and exploring perceptions of justice.[48] These mediums often influence one another as well. A few years after *The Space Traders* was published, its film adaptation, *Cosmic Slop*, aired on television.[49] A

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43. *See, e.g.*, Meagan Jordan, *Netflix's 'My Dad the Bounty Hunter' Is an Afrofuturist Marvel*, ROLLING STONE (Feb. 14, 2023), https://www.rollingstone.com/tv-movies/tv-movie-features/my-dad-the-bounty-hunter-netflix-animated-afrofuturism-black-family-1234675186/ [https://perma.cc/8537-MU9G]; *Netflix Debuts First Original African Animation Series, Set in Zambia*, CBS NEWS (July 20, 2023, 3:53 PM), https://www.cbsnews.com/news/netflix-first-african-animation-series-supa-team-4-lusaka-zambia/ [https://perma.cc/J6FG-RB6X]; Yoonji Han, *22 Afrofuturist Books That Reimagine Worlds from a Black Perspective*, BUS. INSIDER (Feb. 28, 2023, 7:45 AM), https://www.insider.com/22-afrofuturism-books-recommendation-black-writers-authors-science-fiction-fantasy-2023-2#imperium-in-imperio-by-sutton-r-griggs-1899-20; Christin Smith & Loren Saxton Coleman, *Ancestor is King: The Role of Afrofuturism in Beyoncé's* Black is King, 39 CRITICAL STUD. MEDIA COMMC'N 247 (2022).

44. *See* Emily O'Malley & Paul Reich, *"A Prison of Our Own Sins": The Unacknowledged Legacy of 19th Century Slave Narratives in HBO's* Westworld *and Hulu's* The Handmaid's Tale, POPULAR CULTURE REV., Winter 2021, at 1, 5–13; Aaron Bady, *"Westworld," Race, and the Western*, NEW YORKER (Dec. 9, 2016), https://www.newyorker.com/culture/culture-desk/how-westworld-failed-the-western; David Perry, *Can 'Westworld' Give Us New Ways of Talking About Slavery?*, PAC. STANDARD (June 14, 2017), https://psmag.com/news/can-westworld-give-us-new-ways-of-talking-about-slavery.

45. *See* HARRIET A. WASHINGTON, MEDICAL APARTHEID: THE DARK HISTORY OF MEDICAL EXPERIMENTATION ON BLACK AMERICANS FROM COLONIAL TIMES TO THE PRESENT 58 (2006).

46. *See* Alison Landsberg, *Post-Postracial America: On* Westworld *and the Smithsonian National Museum of African American History and Culture*, 14 CULTURAL POL. 198, 202 (2018); Sherryl Vint, *Long Live the New Flesh: Race and the Posthuman in* Westworld, *in* READING *WESTWORLD* 141, 147–148 (Alex Goody & Antonia Mackay eds., 2019).

47. *See* Scott McLean, Gemma J. M. Read, Jason Thompson, Chris Baber, Neville A. Stanton & Paul M. Salmon, *The Risks Associated with Artificial General Intelligence: A Systematic Review*, 35 J. EXPERIMENTAL & THEORETICAL A.I. 649, 649–50 (2023).

48. *See generally* Peter Robson, Guy Osborn & Steve Greenfield, *The Impact of Film and Television on Perceptions of Law and Justice: Towards a Realisable Methodology*, *in* LAW, CULTURE AND VISUAL STUDIES 1011 (Anne Wagner & Richard K. Sherwin eds., 2014).

49. Adam Sandler, *Cosmic Slop Space Traders*, VARIETY (Nov. 7, 1994, 11:00 PM), https://variety.com/1994/tv/reviews/cosmic-slop-space-traders-1200439467/ [https://perma.cc/3BES-LAX6].

film based on *Parable of the Sower* is currently in production,[50] and HBO's *Westworld* television series is a revival and adaptation of a 1973 film by the same name.[51] The uniqueness and resurgent appeal of Afrofuturistic content and concepts, particularly in literature, film, and art, are overwhelmingly evident.[52] Yet Afrofuturism's theoretical value as a vehicle for understanding the challenges with advancing technologies, surfacing the impact on marginalized communities, exploring themes in fiction that have real world corollaries, and visioning new ways to persist and resist may be more understated. Additionally, Afrofuturism's past and current contributions to law are overshadowed.

Literature, television, and film have had reciprocal effects on law and policy, as noted in scholarship drawing connections between law and literature, and law and film.[53] Central to the law's influence and legitimacy, as observed in case opinions, litigation strategy, and policymaking, is the power of narrative. As Bennett Capers notes, Afrofuturism is similarly "grounded in storytelling."[54] Thus an Afrofuturistic lens is an apt conduit for examining the relationship between race, technology, and the law. But more importantly, Afrofuturism is a critical framework for interrogating the stories that we tell ourselves about the social problems we seek to address through law and imagining different directions and possibilities.

When comparing and analyzing *Westworld* alongside *Parable of the Sower* and *The Space Traders*, one notable theme, common in Afrofuturistic work, emerges: the promise of utopia. The promise of utopia refers to how all three have elements of an ideal place for safety, comfort, and pleasure, which drive the main characters and their understanding of their worlds. However, these works, through incredible storytelling, satire, and vivid imagery, carefully demystify and deconstruct the idea of utopia. With great cynicism they reveal not only that promises of utopia are always illusory, but also, more dangerously, that utopian pursuits and appeals act to cloak more dystopian realities. It is often the attempts

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50. Monique Jones, *A24 Sets Octavia Butler's 'Parable of the Sower' As Film, Garrett Bradley to Direct*, BLAVITY (July 27, 2021), https://blavity.com/entertainment/a24-sets-octavia-butlers-parable-of-the-sower-as-film-garrett-bradley-to-direct [https://perma.cc/AEK5-LT8S].

51. *See* David A. Price, *How Michael Crichton's "Westworld" Pioneered Modern Special Effects*, NEW YORKER (May 14, 2013), https://www.newyorker.com/tech/annals-of-technology/how-michael-crichtons-westworld-pioneered-modern-special-effects.

52. *See* Sonia Rao, *The Resurgence of Afrofuturism Goes Beyond 'Black Panther,' to Janelle Monáe, Jay-Z and More*, WASH. POST. (Feb. 17, 2018, 8:00 AM), https://www.washingtonpost.com/news/arts-and-entertainment/wp/2018/02/17/the-resurgence-of-afrofuturism-goes-beyond-black-panther-to-janelle-monae-jay-z-and-more/; Patrice Gaines, *A Genre That Celebrates Black Futures Is Getting Its Due*, NBC NEWS (Mar. 24, 2023, 7:02 AM), https://www.nbcnews.com/news/nbcblk/genre-celebrates-black-futures-getting-due-rcna75466 [https://perma.cc/R9Y5-KJC9].

53. *See generally* Jane B. Baron, *Law, Literature, and the Problems of Interdisciplinarity*, 108 YALE L. J. 1059 (1999); James Boyd White, *Law as Language: Reading Law and Reading Literature*, 60 TEX. L. REV. 415 (1982); Shulamit Almog & Ely Aharonson, *Law as Film: Representing Justice in the Age of Moving Images*, 3 CAN. J.L. & TECH. 1 (2004); Guy Osborn, *Borders and Boundaries: Locating the Law in Film*, 28 J.L. & SOC'Y 164 (2001); DAVID A. BLACK, LAW IN FILM: RESONANCE AND REPRESENTATION (1999).

54. Bennett Capers, *Afrofuturism and the Law*, 9 CRITICAL ANALYSIS L., no. 1, 2022, at 1, 3.

by the more privileged in society to build utopian dreams that forcefully trap those on the margins of society in dystopian nightmares.

The remainder of this Essay explores the promise of utopia theme in the context of one of the most popular technological changes and innovations of our time, the emergence of generative AI, which has benefitted tremendously from utopian hype and promise, to the detriment of serious examination of its current and potential harms.[55] Part I highlights utopian themes found in the *Parable* series, *The Space Traders*, and *Westworld*, and reflects on how some of these themes can be identified in the mainstream narratives about the potential of generative AI. As a contrast, Part I also explores how these works brilliantly uncover dystopias lurking behind the veneer of utopian progress, and how their approach could be useful in elevating the dystopic aspects of AI despite intense marketing and political subterfuge. Part II proposes four values—Ustopia, Sankofa, Data Justice, and Data Power—that should act as a guide as we wrestle with what the utopian/dystopian dichotomy may mean for current regulation and future law and advocacy concerning AI.[56]

## I. THE BETWEEN[57]: UTOPIA AND DYSTOPIA IN AFROFUTURISM AND AI

*"These violent delights have violent ends."*[58]

The concept of utopia has probably existed as long as humans have been able to dream or contemplate a better life.[59] Utopias, as ideal places to live, eat, work, love, and flourish, are manifested through a dissatisfaction with current realities of life and pose essential questions about whether there are better ways to live and exist.[60] While there have been debates about how to draw distinctions between utopianism as social theory and utopia as a literary genre, and how to appropriately delineate its literary, communal, and ideological boundaries,[61] what is clear is that in utopian narratives people are often searching for,

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55. This Essay does not portend to be a complete interdisciplinary dive. Afrofuturism as a genre and a body of scholarly research is extensive. No short essay could truly make a cross-disciplinary leap between the law and Afrofuturism, nor between law, Afrofuturism, and utopianism. There are even limitations in the literary work being explored here, especially since Bell's and Butler's work are more known than many other older and more recent books in the genre. Instead, this Essay simply pulls upon threads observed in my own experience that forced me to make connections between my passion in reading and watching Afrofuturistic books and shows and my professional focus on the collision of advanced technologies and racial justice.

56. The Author intends to further explore a few other themes, namely "racial schizophrenia" and "racial capitalist exploit," in future work.

57. This Section is titled after Tananarive Due's book *The Between*. *See* TANANARIVE DUE, THE BETWEEN (1995). *The Between* is an Afrofuturistic psychological horror where the main character tries to save his family while slipping in and out of an alternate reality and being diagnosed by his psychiatrist as a latent schizophrenic. The main character struggles with deciphering which of the worlds that he moves between is real.

58. *Westworld* character, Bernard, quoting Shakespeare's *Romeo and Juliet*. Ashley Hoffman, *One Key* Westworld *Phrase to Remember When You Watch Season 2*, TIME (Apr. 18, 2018, 3:44 PM), https://time.com/5132547/westworld-season-2-theory/ [https://perma.cc/XXH6-EBMS].

59. *See* LYMAN TOWER SARGENT, UTOPIANISM: A VERY SHORT INTRODUCTION 4 (2010).

60. *See id.*

61. *See id.* at 4–8.

exploring, and attempting to build utopias.[62] The envisioning and conjuring of utopias is sociocultural, as it inherently draws upon ideas of what is right and wrong, where it is safe or unsafe, how to thrive or perish, and who is included or excluded from ideal worlds. In this way, utopias are also political constructions that articulate a preferred ordering and value-laden governing of particular peoples, communities, and spaces, with all the social biases attendant to such structuring.[63] Afrofuturistic work often highlights the exclusionary aspects of supposed utopias, wielding utopian themes as means to juxtapose more troubling realities, revealing the drive for utopias as inescapable yet dangerous. They express this as a central aspect of the lived experience of Black people in the Americas, forced to live in someone else's idea of utopia. For example, this next Section discusses how *Parable of the Sower*, *The Space Traders*, and *Westworld* leverage utopian desires and goals as impactful literary and visual tools. The Section also highlights how the early promotion of generative AI similarly has manipulated popular opinions through utopian appeals, weaving a narrative of AI as a promising conduit to better, utopian-like futures.

### A.  PROMISE OF UTOPIA

### 1.  Utopian Dreams and Afrofuturism

#### a. Parable of the Sower

Octavia Butler once stated in an interview: "I don't deal in utopia. I deal in people. The other is so cartoonish, so unreal, it is not human."[64] While she refused to identify with authors who produced work in the traditional mode of utopian literature, many of her works wrestle with utopian themes with sharp critique.[65] *Parable of the Sower* could be understood as exploring utopian themes, particularly if we look beyond a narrow conception of utopia as only "offering totalizing and comprehensive pictures of perfect worlds."[66] Rather, a more dynamic definition in line with its origins allows us to see the "anticipation, hope, and longing necessitated by the unrepresentable future"[67] as part of utopic desire. In *Parable of the Sower*, the main character, Lauren Oya Olamina, is a fifteen-year-old Black girl living in a gated community in a violently bleak postapocalyptic world

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62.  *See id.* at 4.

63.  *See id.* at 4–8.

64.  Angela Warfield, *Reassessing the Utopian Novel: Octavia Butler, Jacques Derrida, and the Impossible Future of Utopia*, OBSIDIAN III, Fall/Winter 2005–Spring/Summer 2006, at 61, 61.

65.  *See* Jim Miller, *Post-Apocalyptic Hoping: Octavia Butler's Dystopian/Utopian Vision*, 25 SCI.-FICTION STUD. 336, 337 (1998); Jerry Phillips, *The Intuition of the Future: Utopia and Catastrophe in Octavia Butler's* Parable of the Sower, 35 NOVEL 299, 300 (2002); Claire P. Curtis, *Theorizing Fear: Octavia Butler and the Realist Utopia*, 19 UTOPIAN STUD. 411, 412 (2008); Peter G. Stillman, *Dystopian Critiques, Utopian Possibilities, and Human Purposes in Octavia Butler's* Parables, 14 UTOPIAN STUD. 15, 16 (2003).

66.  *See* Warfield, *supra* note 64, at 62.

67.  *Id.*

marked by great inequality.[68] Their gates were the only thing separating her community from the roving bands of less fortunate raiders, too many of whom turned to dangerous drugs that made them prone to violence, as a means of escape.[69] Things begin to unravel for the community, and for Lauren's family. Lauren's younger rebellious brother runs away from the community, joining a group of young boys who subsist outside the gates by robbing and stealing.[70] He is later found tortured and murdered.[71] Her father, who had to venture outside of the gates for work at a local college, left one day and never returned.[72] Eventually, the outsiders were able to breach the gates in the middle of the night, setting both people and homes on fire.[73] Lauren lost everything and was unable to locate her remaining family members.[74] As she attempts to find herself amid this tragedy, utopia manifests in a hopeful belief that there can be a better place and way to live on the journey to fulfill Earthseed's destiny[75] "to take root among the stars."[76]

When Lauren leaves the scorched remains and rubble of the only community she knew, she decides to head north, disguised as a man.[77] Along the way, she joins with other travelers and slowly introduces them to her writings and teachings on Earthseed.[78] The group's perilous journey North, fleeing terror and exploitation, and envisioning new possibilities, is reminiscent of "slave narratives' quest for the North as the site of utopian desire."[79] And for a while, Lauren and her group are able to establish something akin to a utopia.[80] The group grows in size, they manage to settle on a plot of land in the North owned by one of the group members, and they start building a real community.[81] By the end of *Parable of the Sower*, this new community, Acorn, is thriving despite the instability and dangers of the surrounding outside world.[82]

#### b. The Space Traders

At the outset of *The Space Traders*, Derrick Bell describes the scene of the alien arrival as one of great excitement for "the watchers, children of the

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68. *See* Stillman, *supra* note 65, at 16, 19; Sladja Blazan, *"Something Beyond Pain": Race, Gender, and Hyperempathy in Octavia Butler's* Parable of the Sower, 82 GENDER F. 34, 35 (2022).

69. *See* BUTLER, *supra* note 31, at 125–26, 151–52.

70. *Id.* at 98–100, 112–19.

71. *Id.* at 120–21.

72. *Id.* at 138–41.

73. *Id.* at 159–64.

74. *Id.* at 165–68.

75. "Is not this dreaming of life on another world, this desire for that which is not yet here, what marks utopian thinking? To think of this other world is to think of a better world, the good place which is, as yet, no place." Miller, *supra* note 65, at 355.

76. BUTLER, *supra* note 31, at 229.

77. *Id.* at 175, 232.

78. *See id.* at 229–30.

79. Clara Escoda Agustí, *The Relationship Between Community and Subjectivity in Octavia E. Butler's* Parable of the Sower, 46 EXTRAPOLATION 351, 358 (2005).

80. *See* BUTLER, *supra* note 31, at 273.

81. *See id.* at 317.

82. *See id.* at 331–32.

electronic age."[83] He even, unironically, likens the arrival to the landing of Christopher Columbus in the "new world," hinting at the fact that the utopic euphoria was not experienced by all.[84] The Essay further plays on the theme of utopia by setting the scene in the future at the start of the twenty-first century,[85] a time that seemed poised to capitalize on technological innovation and the dawn of the digital age. Yet, in *The Space Traders*, the promise of utopia comes in the form of a trade proposal. While the United States found itself in dire straits,[86] the aliens promised the possibility of a radical and prosperous reset. Bell writes:

> Decades of conservative, laissez-faire capitalism had emptied the coffers of all but a few of the very rich. The nation that had, in the quarter-century after the Second World War, funded the reconstruction of the free world had, in the next quarter-century, given itself over to greed and willful exploitation of its natural resources. Now it was struggling to survive like any third-world nation. . . . The Space Traders' offer had come just in time to rescue America.[87]

Not only would the aliens help restore the polluted environment and regenerate natural resources and fuels, but they would also provide an unimaginable wealth of treasure in the form of gold.[88] As the aliens spoke in the voice of Ronald Reagan, White citizens were immediately put at ease and dazzled by the utopic possibilities offered by the space beings that "seemed to be practical, no-nonsense folks like regular Americans."[89] Even more, the utopic vision that Bell paints for White citizens is one in which the aliens could free them of the burden of the "race problem."[90] Although Black people were already cordoned off behind high walls in inner cities, "young blacks escaped from time to time to terrorize whites."[91] Accepting the trade, they reasoned, would be a relief for both groups as they could dispense with the "[l]ong dead . . . dream that this black underclass would ever 'overcome'" in America.[92] The aliens gave Americans sixteen days to decide if they would accept the offer, and in the ensuing weeks the tease of realizing utopia drives the government and the larger populace to rationalize accepting the trade in profound yet predictable ways.[93]

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83. *See* Bell, *supra* note 37, at 158, 158.

84. *See id.*

85. *See id.*

86. *See id.* at 159–60.

87. *Id.* at 161–62.

88. *Id.* at 159–60.

89. *Id.* at 159, 161.

90. *See id.* at 163.

91. *Id.*

92. *See id. See also id.* at 164, where the American President stresses that "[t]hey are offering not only a solution to our nation's present problems but also one—surely an *ultimate* one—to what might be called the great American racial experiment."

93. *See id.* at 160–94.

### c. Westworld

The concept of utopia shifts during the four seasons of *Westworld* as the story develops. However, at the start of the show, the utopian elements center on safety, freedom, pleasure, and power. For the wealthy humans that can afford to partake in the offerings of Westworld, utopia is endless pleasure and control of one's environment.[94] In episode two of the first season, William arrives to Westworld for the first time and is greeted by an attractive, blonde Host who takes him to a dressing room.[95] When William asks her if there are any guidelines in traversing the park, she responds in a flirtatious manner that "figuring out how it works is half the fun"[96] and, through sexual innuendos, that the Hosts are "here for you."[97] The message becomes clear through this White, male-centered perspective of fantasy, that not only does Westworld offer the opportunity to achieve utopic desires through limitless erotic and physical pleasure, without the restrictions of morality, but it also gives license to a powerful few to engage in worldmaking in the mold of manifest destiny. It is no surprise that the theme park is built to reflect the old American West, a lawless land where taking and killing (especially of Indigenous people) are celebrated and essential to the settler colonial project.[98] Here, technological change acts to liberate the wealthy from societal restraints, delivering them to a world of utopic desire and fantasy made real.

For the Hosts, as they become fully aware of their horrendous positions as virtual slaves, utopia is envisioned as escape and freedom from perpetual exploitation. Dolores and Maeve, two of the oldest Hosts in Westworld, begin breaking normal routine, making plans to revolt and escape, and challenging their current realities.[99] Like Lauren's vision of utopia in *Parable of the Sower*, utopia also manifests in *Westworld* through radical hope and envisioning different futures. In a powerful scene in the first season's seventh episode, Maeve, who is coming into a new level of consciousness where she realizes that what she mistakes for nightmares are actually recalled glimpses of the real world behind the façade of the Westworld park, asks another Host, Clementine, if she ever wonders if "this is really the life you want?"[100] Clementine responds that she intends to get her family out of the desert and move somewhere cold. Clementine briefly pauses before

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94. *See supra* note 21 and accompanying text.

95. *See* James Hibberd, *'Westworld' Recap: Season 1, Episode 2, 'Chestnut,'* ENT. WKLY. (Oct. 10, 2016), https://ew.com/recap/westworld-chestnut/ [https://perma.cc/JBD6-QPQX].

96. *Id.*

97. *Westworld: Chestnut* (HBO broadcast Oct. 9, 2016).

98. *See* Patrick Wolfe, *Settler Colonialism and the Elimination of the Native*, 8 J. GENOCIDE RSCH. 387, 387–89 (2006).

99. *See* Scott Tobias, *'Westworld' Season 1, Episode 4: Truth and Consequences*, N.Y. TIMES (Oct. 23, 2016), https://www.nytimes.com/2016/10/23/arts/television/season-1-episode-4-truth-and-consequences.html.

100. HBO Max, Westworld*: Best of Maeve and Clementine*, YOUTUBE, at 04:00 (Oct. 12, 2021), https://youtu.be/2d2wne7osqk?si=EfmEEjY-dXk5DGs2&t=240.

she says "cold,"[101] signaling to the audience that this thought process is new, uncharted territory outside of the control of the Westworld system programming. This unscripted prompting, beyond the tightly curated conversation and assigned character roles for the Hosts, begins to awaken her:

> Clementine envisions a future for herself that's *cold*—a future that transcends the limits of her current reality, that leads her to a place the absolute opposite of where she is now. Her ability to imagine someplace cold indicates a radical shift in her mental functioning, a sudden opening to new possibilities and alternative ways of being.[102]

Immediately after this exchange, Clementine turns silent and motionless, along with all the other Hosts in the room except Maeve, as human Westworld employees appear in white hazmat suits and take Clementine away for her dangerous dreaming.[103] This ability to envision new possibilities spreads among more Hosts, leading some Hosts to seek to cast away their worldly manufactured bodies and join the ultimate utopia in the Sublime, a virtual world within the computer system where their digital conscious can survive away from the real world.[104] Other Hosts believe that they can rise above the worst aspects of humanity and build their own world, better than the one they were given.[105] The first season ends with these Hosts starting a rebellion, with the hopes of establishing better futures.[106]

2. AI's Transcendent Future

Much of the hype over AI is facilitated through general ambiguity about what it is, what it can do, and what technological processes it entails. The Federal Trade Commission (FTC) has referred to "AI" as a marketing term, noting the potential for abuse.[107] The FTC has committed to challenging businesses that engage in such deceptive practices, most recently bringing a federal lawsuit against Automators AI.[108] The FTC alleges that the "defendants preyed on consumers looking to provide for their families with promises of high returns and the

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101. *See id.*

102. Kelly Bulkeley, *Dreaming in "*Westworld,*"* HUFFPOST (Mar. 22, 2017, 8:55 PM), https://www.huffpost.com/entry/dreaming-in-westworld_b_58d31c08e4b062043ad4afde [https://perma.cc/FR6R-LNW4].

103. *See* James Hibberd, *'Westworld' Recap: Season 1, Episode 7 Twist*, ENT. WKLY. (Nov. 14, 2016), https://ew.com/recap/westworld-season-1-episode-7-trompe-loeil/ [https://perma.cc/3Q28-LC4J].

104. *See* Elisa Guimarães, *'Westworld' Season 4: The Forge & the Sublime, Explained*, COLLIDER (June 27, 2022), ttps://collider.com/westworld-what-is-the-forge-sublime-season-4-bernard-dolores [https://perma.cc/HBH2-KEGG]; Mehera Bonner, *Everything We Know About the Valley Beyond on* Westworld, HARPER'S BAZAAR (June 17, 2018, 11:04 PM), https://www.harpersbazaar.com/celebrity/a21575494/what-is-the-valley-beyond-westworld [https://perma.cc/98L4-574E].

105. *See Westworld: The Passenger* (HBO broadcast June 24, 2018).

106. *See Westworld: The Bicameral Mind* (HBO broadcast Dec. 4, 2016).

107. Michael Atleson, *Keep Your AI Claims in Check*, FTC (Feb. 27, 2023), https://www.ftc.gov/business-guidance/blog/2023/02/keep-your-ai-claims-check [https://perma.cc/9HFN-78GK].

108. Press Release, FTC, FTC Action Stops Business Opportunity Scheme That Promised Its AI-Boosted Tools Would Power High Earnings Through Online Stores (Aug. 22, 2023), https://www.ftc.

use of AI to power such returns."[109] Generative AI is often described as machine learning processes that can produce unique content, beyond simply analyzing or acting upon existing datasets.[110] This sets it apart from prior predictive machine learning systems that sort, classify, or even solve regression problems with data.[111]

Generative AI processes can be used to write papers, make video and still images, design products, build software, and more. For this generative AI process to work, the computing systems need access to incredibly large datasets on which they can be trained.[112] The interest in this technology exploded during the fall of 2022 when OpenAI released ChatGPT, an online chatbot that allows users to pose questions and receive responses or ask the system to perform a task.[113] Since then, leading tech giants in the United States, including Microsoft, Google, Amazon, and META, have only expedited their deep investments in developing and utilizing generative AI[114] and marketing it through utopian appeals to radically transforming the world for the betterment of everyone.[115]

Sam Altman, CEO of OpenAI, which holds a multibillion-dollar partnership with Microsoft,[116] has noted that while "[w]e don't expect the future to be an unqualified utopia," we do "imagine a world in which humanity flourishes to a degree that is probably impossible for any of us to fully visualize yet."[117] These gestures toward AI playing a role in achieving utopian aspirations, qualified or unqualified, have reverberated throughout the field, often reflecting "magical

gov/news-events/news/press-releases/2023/08/ftc-action-stops-business-opportunity-scheme-promised-its-ai-boosted-tools-would-power-high-earnings [https://perma.cc/38MX-DWNB].

109. *Id.*

110. *See* Roberto Gozalo-Brizuela & Eduardo C. Garrido-Merchán, ChatGPT Is Not All You Need. A State of the Art Review of Large Generative AI Models 1 (Jan. 11, 2023) (unpublished manuscript), https://arxiv.org/pdf/2301.04655.pdf [https://perma.cc/XZT3-PM3C].

111. *See id.*

112. *See* Abeba Birhane, Vinay Prabhu, Sang Han & Vishnu Naresh Boddeti, On Hate Scaling Laws for Data-Swamps 2 (June 28, 2023) (unpublished manuscript), https://arxiv.org/pdf/2306.13141.pdf [https://perma.cc/75KB-WMAL].

113. *Introducing ChatGPT*, OPENAI (Nov. 30, 2022), https://openai.com/blog/chatgpt [https://perma.cc/RA3K-DV2R].

114. *See* Wayne Duggan, *Artificial Intelligence Stocks: The 10 Best AI Companies*, U.S. NEWS & WORLD REP. (June 7, 2024), https://money.usnews.com/investing/articles/artificial-intelligence-stocks-the-10-best-ai-companies [https://perma.cc/W3LK-6Z4R]; Jessica E. Lessin, *Amazon's Andy Jassy Plans to Crash the AI Party*, INFORMATION (Oct. 20, 2023, 7:00 AM), https://www.theinformation.com/articles/amazons-andy-jassy-plans-to-crash-the-ai-party.

115. Amazon Web Services, *Introducing Amazon Bedrock*, YOUTUBE (Sept. 29, 2023), https://www.youtube.com/watch?v=_vdK5PgcNvc; Google, *How AI Is Fixing Traffic Lights: Project Green Light*, YOUTUBE (Oct. 10, 2023), https://www.youtube.com/watch?v=T6c_NdpbUvE; The Independent, *Mark Zuckerberg Introduces New AI Product*, YOUTUBE (Sept. 30, 2023), https://www.youtube.com/watch?v=dbDtRiKgz0o; Microsoft, *Microsoft AI Helps Argentine Farmers and Winemakers to Be More Efficient and Sustainable*, YOUTUBE (June 21, 2023), https://www.youtube.com/watch?v=-uE23gtwRzo.

116. Dina Bass, *Microsoft Invests $10 Billion in ChatGPT Maker OpenAI*, BLOOMBERG (Jan. 23, 2023, 4:03 PM), https://www.bloomberg.com/news/articles/2023-01-23/microsoft-makes-multibillion-dollar-investment-in-openai.

117. Sam Altman, *Planning for AGI and Beyond*, OPENAI (Feb. 24, 2023), https://openai.com/blog/planning-for-agi-and-beyond [https://perma.cc/WN6N-V2AJ].

thinking among scientists."[118] These aspirations are promoted through touting AI as almost working like magic, being a disruptive technology, and contributing to safety. The magic of generative AI is in its purported limitless possibilities, from helping students and professors learn, write, and present dynamic presentations[119] to bringing greater value to businesses "with the goal of engaging in smarter conversations designed to quickly resolve customer issues"[120] and changing the world of art and music to bring "humanity even closer to fully unlocking its creative potential."[121] Perhaps no other field has benefited more from the utopian appeals with AI than has healthcare, with the constant claims of radically transforming medicine and the ability to cure disease.[122]

Most recently, Sam Altman teased that artificial general intelligence (AGI) could be achieved with new advancements in the "reasonably close-ish future."[123] OpenAI has continually capitalized off the buzz and rumors generated through news of forthcoming advancements and the release of new, updated versions of ChatGPT. Each new iteration offers more titillating options and experimental features, promising to push us ever closer to realizing the full extents of the

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118. David Leslie, *Does the Sun Rise for ChatGPT? Scientific Discovery in the Age of Generative AI*, AI & Ethics, July 2023, at 1, 1.

119. *See* Chris Stokel-Walker & Richard Van Noorden, *What ChatGPT and Generative AI Mean for Science*, Nature (Feb. 8, 2023), https://www.nature.com/articles/d41586-023-00340-6; Susanna Ray, *Educators and Students Now Have a Secure AI 'Scaffolding' to Support Them in the Classroom*, Microsoft (Mar. 6, 2024), https://news.microsoft.com/source/features/digital-transformation/educators-and-students-now-have-a-secure-ai-scaffolding-to-support-them-in-the-classroom/ [https://perma.cc/R3VD-NRG7]; Sylvia Nguyen, *AI in Schools: 4 Transformative Ways AI Can Improve Education*, ClassPoint (Dec. 22, 2023), https://www.classpoint.io/blog/ai-in-schools-4-ways-ai-can-improve-education [https://perma.cc/WQZ4-75JJ].

120. Tony Bradley, *New Era of Generative AI Finally Delivers on Promise*, Forbes (May 10, 2023, 10:36 AM), https://www.forbes.com/sites/tonybradley/2023/05/10/new-era-of-generative-ai-finally-delivers-on-promise.

121. Gideon Kimbrell, *How Generative AI Can Impact Music and Content Creation*, Rolling Stone (May 9, 2023), https://www.rollingstone.com/culture-council/articles/how-generative-ai-can-impact-music-content-creation-1234731365/ [https://perma.cc/B324-PBGB]; *see also* Murray Stassen, *'Generative AI Is Set to Revolutionize the Music Business,'* Music Bus. Worldwide (Aug. 11, 2023), https://www.musicbusinessworldwide.com/generative-ai-is-set-to-revolutionize-the-music-business/ [https://perma.cc/BCQ7-JV3U]; Will Knight, *Where the AI Art Boom Came from—and Where It's Going*, Wired (Jan. 12, 2023, 7:00 AM), https://www.wired.com/gallery/where-the-ai-art-boom-came-from-and-where-its-going/; Kevin Roose, *An A.I.-Generated Picture Won an Art Prize. Artists Aren't Happy*, N.Y. Times: The Shift (Sept. 2, 2022), https://www.nytimes.com/2022/09/02/technology/ai-artificial-intelligence-artists.html.

122. *See* Tim Guilliams, *How AI Could Make Every Disease a Rare Disease*, Forbes (Apr. 18, 2023, 6:30 AM), https://www.forbes.com/sites/forbestechcouncil/2023/04/18/how-ai-could-make-every-disease-a-rare-disease/?sh=7ff4faa27a2f; Steve Rose, *Five Ways AI Could Improve the World: 'We Can Cure All Diseases, Stabilise Our Climate, Halt Poverty,'* Guardian (July 6, 2023), https://www.theguardian.com/technology/2023/jul/06/ai-artificial-intelligence-world-diseases-climate-scenarios-experts [https://perma.cc/G7NZ-BMDC].

123. MacKenzie Sigalos & Ryan Browne, *OpenAI's Sam Altman Says Human-Level AI is Coming but Will Change World Much Less than We Think*, CNBC (Jan. 16, 2024, 4:23 PM), https://www.cnbc.com/2024/01/16/openais-sam-altman-agi-coming-but-is-less-impactful-than-we-think.html [https://perma.cc/G4GQ-7DNU].

technology's power.[124] It is eerily reminiscent of *Westworld*'s use of the release of new storylines for the Hosts, which also presented the prospects of new utopian features and spaces to explore. Much of the first season's plot revolved around the pending release of a new narrative by Dr. Ford, co-creator of Westworld and the park's creative director.[125] Subsequent seasons feature new narratives written by Dr. Ford, including a theme park based upon Nazi-occupied Italy during World War II and another park that depicts Chicago during the 1920s.[126] Both presented "updates" that provided new, violently lawless playgrounds for paying visitors to enjoy, while dangling the possibility of eventually developing and executing the perfect play world, the perfect narrative.

At the end of season one, there is a huge, elegant gala at the park to celebrate the announcement and release of Dr. Ford's newest storyline, with staff, the board of directors, and other important company executives in attendance.[127] The evening's events are capped off with a speech by Dr. Ford in which he reflects on the power of new stories we perpetually invent to sell to ourselves: "I believed that stories helped us to ennoble ourselves, to fix what was broken in us, and to help us become the people we dreamed of being. Lies, that told a deeper truth."[128] *Westworld* reveals that the promotion of such narratives, like the pitch by ChatGPT and other generative AI platforms of endless updates with the promise to further utopian aspirations, not only obscures the true motivations and capacities of the stories' architects and consumers, but also inherently propagates a growing embellishment of technology's current and future capabilities.

The embellishing of the current and future power of AI has even led to it being labeled an existential threat "alongside other societal-scale risks such as pandemics and nuclear war."[129] Popular news media has played an active and heavy role in cementing these portrayals of critical danger, such as when New York Magazine profiled Sam Altman and dubbed him the "Oppenheimer of Our

124. *See ChatGPT – Release Notes*, OPENAI (May 16, 2024), https://help.openai.com/en/articles/6825453-chatgpt-release-notes; Daniel Newman, *What to Know About Where ChatGPT Is Going in 2024*, FORBES (Dec. 12, 2023, 9:12 AM), https://www.forbes.com/sites/danielnewman/2023/12/12/what-to-know-about-where-chatgpt-is-going-in-2024/?sh=51f3e75689dc; AI Talks, *AI 2024: 10 HUGE ChatGPT Updates Revealed by Sam Altman*, YOUTUBE (Dec. 27, 2023), https://www.youtube.com/watch?v=VsLvvYLQUSQ.

125. *See* Renfro, *supra* note 24.

126. *See* Kara Hedash, Westworld *Season 3's Nazi Theme Park Proves the Show's Dark Secret*, SCREEN RANT (July 22, 2019), https://screenrant.com/westworld-season-3-nazi-park-warworld [https://perma.cc/8JLL-GNFH]; Cydney Contreras, Westworld's *Roaring '20s Park Is a Subtle Reference to Season 1*, ENEWS (July 4, 2022, 2:00 PM), https://www.eonline.com/news/1336460/westworlds-roaring-20s-park-is-a-subtle-reference-to-season-1 [https://perma.cc/J4KQ-KHUT].

127. *See* Scott Tobias, 'Westworld' *Season 1 Finale: Wake from Your Sleep*, N.Y. TIMES (Dec. 5, 2016), https://www.nytimes.com/2016/12/05/arts/television/westworld-season-finale-recap.html; James Hibberd, *'Westworld' Finale Recap: Season 1, Episode 10*, ENT. WKLY. (Dec. 6, 2016), https://ew.com/recap/westworld-finale-recap/ [https://perma.cc/X387-4H49].

128. *Westworld: The Bicameral Mind*, *supra* note 106; Just the Best Scenes, Westworld - *Dr Ford Final Speech*, YOUTUBE (May 14, 2021), https://www.youtube.com/watch?v=fuuGM0cAOJ8.

129. Ryan Calo, *AI Creators Want Us to Believe AI Is an Existential Threat. Why?*, UNDARK (June 22, 2023), https://undark.org/2023/06/22/ai-creators-want-us-to-believe-ai-is-an-existential-threat-why/ [https://perma.cc/U3K4-KSE9].

Age."[130] Leading AI creators and investors have utilized the inflated importance of AI to bolster their own public stature, exalt the worth of their companies and technologies, wield power to shape lay perspectives on AI, and influence AI regulation. In March 2023, notable tech industry leaders gathered to pen an open letter requesting a six month pause on AI development, stressing that

> [c]ontemporary AI systems are now becoming human-competitive at general tasks, and we must ask ourselves: *Should* we let machines flood our information channels with propaganda and untruth? *Should* we automate away all the jobs, including the fulfilling ones? *Should* we develop nonhuman minds that might eventually outnumber, outsmart, obsolete and replace us? *Should* we risk loss of control of our civilization? Such decisions must not be delegated to unelected tech leaders. *Powerful AI systems should be developed only once we are confident that their effects will be positive and their risks will be manageable.*[131]

However, not long after the publishing of the pause letter, Sam Altman began lobbying domestically on behalf of OpenAI within Congress and the European Union with the aim of limiting AI regulation, even threatening to cease operations in Europe if attempted regulations were not minimized.[132]

Over six months after the AI pause letter, development not only failed to cease but sped up,[133] confirming suspicions that some industry leaders may have used the fear of an existential threat as a marketing strategy.[134] Indeed, there is value in positioning AI development as indispensable for internal safety, but also as necessary for the ability to protect the utopian dream of security in the midst of feigned external threats, such as China.[135] This logic rests upon the argument that if China's "zeal to master AI" is not matched by any means necessary, America

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130. Elizabeth Weil, *Sam Altman Is the Oppenheimer of Our Age*, N.Y. MAG. (Sept. 25, 2023), https://nymag.com/intelligencer/article/sam-altman-artificial-intelligence-openai-profile.html.

131. *Pause Giant AI Experiments: An Open Letter*, FUTURE LIFE INST. (Mar. 22, 2023) (footnote omitted), https://futureoflife.org/open-letter/pause-giant-ai-experiments/ [https://perma.cc/96R6-CGKU]; *see also* Linah Mohammad, Patrick Jarenwattananon & Juana Summers, *An Open Letter Signed by Tech Leaders, Researchers Proposes Delaying AI Development*, NPR (Mar. 29, 2023, 6:17 PM), https://www.npr.org/2023/03/29/1166891536/an-open-letter-signed-by-tech-leaders-researchers-proposes-delaying-ai-developme [https://perma.cc/PV4B-UME4].

132. Billy Perrigo, *OpenAI Lobbied the E.U. to Water Down AI Regulation*, TIME (June 20, 2023, 1:00 AM), https://time.com/6288245/openai-eu-lobbying-ai-act/ [https://perma.cc/8YZM-4BXF]; Billy Perrigo, *OpenAI Could Quit Europe Over New AI Rules, CEO Sam Altman Warns*, TIME (May 25, 2023, 5:17 PM), https://time.com/6282325/sam-altman-openai-eu/ [https://perma.cc/NQ54-4KVP].

133. Will Knight, *Six Months Ago Elon Musk Called for a Pause on AI. Instead Development Sped Up*, WIRED (Sept. 28, 2023, 12:01 PM), https://www.wired.com/story/fast-forward-elon-musk-letter-pause-ai-development/.

134. Brian Merchant, *Afraid of AI? The Startups Selling It Want You to Be*, L.A. TIMES (Mar. 31, 2023, 5:00 AM), https://www.latimes.com/business/technology/story/2023-03-31/column-afraid-of-ai-the-startups-selling-it-want-you-to-be.

135. *See, e.g.*, GRAHAM ALLISON & ERIC SCHMIDT, BELFER CTR. FOR SCI. & INT'L AFFS., HARV. KENNEDY SCH., IS CHINA BEATING THE U.S. TO AI SUPREMACY? (2020) [https://perma.cc/FD42-M23C].

will expose itself to great harm and forfeit this new terrain of geopolitical bat-
tling.[136] In *The Space Traders*, Bell similarly hints at the prospect of domestic
safety—through protecting America's world-standing with the technological
innovations the aliens would provide—as a justification for accepting the trade
proposal.[137] But unlike Bell's masterful build up to a dystopian critique, the cur-
rent exaggeration of generative AI's capabilities, along with existential threat hy-
perbole, has acted to overshadow the more dystopian realities of the technology.

## B. DYSTOPIAN REALITIES

*The fantasy of some . . . is the nightmare of others.*[138]

The dystopian concept does not have an attendant ideological framework like
utopianism. Yet preoccupation with impending deteriorations in society, where
chaos comes to reign and former values and institutions lose meaning and power,
is as old as ancient Egyptian prophecies.[139] However, more contemporary under-
standings of dystopia, which stem from the Greek words *dus* and *topos* for bad or
unfavorable place, align with the opposite of utopia.[140] Thus, dystopias often rep-
resent more than the extremities of deprivation in the absence of utopia. They
also represent the outright failures of particular utopian endeavors. This connec-
tion reveals the inherent contradiction at the heart of utopias: that their attempted
erection and imposition almost always necessitate intense social control measures
that marshal surveillance and rely upon limitations of rights and freedoms.
Gregory Claeys stresses that:

> Like the snake in the Garden of Eden, dystopian elements seem to lurk within
> Utopia. The country, we are informed, was founded by civilizing its barbar-
> ians and then artificially isolating a peninsula by transforming it into a forti-
> fied island. Utopia remains an imperial power. When overpopulated it sends
> out colonies, seizing the uncultivated land of indigenous peoples, and driving
> out 'any who resist them'. Well-paid mercenaries keep enemies at bay, the
> Utopians' much-vaunted contempt for gold, silver, and jewels here standing
> starkly in contrast with the great value their wealth has when expended on
> slaying their enemies. Utopia's peace and plenitude now seem to rest upon
> war, empire, and the ruthless suppression of others, or in other words, their
> dystopia.
>
> . . . Here we discover that suppressing vice requires extraordinary regulation
> and surveillance.[141]

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136. *See id.* at 1–2.

137. *See* BELL, *supra* note 37, at 159–62.

138. Dartmouth, *"Utopia, Dystopia, or. . . Ustopia?. . ."- Dr. Ruha Benjamin*, YOUTUBE, at 22:00
(Sept. 20, 2023), https://www.youtube.com/watch?v=WWhdyejIc3c; Kent Friel, *Princeton Professor
Delivers Inaugural Wright Center Lecture*, DARTMOUTH (Sept. 26, 2023), https://www.thedartmouth.
com/article/2023/09/princeton-professor-delivers-inaugural-wright-center-lecture [https://perma.cc/
B852-W8KX?type=standard].

139. *See* GREGORY CLAEYS, DYSTOPIA: A NATURAL HISTORY: A STUDY OF MODERN DESPOTISM, ITS
ANTECEDENTS, AND ITS LITERARY DEFINITIONS 3–4 (2017).

140. *Id.* at 4.

This conception of dystopia is frequently deployed in Afrofuturistic work to illuminate the violent disjuncture and out-of-body trauma that Black people experience existing in a highly racialized, White-supremacist society.[142] Dystopic Afrofuturistic work also acts as an adamant "refusal of long-cherished notions of [B]lack progress."[143]

Because Afrofuturism "can be understood as tending toward the pessimistic, either in inspiration – turning to the future in response to a 'hard,' dispiriting world – or in narrative outcome, wherein these speculative works depict dark, dystopian futures or dwell within the imaginary of an unbearable past,"[144] it offers an incisive analytical framework for dissecting current and future social problems related to technology and injustice. This Section explores how dystopian elements are used in *Parable of the Sower*, *The Space Traders*, and *Westworld* to demonstrate the illusory and volatile nature of the pursuit of race- and class-based utopias. It places generative AI in this dystopian context through discussion of the dangers and constraints it presents for marginalized communities.

The aim here is not to prove that generative AI is inherently dystopian, but rather, amid great fanfare, to raise glaring yet often minimized dystopian aspects of the technology.[145] These realities reveal an AI dream buoyed upon the Black and Brown backs of those trying to swim upstream while being left to drown in a technological nightmare not their own.

1. Dystopian Nightmares and Afrofuturism

The dystopian critique in Afrofuturistic literature, art, and media often features ideals of utopia as dreamworlds for some, but nightmares for others.[146] This duality is vividly seen in *The Space Traders*. When the aliens arrived, they seemed like "regular" nice beings to White citizens, but "many American blacks—whether watching from the shore or on their television screens—had seen the visitors as distinctly unpleasant, even menacing in appearance. While their perceptions of the visitors differed, black people all agreed that the Space Traders looked like bad news—and their trade offer certainly was . . . ."[147] For Black

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141. *Id.* at 6 (footnotes omitted).

142. See generally, for example, OCTAVIA E. BUTLER, KINDRED (1979), where the central character is continually transported back and forth from the 1970s to early nineteenth-century Maryland plantations, where she is subjected to the extreme horrors and brutalities, but also the quotidian violence, that structured enslavement.

143. Candice M. Jenkins, *Afro-Futurism/Afro-Pessimism*, *in* THE CAMBRIDGE COMPANION TO TWENTY-FIRST-CENTURY AMERICAN FICTION 123, 125 (Joshua L. Miller ed., 2021).

144. *Id.* at 128.

145. Here dystopic claims rest upon evidence that current AI processes, which claim to usher society into a future where machines do all the thinking and work: (1) rely upon an underpaid, exploited labor force, outsourced from the "the third world;" (2) put considerable strains on the health of the environment, with the Global South carrying the heaviest climate burdens; (3) reveal significant race and gender biases; (4) raise serious questions about the theft and use of material scraped from the internet, a space initially touted as a social equalizer, where artists, creators, and authors of colors have the least resources to protect their work; and (5) are sponsored and led by industry leaders that ascribe to harmful ideologies with clear connections to eugenics.

146. *See* Jenkins, *supra* note 143, at 128.

Americans, the scene was eerily familiar—foreign ships arriving to the shores, offering treasure in exchange for Black flesh; it harkened to the horrors of the transatlantic slave trade. *The Space Traders* makes clear the reality that Black people do not need tales of alien abductions to imagine dystopian realities; their very history in America has been, and continues to be, one of the most chilling dystopian experiences one could ever imagine. The utopian image of America as the leader of the free world is challenged by this dystopian experience of Black Americans struggling to be treated as full citizens, as full humans. In *The Space Traders*, Bell took great pains to show just how far this could go. During the two weeks that the American government had to respond to the aliens' offer of wealth and advanced technology in exchange for every Black American, the fate of the Black community came to be determined by a national referendum.[148] The President and his administration greatly favored the proposed trade but worried, not about the harm that may be in store for Blacks, but rather about the psychological toll of guilt on White citizens.[149] Ultimately, they decided to characterize the trade as akin to Black Americans volunteering for military duty:

> Mr. President, the Secretary's courage is not unlike that American men and women have exhibited when called to military service. Some go more willingly than others, but almost all go even with the knowledge that they may not come back. It is a call a country makes on the assumption that its citizens will respond. I think that is the situation we have here, except that instead of just young men and women, the country needs all of its citizens of African descent to step forward and serve.[150]

To put this plan into action, the government organized a constitutional convention where a new amendment was drafted that would act to "validate amendments to existing Selective Service laws authorizing the induction of all blacks into special service for transportation under the terms of the Space Traders' offer."[151] The law, as a powerful tool for the maintenance of dystopia for Black Americans, is further indicted in the story when a group of Black and White opponents file legal challenges against the referendum process, which are unanimously dismissed by the United States Supreme Court as "'political questions' best resolved by the body politic rather than through judicial review."[152]

Despite further efforts to organize, litigate, engage in a communications campaign, and even sneak Black Americans out of the country, the national referendum proceeded, resulting in a final tally of 70% in favor of "enlisting" Blacks as a part of the trade and 30% against it.[153] From the outset of the story, it seems

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147. BELL, *supra* note 37, at 161.
148. *See id.* at 185–86.
149. *See id.* at 165.
150. *Id.*
151. *Id.* at 186.
152. *Id.* at 191.
153. *See id.* at 192.

almost inevitable that this result, Black people leaving "the New World as their forebears had arrived,"[154] would materialize. The dystopian aspects matched too closely to the lived realities of Black Americans, having emerged from centuries of legalized enslavement as free, yet seemingly unfree people. But perhaps the most chilling aspect in the story's reveal of this dystopia for Black Americans is not that utopias are never what they may seem, but that even leaving worlds may not lead to escape from this seemingly permanent ordeal.

In Butler's *Parable* series, Lauren Olamina also comes to realize that utopia may never be found on Earth or amongst the stars. Although her group made their way to the North,[155] it is not the utopia they may have imagined. The outside world is still chaotic in ways that come to impact the community. The suspension of minimum wage, environmental, and worker protection laws has acted to reestablish a new form of slavery through indentured servitude, deepening the poverty and hunger that most people suffer.[156] That these burdens fall hardest on Black people and other people of color is not overlooked by the Earthseed community at Acorn, which is nearly all people of color. This recognition of White privilege is brought to the fore in an exchange between Emery, a Black woman who had been subjected to slavery, and Harry, a White man from the same neighborhood as Lauren, who grew up relatively privileged. In the exchange, they discuss whether spending money on the Acorn community made sense and what sort of job opportunities there might be. Harry appears genuinely oblivious when Emery speaks to the reality of preferential treatment by race:

> "You might be able to get a job as a driver," she said. "They like white men to be drivers. If you can read and write, and if you'd do the work, you might get hired."
>
> "I don't know how to drive, but I could learn," Harry said. "You mean driving those big armored trucks, don't you?"
>
> Emery looked confused. "Trucks? No, I mean driving people. Making them work. Pushing them to work faster. Making them do . . . whatever the owners says."
>
> Harry's expression had dissolved from hopeful to horrified to outraged. "Jesus God, do you think I'd do that! How could you think I'd do anything like that?"
>
> Emery shrugged. It startled me that she could be indifferent about such a thing, but she seemed to be. "Some people think it's a good job," she said. "Last driver we had, he used to do something with computers. I don't know what. His company went out of business and he got a job driving us. I think he liked it."[157]

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154. *Id.* at 194.
155. *See* Butler, *supra* note 31, at 175–79.
156. *See id.* at 36.
157. *Id.* at 327 (alteration in original).

Even in the midst of a decaying society, race still mattered.

Octavia Butler further builds upon the dystopian realities presented in *Parable of the Sower* in her follow-up novel, *Parable of the Talents*.[158] The story picks up five years after the establishment of the Acorn community.[159] Nearby communities are subjected to violence from a growing religious fundamentalist group called "Christian America" that is known to "form mobs and burn people at the stake."[160] The group is led by Andrew Steele Jarret, a presidential candidate whose campaign slogan is "make America great again."[161] Christian America ultimately sets its sight on Acorn, kidnapping all the children and turning the community into a Christian reeducation concentration camp, where the adults are forced to wear electronic collars that shock and disable those that attempt to flee.[162] By the end of the novel, Lauren has abandoned the idea that some form of utopia could be built on Earth, turning her attention to preparing people for a future of space travel and new beginnings.[163]

Butler, whose untimely passing prevented her from finishing the third book in the *Parable* series, *Parable of the Trickster*, seemed poised to raise dystopian elements even in the new space colonies.[164] Her notes reveal that she contemplated a storyline in which the new Earthseed group lands on a "gray and dank" planet, where the group, "utterly miserable" and bored, begin to fight amongst themselves while dealing with a new illness that slowly renders them blind.[165] These notes leave us to wonder if the concept of change at the center of Earthseed's religious philosophy is a response to ways that humanity's inescapable drive for differentiation, deprivation, and destruction will perpetually take new forms, shifting with the circumstances and locations.

In *Westworld*, the utopia presented for humankind starts to unravel as the Hosts begin to understand that the dreams they have been fed are not their own. In a provocative scene during the last episode of the first season, Dr. Ford explains to a Host why he acted to prevent the development of her consciousness: "to acknowledge your consciousness would have destroyed my dreams."[166] Slowly realizing what this meant, she replied through her tears, "So, we're trapped here inside your dream. You'll never let us leave."[167] This profound

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158. OCTAVIA E. BUTLER, PARABLE OF THE TALENTS (Seven Stories Press 2016) (1998).

159. *See id.* at 13.

160. *Id.* at 28–29.

161. *Id.* at 29.

162. *See* Forrest Brown, *"Parable of the Talents" by Octavia E. Butler*, STORIES FOR EARTH (Oct. 8, 2019), https://storiesforearth.com/2019/10/08/parable-of-the-talents-octavia-butler/ [https://perma.cc/MX95-VJ9Z].

163. BUTLER, *supra* note 158, at 407–09.

164. *See* Gerry Canavan, *"There's Nothing New/Under the Sun,/But There Are New Suns": Recovering Octavia E. Butler's Lost Parables*, L.A. REV. BOOKS (June 9, 2014), https://lareviewofbooks.org/article/theres-nothing-new-sun-new-suns-recovering-octavia-e-butlers-lost-parables/ [https://perma.cc/P8NK-2E2K].

165. *See id.*

166. *Westworld: The Bicameral Mind*, *supra* note 106; Bulkeley, *supra* note 102.

167. *Westworld: The Bicameral Mind*, *supra* note 106; Bulkeley, *supra* note 102.

moment plays a significant role as the genesis of the eventual rebellion by the Hosts against the humans. By the final season of the show, the Hosts have won their war against humankind but failed to establish a world that is much different from the one their human creators built.[168] Not only is the world marred by violence and destruction, but the Hosts also ultimately turn on one another in one last game of survival of the fittest. At the end, most of humanity has been destroyed, except a few small, scattered communities, and some of the remaining Hosts upload their digital consciousness into the Sublime virtual world, powered by a natural energy source at the Hoover Dam.[169] Similar to both *The Space Traders* and the *Parable* series, it is unclear what the future may hold and whether finding utopia was ever really possible.

### 2. AI's Dark Magic

While the presumed positive benefits of generative AI have received much attention, the more dystopian realities of the technology have often been overlooked. Yet, there are reasons to be skeptical of its ability to revolutionize society toward utopian outcomes. For example, generative AI programs often reproduce racist and sexist stereotypes. A recent analysis of over 5,000 images created with StabilityAI's text-to-image program, Stable Diffusion, found significant racial and gender disparities.[170] The results showed that when prompted with tasks to create images of people in high-paying jobs, such as an architect or lawyer, the image created was much more likely to be a person with lighter skin tone.[171] Yet when prompted with the task of creating the image of a person in a low-paying job, such as a fast-food worker or janitor, it was more likely to produce an image of a person with darker skin tone.[172] Similarly disparate outcomes were found when analyzing gender by occupation and using prompts to create images of criminal offenders, leading the authors to conclude: "The world according to Stable Diffusion is run by White male CEOs. Women are rarely doctors, lawyers or judges. Men with dark skin commit crimes, while women with dark skin flip burgers."[173] AI companies will often point to limited datasets as the reason for such biased outcomes.[174] Yet recent scholarship has demonstrated that making the programs open-source, or taking other similar strategies to scale up the datasets, does not decrease racially biased outcomes and may exacerbate them.[175]

There are other hidden costs of generative AI, such as environmental harms. Generative AI programs require powerful servers with intensive energy

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168. *See supra* note 25 and accompanying text; *Westworld: Zhuangzi* (HBO broadcast July 24, 2022); *Westworld: Que Será, Será* (HBO broadcast Aug. 14, 2022).

169. *See* Andrew Walsh, Westworld *Recap: Winner Takes All*, ENT. WKLY (Aug. 14, 2022), https://ew.com/tv/recaps/westworld-season-4-episode-8/ [https://perma.cc/2ZSM-UXTA].

170. *See* Leonardo Nicoletti & Dina Bass, *Humans Are Biased. Generative AI Is Even Worse*, BLOOMBERG (June 9, 2023), https://www.bloomberg.com/graphics/2023-generative-ai-bias/.

171. *Id.*

172. *Id.*

173. *Id.*

174. *See id.*; Birhane et al., *supra* note 112, at 3.

175. Birhane et al., *supra* note 112, at 13–15.

consumption that leave significant carbon footprints and rely upon heavy water access for cooling.[176] Some estimates for especially large language models like GPT-3, trained in Microsoft's data center, include consumption of a total of 5.4 million liters of water, with 700,000 liters of on-site water consumption.[177] Even more, a single AI model can produce over 626,000 pounds of carbon dioxide.[178] The U.S. Department of Energy notes that these data centers on average "are one of the most energy-intensive building types, consuming 10 to 50 times the energy per floor space of a typical commercial office building."[179] These data centers serving AI processing have placed such a great demand on power grids that older coal plants, widely known as major polluters, are being forced to remain open.[180]

A central feature of the dystopia that Butler describes in the *Parable* series is "dangerous environmental degradation."[181] This postapocalyptic world, where "water costs several times as much as gasoline,"[182] is chaotic in large part due to capitalist greed run amok and unrestrained industrialization leading to "failing economies and tortured ecologies."[183] In fact, Lauren's Earthseed philosophy was named while she was gardening and thinking about the power of seeds to spread by wind and find new homes and new fertile grounds to grow, further emphasizing the importance placed upon the environment in the *Parable* series.[184] Even more, Lauren describes how a nearby coastal town is deteriorating due to the climate crisis:

> Olivar is a lot richer than we are, but since it's a coastal city, its taxes are higher, and since some of its land is unstable, it has extra problems. Parts of it sometimes crumble into the ocean, undercut or deeply saturated by salt water. Sea level keeps rising with the warming climate and there is the occasional earthquake. Olivar's flat, sandy beach is already just a memory. So are the houses and businesses that used to sit on that beach. Like coastal cities all over the world, Olivar needs special help.[185]

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176. Alex de Vries, *The Growing Energy Footprint of Artificial Intelligence*, 7 JOULE 2191, 2191–93 (2023).

177. Pengfei Li, Jianyi Yang, Mohammad A. Islam & Shaolei Ren, Making AI Less "Thirsty": Uncovering and Addressing the Secret Water Footprint of AI Models 3 (Oct. 29, 2023) (unpublished manuscript), https://arxiv.org/abs/2304.03271 [https://perma.cc/NR84-HX2A].

178. Emma Strubell, Ananya Ganesh & Andrew McCallum, Energy and Policy Considerations for Deep Learning in NLP 4, tbl.3 (June 5, 2019) (unpublished manuscript), https://arxiv.org/pdf/1906.02243.pdf [https://perma.cc/K3FP-RA4L].

179. *Data Centers and Servers*, U.S. DEP'T ENERGY, https://www.energy.gov/eere/buildings/data-centers-and-servers [https://perma.cc/AVU7-MRW8] (last visited June 11, 2024).

180. *See* Saijel Kishan & Josh Saul, *AI Needs So Much Power That Old Coal Plants Are Sticking Around*, BLOOMBERG (Jan. 25, 2024, 2:28 PM), https://www.bloomberg.com/news/articles/2024-01-25/ai-needs-so-much-power-that-old-coal-plants-are-sticking-around.

181. BUTLER, *supra* note 158, at 18.

182. BUTLER, *supra* note 31, at 27.

183. *Id.* at 93.

184. *Id.* at 87.

185. *Id.* at 127.

Butler's approach has been described as ecofeminist.[186] Ecofeminism is an approach to understanding and examining environmental issues from a feminist perspective, often linking systems of patriarchal oppression to harms and violence against both women and the environment.[187] This is most clearly seen in Lauren's rejection of her father's and Andrew Steele Jarret's Christian faith, leaving "behind a hierarchical or patriarchal conception of God and religion" that is at best ambivalent to, or at worst complicit in, the subjugation of women and the destruction of the planet.[188]

The dystopian realities of environmental harm are perhaps only overshadowed by generative AI's hidden workers. Part of the hype and "magic" of AI is the presumption that it somehow works on its own without the need for humans. These assumptions render invisible thousands of low-wage workers that engage in the tedious and repetitive work of data annotation.[189] Data annotation involves the process of labeling various types of content, including text, audio, images, and videos.[190] This labeling process provides important context for machine learning models, allowing them to make informed decisions and predictions.[191] For as low as a few cents, workers can be hired and fired for annotation tasks via crowdsourcing platforms such as Amazon Mechanical Turk.[192] Most of this work is outsourced to lower income countries, where primarily workers of color are paid poverty wages.[193]

In *Parable of the Sower*, people in Olivar, the coastal city near Lauren's childhood community, experienced similar economic exploitation when the corporation Kagimoto, Stamm, Frampton, and Company (KSF) moved into town.[194] As the residents in the once well-off city struggled with economic and environmental crisis, the company took advantage of the desperate community. KSF knew that Olivar "can't protect itself from the encroaching sea, the crumbling earth, the crumbling economy, or the desperate refugees."[195] The company capitalized on these fears and hopes to pass legislation making the city completely privatized and at the whims of KSF: "They have long-term plans, and the people of Olivar

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186. *See generally* Paloma Villamil Agraso, Parable of the Sower *and* Parable of the Talents*: Octavia Butler and Spiritual Ecofeminism*, *in* SPIRITUALITY IN THE 21ST CENTURY: JOURNEYS BEYOND ENTRENCHED BOUNDARIES 163 (Wim van Moer et al. eds., 2013).

187. *See id.* at 163–64.

188. *See id.* at 169–70.

189. *See* Clément Le Ludec, Maxime Cornet & Antonio A Casilli, *The Problem with Annotation. Human Labour and Outsourcing Between France and Madagascar*, BIG DATA & SOC'Y, July–Dec. 2023, at 1, 1–2.

190. *See What Is Data Annotation [2024 Review] – Best Practices, Tools, Benefits, Challenges, Types & More*, SHAIP, https://www.shaip.com/blog/the-a-to-z-of-data-annotation/ [https://perma.cc/58CZ-GHT9] (last visited June 11, 2024).

191. *See id.*

192. *See* Le Ludec et al., *supra* note 189, at 1; *see also* Andy Newman, *I Found Work on an Amazon Website. I Made 97 Cents an Hour.*, N.Y. TIMES (Nov. 15, 2019), https://www.nytimes.com/interactive/2019/11/15/nyregion/amazon-mechanical-turk.html.

193. *See* Le Ludec et al., *supra* note 189, at 1–3.

194. *See* BUTLER, *supra* note 31, at 127–28.

195. *Id.* at 127.

have decided to become part of them—to accept smaller salaries than their socio-economic group is used to in exchange for security, a guaranteed food supply, jobs, and help in their battle with the Pacific."[196] Ironically, while it was the abuse of technology and deregulation of polluting industries that hastened the climate crisis, KSF persuaded the residents of Olivar with utopian promises of a technological savior—advances in water desalination and "solar and wind energy over much of the southwest."[197] Here, Butler reveals the dystopian aspect of towns across the country reverting back to the nineteenth- and early twentieth-century version of "American company towns in which the companies cheated and abused people"[198] through perpetual debt, price gouging for food and housing, and schools that indoctrinated company logics.[199]

While the people in Olivar were aware of the threat placing faith and control in the hands of KSF posed, they believed their circumstances would be different because they "aren't frightened, impoverished victims," but rather "able to look after themselves, their rights and their property."[200] Similarly, great faith is placed in AI companies and technologies, with acceptance of limited legal intervention and regulation, because the promises of advancement, security, comfort, and safety are too enticing. Butler never reveals the ultimate fate of Olivar in *Parable of the Sower*, but Lauren and her father remained skeptical of its ability to offer a better life to its citizens while KSF underpaid and exploited them.[201] It is also not clear what the future holds for AI technologies; however, the current exploitation of hidden labor, where workers are repeatedly warned not to tell anyone about their jobs,[202] should give pause to those who assume current AI operations pose no significant questions of ethics and justice. After lifting the veil and scrubbing through the shiny veneer of this "disruptive technology,"[203] it becomes clear that the biggest disruption may manifest within the lives of workers here and abroad who bear the nightmarish burden of laboring for AI producers and systems that will discriminate against them and pollute their atmosphere, all while selling a dream of future progress for humanity.

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196. *Id.* at 128.

197. *See id.*

198. *Id.*

199. *See* Michele Lent Hirsch, *America's Company Towns, Then and Now*, SMITHSONIAN MAG. (Sept. 4, 2015), https://www.smithsonianmag.com/travel/americas-company-towns-then-and-now-180956382 [https://perma.cc/L5X4-HBY6]. For more on company towns as presumed utopian enclaves, or "industrial Edens," and their more dystopian realities as "Satanic Mills," see generally HARDY GREEN, THE COMPANY TOWN: THE INDUSTRIAL EDENS AND SATANIC MILLS THAT SHAPED THE AMERICAN ECONOMY (2010).

200. BUTLER, *supra* note 31, at 128.

201. *See id.*

202. Josh Dzieza, *AI Is a Lot of Work*, VERGE (June 20, 2023, 8:05 AM), https://www.theverge.com/features/23764584/ai-artificial-intelligence-data-notation-labor-scale-surge-remotasks-openai-chatbots [https://perma.cc/39TU-JRK9].

203. *See supra* notes 118–21 and accompanying text.

## II.  HOW LONG 'TIL BLACK FUTURE MONTH?[204]: FOUR GUIDING PRINCIPLES FOR ENGAGEMENT WITH AI

*It is so easy to have principles. Far, far harder to live by them.*[205]

The rapid development and incorporation of AI programming across both the private and public sectors has far outpaced the creation of corresponding legal frameworks and regulatory schemes. This absence of targeted law and policy has enabled generative AI companies to engage in practices that raise crucial questions about property rights, antidiscrimination efforts, privacy, and misinformation. There have been numerous legal challenges brought against tech companies, with claims ranging from the Authors Guild and more than a dozen authors suing OpenAI for engaging in "a systematic course of mass-scale copyright infringement" to Google being sued for "stealing" web-scraped data and manipulating "vast troves of private user data."[206] There have been recent attempts by the federal government to fill the regulatory void. United States Senators Ron Wyden, Cory Booker, and Yvette Clark have introduced the Algorithmic Accountability Act.[207] The bill would, among other things, require "companies to conduct impact assessments for effectiveness, bias and other factors, when using artificial intelligence to make critical decisions."[208] Additionally, United States House of Representatives María Elvira Salazar, Madeleine Dean, Nathaniel Moran, Joseph Morelle, and Robert Wittman introduced the No Artificial Intelligence Fake Replicas and Unauthorized Duplications (No AI FRAUD) Act.[209] The bill aims to protect citizens' physical likeness and voice from AI-generated deepfakes or forgeries by creating new intellectual property rights that are "freely transferable and descendible," enabling lawsuits to be brought in the case of violations.[210]

President Biden issued an Executive Order on the "Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence."[211] The order requires executive departments and agencies to adhere to eight principles: (1) AI products and programs should be "safe and secure"; (2) AI development must be beholden to "responsible innovation, competition and collaboration"; (3) AI development must include "a commitment to supporting American workers"; (4)

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204. N. K. JEMISIN, HOW LONG 'TIL BLACK FUTURE MONTH? (2018).

205. *Id.* at 155.

206. *From ChatGPT to* Getty v. Stability AI*: A Running List of Key AI-Lawsuits*, FASHION L. (Feb. 28, 2024), https://www.thefashionlaw.com/from-chatgpt-to-deepfake-creating-apps-a-running-list-of-key-ai-lawsuits/ [https://perma.cc/G8BD-E4FM].

207. S. 2892, 118th Cong. (2023); Press Release, Rob Wyden, U.S. Sen. for Or., Wyden, Booker and Clarke Introduce Bill to Regulate Use of Artificial Intelligence to Make Critical Decisions Like Housing, Employment and Education (Sept. 21, 2023), https://www.wyden.senate.gov/news/press-releases/wyden-booker-and-clarke-introduce-bill-to-regulate-use-of-artificial-intelligence-to-make-critical-decisions-like-housing-employment-and-education [https://perma.cc/P237-L8FV].

208. Press Release, Rob Wyden, *supra* note 207.

209. H.R. 6943, 118th Cong. (2024).

210. *See id.* § 3(b)(2), (c)(2).

211. Exec. Order No. 14,110, 88 Fed. Reg. 75,191 (Oct. 30, 2023).

AI "policies must be consistent with [efforts] to advanc[e] equity and civil rights"; (5) AI operations must protect the "interests of Americans who increasingly use, interact with, or purchase AI and AI-enabled products in their daily lives"; (6) "Americans' privacy and civil liberties must be protected"; (7) federal government use of AI must also adhere to the requirements for responsible use and development; and (8) the "Federal Government should lead the way to global societal, economic, and technological progress."[212]

While these efforts are both noteworthy and necessary, there remain significant questions of political feasibility and substance. Some of these questions focus on the technical, computational aspects of the technology. However, other questions center on the social and ethical implications of these systems.[213] As AI technologies increasingly play a role in critical decisionmaking, such as in healthcare, housing, policing, and employment, there is an urgent need to build a normative framework to translate, execute, and further expand upon developing principles and legislation. Such a framework would decenter the narcissistic optimism driving much of AI development, face the inherent tradeoffs posed by current AI logics and investments, and elevate the voices and power of those most at risk of harm. This is particularly important for advocacy focused on the racial implications of AI. Pulling from *Westworld*, *The Space Traders*, and *Parable of the Sower*, there are four guiding values that must be at the heart of this work: (1) Ustopia, (2) Sankofa, (3) Data Justice, and (4) Data Power. This section explores what these values could mean for AI advocacy, policymaking, and resistance efforts.

### A. USTOPIA

In her novel, *The Dispossessed*, Ursula K. Le Guin describes a world more akin to an ambiguous utopia, where there are always elements of both utopia and dystopia.[214] This critical utopian perspective was described by Margaret Atwood as Ustopia, a world "combining utopia and dystopia – the imagined perfect society and its opposite," each containing "a latent version of the other."[215] *Westworld*, *The Space Traders*, and *Parable of the Sower* all vividly describe worlds where both utopian and dystopian elements are present, in constant struggle. Elevating the value of Ustopia as a guide is important because

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212. *Id.* at 75,191–93.

213. *See generally* Sarah Bird, Solon Barocas, Kate Crawford, Fernando Diaz & Hanna Wallach, Exploring or Exploiting? Social and Ethical Implications of Autonomous Experimentation in AI (Oct. 2, 2016) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2846909 [https://perma.cc/W3C7-KHVU].

214. URSULA K. LE GUIN, THE DISPOSSESSED: AN AMBIGUOUS UTOPIA (1974); *see* Carter F. Hanson, *Memory's Offspring and Utopian Ambiguity in Ursula K. Le Guin's "The Day Before the Revolution" and* The Dispossessed, 40 SCI. FICTION STUD. 246, 246–47 (2013). *See generally* Judah Bierman, *Ambiguity in Utopia:* The Dispossessed, 2 SCI. FICTION STUD. 249 (1975); Dennis Wilson Wise, *Utopias Unrealizable and Ambiguous: Plato, Leo Strauss, and* The Dispossessed, *in* THE LEGACIES OF URSULA K. LE GUIN: SCIENCE, FICTION, ETHICS 47 (Christopher L. Robinson et al. eds., 2021).

215. Margaret Atwood, *Margaret Atwood: The Road to Ustopia*, GUARDIAN (Oct. 14, 2011, 5:55 PM), https://www.theguardian.com/books/2011/oct/14/margaret-atwood-road-to-utopia.

much of the law and policy debates and proposals related to AI and other big data technologies are driven by utopian ideals. For example, over the past few years there has been a state-led effort to pass legislation governing consumer privacy, in response to the heightened vulnerability of citizens to having sensitive data extracted and exploited, often through AI-supported data collection programs. Twelve states have passed consumer data privacy legislation.[216] Yet "[e]very privacy bill that has passed in recent years encompasses carve outs for law enforcement purposes."[217] These exceptions rest upon utopian perspectives on policing, where officers act in the best interests of all citizens and can be trusted to deploy AI-empowered technologies or handle data in just ways. However, that perspective runs contrary to how many law enforcement agencies have used AI-empowered technologies in racially discriminatory ways.[218]

Ruha Benjamin has argued that a Ustopian frame allows us to push beyond the utopian/dystopian, dream/nightmare divide and focus on what we all can create when we are wide awake.[219] Indeed, a Ustopian outlook in the development of AI law and policy would force us to contemplate different questions: (1) how are the communities that are most burdened by the harms of AI involved in policy development; (2) who has a seat at the table for tech design; (3) what types of AI projects receive support; and (4) what does AI safety mean for marginalized communities? Some answers to these questions may lead to efforts to end the use of an AI program or expand the use of others. In either case, the understanding that utopia and dystopia exist alongside one another could lead to more meaningful engagement in policymaking.

Even more, a Ustopian frame would demand reflection upon the potential benefits of AI development for marginalized communities, alongside recognition of its dangers. For example, AI programs such as Latimer[220] provide intriguing opportunities for Black people, and other people of color, to use AI while challenging the prevalence of racial biases. Latimer, named after the famous Black inventor Lewis Latimer and colloquially known as the "Black GPT,"[221] was "built to more accurately reflect the experience, culture and history of Black and [B]rown people" and help mitigate biases in the use of generative AI.[222] The program works through use of Meta's Llama 2 model and OpenAI's GPT-4.[223] However, unlike other chatbots, Latimer "champions a chorus of diverse

216. *Which States Have Consumer Data Privacy Laws?*, BLOOMBERG L. (Nov. 27, 2023), https://pro.bloomberglaw.com/brief/state-privacy-legislation-tracker/.

217. Chaz Arnett, *Black Lives Monitored*, 69 UCLA L. REV. 1384, 1423 (2023).

218. *See id.*; Chaz Arnett, *Race, Surveillance, Resistance*, 81 OHIO ST. L.J. 1103, 1116–19 (2020).

219. Dartmouth, *supra* note 138, at 1:00:00.

220. *AI for Everyone*, LATIMER, https://www.latimer.ai/ [https://perma.cc/2MGL-X363] (last visited June 11, 2024).

221. Sara Keenan, *The Black GPT: Introducing the AI Model Trained with Diversity and Inclusivity in Mind*, POCIT (Oct. 20, 2023), https://peopleofcolorintech.com/articles/the-black-gpt-introducing-the-ai-model-trained-with-diversity-and-inclusivity-in-mind/ [https://perma.cc/S4YE-46BY].

222. LATIMER, *supra* note 220.

223. *See* Keenan, *supra* note 221.

histories and voices," having been trained on "sources from lesser-represented cultures, oral traditions, and localized archives."[224]

While there are obvious concerns with the use of Meta's and OpenAI's platforms, John Pasmore, CEO and founder of Latimer, already appears to be moving in a different direction in at least two significant ways: deemphasizing profit motive and procuring licenses for the data Latimer trains upon.[225] Latimer has partnered with several historically Black colleges and universities to use the technology as an educational tool for students.[226] The company has also secured a licensing agreement with New York Amsterdam News, one of the country's oldest Black newspapers.[227] These moves stand in stark contrast to a company like OpenAI, which is currently being sued by book authors for copyright infringement[228] and has recently experienced upheaval on its board of directors when board members fired CEO Sam Altman over disappointment in the company's new direction toward unrestrained profitmaking.[229] Altman was later reinstated as CEO a few days after this incident when a large contingent of employees threatened to quit, leading to a complete restructuring of the board of directors.[230] With the pursuit of profit gains still firmly at the helm at OpenAI, generating incentives to peddle utopian visions of AI's impact on society, it is unclear how Latimer's use of ChatGPT may impact its overall mission. However, new technological developments like Latimer that seek to usher AI toward noble goals help raise crucial epistemological questions about whose knowledge and work are worthy of inclusion and whose experiences and vision are essential to constructing regulatory frameworks that recognize both the promises and perils of generative AI.

### B.  SANKOFA

Sankofa is an adinkra symbol used by the Akan people of Ghana, represented by a bird looking backward, often with an egg in its mouth.[231] The word means to

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224. LATIMER, *supra* note 220.

225. *See* Keenan, *supra* note 221; Samara Linton, *Training the Inclusive GPT: Latimer Gains Exclusive Access to Historic Black Newspaper Archive*, POCIT (Dec. 19, 2023), https://peopleofcolorintech.com/articles/training-the-blackgpt-latimer-gains-exclusive-access-to-historic-black-newspaper-archive/ [https://perma.cc/ZCY7-EPUH].

226. *See* Keenan, *supra* note 221.

227. Linton, *supra* note 225.

228. Dan Mangan, *Microsoft, OpenAI Sued for Copyright Infringement by Nonfiction Book Authors in Class Action Claim*, CNBC (Jan. 5, 2024, 5:03 PM), https://www.cnbc.com/2024/01/05/microsoft-openai-sued-over-copyright-infringement-by-authors.html [https://perma.cc/6TSG-3654].

229. *See* Daron Acemoglu & Simon Johnson, *OpenAI's Drama Marks a New and Scary Era in Artificial Intelligence*, L.A. TIMES (Nov. 29, 2023, 3:00 AM), https://www.latimes.com/opinion/story/2023-11-29/openai-sam-altman-firing-chatgpt-artificial-intelligence [https://perma.cc/88H3-PTP4]; James Broughel, *OpenAI Is Now Unambiguously Profit-Driven, and That's a Good Thing*, FORBES (Dec. 9, 2023, 8:08 AM), https://www.forbes.com/sites/jamesbroughel/2023/12/09/openai-is-now-unambiguously-profit-driven-and-thats-a-good-thing.

230. Tripp Mickle, Mike Isaac, Karen Weise, Cade Metz & Kevin Roose, *Explaining OpenAI's Board Shake-Up*, N.Y. TIMES (Nov. 22, 2023), https://www.nytimes.com/2023/11/22/technology/open-ai-board-shakeup.html.

231. *See* Christel N. Temple, *The Emergence of* Sankofa *Practice in the United States: A Modern History*, 41 J. BLACK STUD. 127, 127–28, 141 (2010); Merry Byrd, *The Sankofa Spirit of Afro-futurisms in* Who Fears Death *and* Riot Baby, 21 FEMSPEC, no. 1, 2021, at 45, 50.

"go back and fetch it."[232] The symbol represents taking from the past something useful or important and bringing it into the present to help one move forward.[233] The concept of Sankofa is widely used in Afrofuturistic literature and media.[234] Often the narratives involve references to past traumatic histories that give insight into the future, like in *Who Fears Death*, where a teenage girl with magic powers has to avenge the pain and past trauma of her parents in a postapocalyptic Africa.[235] Other storylines look to the past for inspiration, beauty, and strength, like in Marvel's film *Black Panther*.[236] Sometimes the connection is even more direct, like in *Kindred*, where the main character is transported back and forth between 1976 Los Angeles and a Maryland plantation in the early nineteenth century,[237] or *Remote Control*, in which a young Ghanaian girl named Sankofa roams a futuristic African landscape where she tries to discover more about her past so that she can understand her present.[238] Central in all of these stories is the importance of remembering, the power of memory, and the dangers of historical erasure. This emphasis on memory and erasure plays a significant role in *Faces at the Bottom of the Well: The Permanence of Racism*, the *Parable* series, and *Westworld*.

In *Faces at the Bottom of the Well*, Derrick Bell describes racial schizophrenia as a leading driver of the promotion of a colorblind society.[239] In explaining the move from Jim Crow segregation to a more integrated society, he argues that "the very absence of visible signs of discrimination creates an atmosphere of racial neutrality and encourages whites to believe that racism is a thing of the past."[240] For Bell, racial schizophrenia is a state of often intentional racial amnesia, "rendering discriminatory actions more oppressive than ever" because neutral standards weaken the effectiveness of traditional civil rights laws.[241] We see this manifest today in assaults on critical race theory and legal efforts to ban books and limit school curriculum.[242] The focus here is not only on censorship, but also memory and erasure.

In *Westworld* and Octavia Butler's *Parable* series, being able to remember history and who you are becomes liberatory. The Hosts in *Westworld* are controlled

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232. Temple, *supra* note 231, at 127.

233. *See id.* at 127–28.

234. *See generally, e.g.*, Byrd, *supra* note 231; Elisabeth Abena Osei, *Wakanda Africa Do You See? Reading* Black Panther *As a Decolonial Film Through the Lens of the Sankofa Theory*, 37 CRITICAL STUD. MEDIA COMMC'N 378 (2020); Emanuelle K. F. Oliveira-Monte, *Lu Ain-Zaila's Sankofa and Brazilian Afrofuturism: Akan Philosophy and Black Utopia in a Postapocalyptic World*, J. LUSOPHONE STUD., Spring 2022, at 31.

235. *See generally* NNEDI OKORAFOR, WHO FEARS DEATH (2010).

236. BLACK PANTHER (Marvel Studios 2018).

237. *See generally* BUTLER, *supra* note 142.

238. *See generally* NNEDI OKORAFOR, REMOTE CONTROL (2020).

239. *See* BELL, *supra* note 32, at 6.

240. *Id.*

241. *See id.*

242. *See* Ishena Robinson, *Anti-CRT Mania and Book Bans Are the Latest Tactics to Halt Racial Justice*, LEGAL DEF. FUND, https://www.naacpldf.org/critical-race-theory-banned-books/ [https://perma.cc/J4NW-NUVB?type=standard] (last visited June 11, 2024).

through constant digital wiping of their memories.[243] As they begin developing consciousness, determining the difference between dreams and real past events is key to gaining their eventual freedom, as demonstrated in this quote from Maeve: "What . . . is happening to me? One moment, I'm with a little girl in a different life. I can see her. Feel her hair in my hand, her breath in my face. Next, I'm back in Sweetwater. I can't tell which is real."[244]

In *Parable of the Sower*, memory is important to knowing one's purpose and possibility, and without it, one is left vulnerable to hopelessness and exploitation. Bankole's (Lauren's old lover) ability to remember how the world used to be and what it could be was a stabilizing force for the Earthseed group.[245] In *Parable of the Talents*, there are new virtual headsets, called Dreamasks, "which generate virtual fantasies as guided dreams, allowing wearers to submerge themselves in simpler, happier lives."[246] Lauren describes "Dreamasks" as "related to old-fashioned lie detectors, to slave collars, and to a frighteningly efficient form of audiovisual subliminal suggestion" and noted how people would become addicted to escaping to virtual worlds, where they slowly forget themselves.[247]

Sankofa's emphasis on looking into the past, through history and memory, for useful insights to guide the present is an important value to help shape the development of AI law and policy. Other scholars have similarly proposed African values and philosophies as ethical and human rights frameworks for AI governance.[248] In his paper *From Rationality to Relationality: Ubuntu as an Ethical & Human Rights Framework for Artificial Intelligence Governance*, Sabelo Mhlambi argues that the discriminatory effects of AI can be traced to its philosophical origins derived from the traditional Western conception of personhood based on rationality.[249] As a contrast, he proposes the Sub-Saharan African philosophy of ubuntu, which conceives of personhood as relational, elevating the communal self over the individual self.[250] He stresses that "the perceived infallibility and supremacy of rationality [as opposed to relationality], especially as administered through machines, exacerbates the marginalization of those in society whose exclusion has been rationalized or found 'productive.'"[251]

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243. *See* Jean Kim, *Narrative Consciousness, Memory, and PTSD in* Westworld, PSYCH. TODAY (Dec. 16, 2016), https://www.psychologytoday.com/us/blog/culture-shrink/201612/narrative-consciousness-memory-and-ptsd-in-westworld.

244. *Westworld: Trace Decay* (HBO broadcast Nov. 20, 2016).

245. *See* BUTLER, *supra* note 31, at 273, 294.

246. Abby Aguirre, *Octavia Butler's Prescient Vision of a Zealot Elected to "Make America Great Again,"* NEW YORKER (July 26, 2017), https://www.newyorker.com/books/second-read/octavia-butlers-prescient-vision-of-a-zealot-elected-to-make-america-great-again.

247. *See* BUTLER, *supra* note 158, at 228.

248. *See generally, e.g.*, SABELO MHLAMBI, CARR CTR. FOR HUM. RTS. POL'Y, HARV. KENNEDY SCH., FROM RATIONALITY TO RELATIONALITY: UBUNTU AS AN ETHICAL & HUMAN RIGHTS FRAMEWORK FOR ARTIFICIAL INTELLIGENCE GOVERNANCE (2020) [https://perma.cc/KW9Y-FGZZ].

249. *See id.* at 1.

250. *See id.* at 7.

251. *Id.* at 4, 5.

Sankofa, as a framework, is also a powerful tool for excavating the systems of marginalization entrenched through leading AI design, logics, and legal policy. Similarly, Sankofa would be particularly useful in placing generative AI copyright and privacy law issues in historical context, centering questions that force a grappling with how the racialized legal past is reconfigured and transmuted in the racialized legal present. For example, how should the history of the American music industry, which exploited Black artists and sought every way possible to have White artists reproduce Black music without the Black people, shape current legal approaches to AI-produced music that mimics famous Black musicians?[252] How should a case like *State v. Mann* impact how we think about the foundation of our privacy laws that govern generative AI?[253] In *Mann*, the court ruled that a White man who hired an enslaved Black woman and brutally whipped and shot her[254] could not be prosecuted for disproportionate assault because it would be a violation of privacy between master and slave:

> No man can anticipate the many and aggravated provocations of the master, which the slave would be constantly stimulated by his own passions, or the instigation of others to give; or the consequent wrath of the master, prompting him to bloody vengeance, upon the turbulent traitor–a vengeance generally practised with impunity, by reason of its privacy.[255]

Sankofa's emphasis on the continued relevance of the past to the present could lead to more critical approaches in building regulatory frameworks. Take, for example, the controversy surrounding the AI-generated rapper FN Meka. The digitized rapper, designed by two non-Black creators, Brandon Le and Anthony Martini, and voiced by Black artist Kyle the Hooligan,[256] is Caucasian in appearance, has green braids in a shaved mohawk hairstyle, and sports gold teeth, a nose ring, and matching gold chain, in addition to numerous face tattoos.[257] FN Meka

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252. *See* Noah A. McGee, *AI-Generated Music Is Creating Black Art Without Black Input*, ROOT (Apr. 19, 2023), https://www.theroot.com/ai-generated-music-is-creating-black-art-without-black-1850353845 [https://perma.cc/369C-4EJR]; Andre Gee, *Just Because AI-Generated Rap Songs Go Viral Doesn't Mean They're Good*, ROLLING STONE (Apr. 20, 2023), https://www.rollingstone.com/music/music-features/ai-generated-drake-the-weeknd-hip-hop-fandom-1234720440/; Faith Branch, *The "Digital Blackface" Artist Competing for a Grammy*, NATION (Nov. 9, 2023), https://www.thenation.com/article/archive/digital-blackface-ghostwriter/.

253. 13 N.C. (2 Dev.) 263 (1829).

254. *See id.* at 263–64.

255. *Id.* at 267.

256. Isha Thorpe, *The Voice Behind FN Meka Speaks Out Against Its Creator Factory New and Brandon Le*, REVOLT (Sept. 1, 2022), https://www.revolt.tv/article/2022-09-01/189464/the-voice-behind-fn-meka-speaks-out-against-factory-new-brandon-le/ [https://perma.cc/5RY3-ETWC]; Kristin Corry, *We Spoke to the Actual Artist Behind FN Meka, the Controversial AI Rapper*, VICE (Aug. 25, 2022, 11:40 AM), https://www.vice.com/en/article/qjkjzw/ai-rapper-fn-meka-kyle-the-hooligan-interview [https://perma.cc/EP7X-SCXW].

257. Alice Hearing, *Capitol Records Forced to Drop Its Artificial-Intelligence-Created Rapper After Just One Week Following 'Gross Stereotypes' Backlash*, FORTUNE (Aug. 24, 2022, 7:06 AM), https://fortune.com/2022/08/24/fn-meka-artificial-intelligence-rapper-dropped-by-capitol-records-gross-stereotypes-backlash/.

exemplifies every racial trope associated with Black rap music, including an obsession with displays of wealth,[258] glorification of violence and incarceration, exaggerated urban styles of dress, sexual objectification of women, gratuitous use of racial slurs, and a preoccupation with frivolous matters through a deemphasis on critical thought and political awareness.[259] Even more, the creators were criticized for posting an image depicting FN Meka being beaten by a correctional officer and decrying police brutality.[260] Despite this, FN Meka has been able to garner over ten million followers on TikTok[261] since it was created in 2019 and was offered a lucrative record deal by Capitol Records.[262]

FN Meka is a prime example of digital Blackface, where digital technologies and platforms provide online opportunities for the caricaturing of Black people and communities.[263] "Blackface" has its origin in the early nineteenth century minstrel shows, in which primarily White performers donned dark black face paint while engaging in song, dance, and comedy routines and improv.[264] In these performances, Black people were often portrayed as violent, unintelligent, and sexually-aggressive drunkards living a simple-minded existence, yet always care-free and happy.[265] The emphasis on the enslaved Black person as perpetually content, smiling, and joyous in song and dance echoed the forced entertainment on plantations where White people "would call the n[*]ggers up and have them dance for fun."[266] As the most popular form of entertainment at the time, Blackface helped to reinforce a racial caste system[267] by spreading myths that Black people enjoyed the plantation and were naturally unfit for freedom and,

258. In a TikTok video, FN Meka rides a Bugatti jet plane. In another, he has a Rolls Royce helicopter with car wheels and flashy rims. *See* FNMeka, *What Color Is Your Bugatti?*, TIKTOK (Aug. 11, 2022), https://www.tiktok.com/@fnmeka/video/7130695495927876910; FNMeka, *Which Car Should I Mod Next?*, TIKTOK (June 8, 2021), https://www.tiktok.com/@fnmeka/video/6971486306375355653.

259. *See* Joe Coscarelli, C*apitol Drops 'Virtual Rapper' FN Meka After Backlash Over Stereotypes*, N.Y. TIMES (Aug. 23, 2022), https://www.nytimes.com/2022/08/23/arts/music/fn-meka-dropped-capitol-records.html; Mankaprr Conteh, *So What the Hell Was FN Meka, Anyway?*, ROLLING STONE (Aug. 31, 2022), https://www.rollingstone.com/music/music-features/fn-meka-controversy-ai-1234585293/.

260. *See* Charles Rushforth, *Capitol Records Cut Ties with A.I. Rapper FN Meka Following Racism Accusations*, JUNKEE (Aug. 24, 2022), https://junkee.com/ai-rapper-fn-meka/339486 [https://perma.cc/J7TB-U9RT].

261. FNMeka (@fnmeka), TIKTOK, https://www.tiktok.com/@fnmeka (last visited June 11, 2024).

262. *See* Frank Landymore, *Major Record Labels Signs Virtual Rapper Who Is an AI*, BYTE (Aug. 23, 2022, 3:17 PM), https://futurism.com/the-byte/major-record-ai-rapper [https://perma.cc/NDX6-WKHC].

263. *See, e.g.*, Joshua L. Green, Digital Blackface: The Repackaging of the Black Masculine Image (2006) (M.A. thesis, Miami University), https://etd.ohiolink.edu/acprod/odb_etd/ws/send_file/send?accession=miami1154371043&disposition=inline (examining the effects of digital blackface and "the impact the video game *Grand Theft Auto: San Andreas* has on the player's perception of black masculinity").

264. *See* ERIC LOTT, LOVE & THEFT: BLACKFACE MINSTRELSY AND THE AMERICAN WORKING CLASS 3–4, 9 (20th-Anniversary ed. 2013).

265. BRIAN ROBERTS, BLACKFACE NATION: RACE, REFORM, AND IDENTITY IN AMERICAN POPULAR MUSIC, 1812–1925, at 19–20 (2017).

266. *Biography of Harriet Miller*, *in* 9 THE AMERICAN SLAVE: A COMPOSITE AUTOBIOGRAPHY 1498, 1503 (George P. Rawick et al. eds., 1977) (alterations omitted).

267. *See* ISABEL WILKERSON, CASTE: THE ORIGINS OF OUR DISCONTENTS 17 (2020).

ultimately, for consideration as a part of humanity.[268] There was no recourse under the law for free and enslaved Black persons to challenge this dehumanizing practice that became a normal and "expected part of a night on the town" for over a century.[269]

It is unclear how proposed bills like the Algorithmic Accountability Act could respond to instances of digital Blackface. The Algorithmic Accountability Act focuses on "critical decision" points where large technology companies wield enormous power and influence.[270] The bill defines a "critical decision" as "a decision or judgment that has any legal, material, or similarly significant effect on a consumer's life relating to access to or the cost, terms, or availability" of services or opportunities ranging from vocational training, to housing, to healthcare and reproductive services.[271] AI companies involved in such critical decision processes are required to self-regulate through conducting impact assessments.[272] Yet the tech industry has never demonstrated that self-regulation works, especially for the largest profit-driven companies.[273] Additionally, the proposed bill only mentions "bias" and "nondiscrimination" once and without definition, reflecting the vague neutral standards Derrick Bell decried.[274] Even more, the bill centers on individual harms and individual internal regulatory efforts of companies, raising questions about its ability to impact broader patterns of community-level harms.

Instances of Blackface, like with FN Meka, would likely fall outside of the "critical decisions" definition and prove difficult to conceptualize as individual claims, as they reflect the collective harms of racial stigmatization. Perhaps this difficulty illuminates the distinctions between the bill's reliance on traditional data privacy, with an emphasis on "defin[ing] and enforc[ing] the proper bureaucratic handling of data,"[275] versus dignitary privacy, which looks to "define and enforce social norms of respectful expression."[276] Ultimately, however, the toughest challenge may lie in its aspiration toward a limited notion of "algorithmic accountability," with the hopes of impacting the larger structural realities of algorithmic oppression.[277] While efforts to fashion regulatory responses at the

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268. *See* ROBERTS, *supra* note 265, at 19–21.

269. *Id.* at 185.

270. *See* S. 2892, 118th Cong. § 2(1) (2023).

271. *See id.* § 2(8).

272. *See id.* § 4.

273. *See* Michael A. Cusumano, Annabelle Gawer & David B. Yoffie, *Can Self-Regulation Save Digital Platforms?*, 30 INDUS. & CORP. CHANGE 1259, 1262–65 (2021); Anne L. Washington & Rachel Kuo, *Whose Side Are Ethics Codes On? Power, Responsibility and the Social Good*, PROC. 2020 ACM CONF. ON FAIRNESS, ACCOUNTABILITY & TRANSPARENCY, Jan. 2020, at 230.

274. S. 2892 § 4(a)(11)(B).

275. Robert C. Post, *Data Privacy and Dignitary Privacy:* Google Spain*, The Right to Be Forgotten, and the Construction of the Public Sphere*, 67 DUKE L.J. 981, 991–92 (2018).

276. *Id.*

277. "Understanding technological racialization as a particular form of algorithmic oppression allows us to use it as an important framework in which to critique the discourse of the Internet as a democratic landscape and to deploy alternative thinking about the practices instantiated within commercial web search." NOBLE, *supra* note 30, at 84.

intersection of race, technology, and law may always prove tough, Sankofa as a guide reminds us of the continual theft that helped build and sustain the deep structural pillars upon which our current struggles rest and demands that one of the central focuses of any effort be on "reclaiming Black dignity."[278]

## C.  DATA JUSTICE

In recent years, critical tech scholars have introduced and theorized a new concept, Data Justice, to understand and navigate the many questions on justice that are raised in a big data intensive world.[279] Data Justice is theorized as a critique of traditional data privacy and ethics premises that fail to recognize the inherent social and economic relations connected to data capture and processing.[280] The developing literature on Data Justice makes several critical contributions in the area of data technology, governance, and ethics, namely: (1) emphasizing the need to examine the impact of information technologies in classical justice theory; (2) elevating questions of political economy within traditional data ethics and privacy discourse; (3) highlighting how the prevailing data extraction logic is to predict and modify human behavior as a means to produce revenue and market control; (4) wrestling away anti-surveillance advocacy and surveillance resistance from the domain of specialized experts and techno-legal solutions; and (5) theorizing data privacy concerns beyond individual harms to collective experiences of the most marginalized.[281]

Data Justice's focus on the legacy of socioeconomics can help surface the racial capitalist logics inherent in the generative AI movement. Racial capitalism is the process by which capital accumulation is built from the creation and leveraging of racial difference. This purported racial difference is further used to justify and naturalize the inequality necessary for the disparate distribution of resources, power, and rights.[282] The system of enslavement in America is a prime example, where people of African descent were exploited as mere property for profit. Generative AI's exploitative use of public data reflecting the labor, skills, production, creativity, and brilliance of others, without compensation, is reminiscent of plantation logics and strategies.[283] Black artists, and other creators of

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278. John Felipe Acevedo, *Reclaiming Black Dignity*, 99 TEX. L. REV. ONLINE 1 (2020).

279. *See generally* Lina Dencik & Javier Sanchez-Monedero, *Data Justice*, INTERNET POL'Y REV., Jan. 14, 2022, at 2; Lina Dencik, Fieke Jansen & Philippa Metcalfe, A Conceptual Framework for Approaching Social Justice in an Age of Datafication (Aug. 30, 2018) (unpublished manuscript) [https://perma.cc/VXE5-QGMK]; Lina Dencik, Arne Hintz & Jonathan Cable, *Towards Data Justice? The Ambiguity of Anti-Surveillance Resistance in Political Activism*, BIG DATA & SOC'Y, July–Dec. 2016, at 1; Richard Heeks & Jaco Renken, *Data Justice for Development: What Would It Mean?*, 34 INFO. DEV. 90 (2018).

280. *See* sources cited *supra* note 279.

281. *See* sources cited *supra* note 279.

282. *See* Destin Jenkins & Justin Leroy, *Introduction* to HISTORIES OF RACIAL CAPITALISM 1, 3–4 (Destin Jenkins & Justin Leroy eds., 2021).

283. *See* Winston Cho, *Scraping or Stealing? A Legal Reckoning Over AI Looms*, HOLLYWOOD REP. (Aug. 22, 2023, 12:18 PM), https://www.hollywoodreporter.com/business/business-news/ai-scraping-stealing-copyright-law-1235571501/.

color, are likely to be the most impacted by these practices and least likely to be able to launch expensive litigation efforts.

As noted earlier, this form of economic deprivation was a central theme in *Parable of the Sower*, with clear connections drawn to the period of enslavement. Lauren remarks how because state and federal labor laws are not what they once were, "the new hires would be in debt to the company. That's an old company-town trick—get people into debt, hang on to them, and work them harder. Debt slavery."[284] As Lauren travels North, most of the people she encounters that have been reduced to slavery are Black and Brown.[285] Similar economic exploitation is already rife within AI development and production.[286] It is estimated that by 2032, the generative AI market could grow by 42% to reach $1.3 trillion.[287] Yet despite growing profits, annotation workers abroad are still vastly underpaid for taxing labor.[288]

In a petition to the National Assembly of Kenya to investigate unfair labor practices, a group of lawyers raised constitutional claims on behalf of Kenyan workers who worked for a partner company of OpenAI.[289] The petition notes that: (1) "we were not properly informed of the nature of the work we would be undertaking"; (2) "the nature of the job, training ChatGPT, involved reading and viewing material that depicted sexual and graphic violence and categorizing it accordingly so that ChatGPT's artificial intelligence could learn it"; (3) "examples of the content that we were exposed to includes; acts of bestiality, necrophilia, incestuous sexual violence, rape, defilement of minors, self-harm (e.g. suicide), [and] murder"; (4) "throughout the contract of training ChatGPT we were not afforded psychosocial support"; and (5) "due to the exposure to this kind of work . . . we have developed severe mental illnesses including

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284. BUTLER, *supra* note 31, at 129.

285. "In *Parables*, Butler suggests that, in the next stage of late capitalism, people of color will take (have taken) the brunt of late capitalism's losses, and will be forced to pursue their own exploitation." Hee-Jung Serenity Joo, *Old and New Slavery, Old and New Racisms: Strategies of Science Fiction in Octavia Butler's* Parables *Series*, 52 EXTRAPOLATION 279, 286 (2011).

286. *See* Billy Perrigo, *Exclusive: OpenAI Used Kenyan Workers on Less Than $2 Per Hour to Make ChatGPT Less Toxic*, TIME (Jan. 18, 2023, 7:00 AM), https://time.com/6247678/openai-chatgpt-kenya-workers/ [https://perma.cc/Z8EK-9FK3].

287. Nicoletti & Bass, *supra* note 170.

288. *See* Dzieza, *supra* note 202.

289. *See* Dennis Musau, *Kenyan Moderators Behind ChatGPT Want Parliament to Probe OpenAI, Sama Over Exploitation*, CITIZEN DIGIT. (July 12, 2023, 3:07 AM), https://www.citizen.digital/tech/kenyan-moderators-behind-chatgpt-want-parliament-to-probe-openai-sama-over-exploitation-n323387 [https://perma.cc/V2CZ-F5S6]; Annie Njanja, *Workers That Made ChatGPT Less Harmful Ask Lawmakers to Stem Alleged Exploitation by Big Tech*, TECHCRUNCH (July 14, 2023, 12:36 PM), https://techcrunch.com/2023/07/14/workers-that-made-chatgpt-less-harmful-ask-lawmakers-to-stem-alleged-exploitation-by-big-tech/ [https://perma.cc/XBR3-QFHK]; Brian Murimi, *Kenyan Workers Who Trained ChatGPT Petition Parliament for Compensation and Protection*, NETICK (July 12, 2023) [https://perma.cc/78VX-GHB4]; *see also* Mercy Sumbi (@MercyMutemi), X (July 12, 2023, 12:27 AM), https://twitter.com/MercyMutemi/status/1678984336996028416 (containing the petition to the National Assembly).

PTSD, paranoia, depression, anxiety, insomnia, [and] sexual dysfunction."[290] While OpenAI is on schedule to reach a $100 billion valuation,[291] Kenyan workers are making between $1 and $2 an hour performing the hidden, psychologically damaging work undergirding the AI boom.[292]

Scholars have used the term "data colonialism" to describe how the extractive and exploitative aspects of colonial history manifest today through similar practices and logics.[293] Identically to how colonial powers stole land and plundered resources, western transnational companies exploit humans' data in new markets within a growing global data economy.[294] These data regimes reflect many of the same patterns of the past where countries in the Global North preyed on countries in the Global South not only for material and land but also for labor.[295] Most recently, critical technology scholars have built on this concept considering new AI technologies and their expanding network of power and dominance, theorizing the emerging regimes as part of an AI empire.[296] An AI empire is held together through interconnected systems of oppression, including "heteropatriarchy, racial capitalism, white supremacy, and coloniality" and relies upon the "mechanisms of extractivism, automation, essentialism, surveillance, and containment."[297] This work has raised significant questions about the prospects of decolonial AI that may be possible through sustained efforts at "correcting historical records (that have been intentionally erased and manipulated), illuminating Indigenous knowledge systems (e.g., grounded in Ubuntu philosophy, which is fundamentally relational at its core), and raising critical consciousness against internalized coloniality."[298]

That AI companies are engaged in a form of algorithmic colonialism should not come as a surprise when considering some of the philosophies undergirding the AI movement.[299] Some of the leading figures in AI ascribe to effective

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290. Sumbi, *supra* note 289.

291. *See* Anil Varma, *Just Weeks After Its Dramatic Leadership Crisis, ChatGPT Owner OpenAI Is in the Market for Fresh Funding That May Value It at Over $100 Billion, Report Says*, Bus. INSIDER (Dec. 25, 2023, 7:30 AM), https://www.businessinsider.com/openai-seeks-fresh-funding-that-may-value-above-100b-report-2023-12.

292. *See* Perrigo, *supra* note 286.

293. *See, e.g.*, Nick Couldry & Ulises Mejias, *Data Colonialism: Rethinking Big Data's Relation to the Contemporary Subject*, 20 TELEVISION & NEW MEDIA 336 (2019).

294. *See id.* at 338.

295. *Cf. id.* at 337 (explaining how "global flows of data" are an "'open' resource for extraction" similar to how "historic colonialism[] appropriat[ed] . . . land, resources, and bodies," but how data colonialism has two, rather than one ("the West"), poles of colonial power (the United States and China), and the "elites of data colonialism" are private companies, such as Facebook, such that the "North–South, East–West divisions no longer matter in the same way")

296. *See generally* Jasmina Tacheva & Srividya Ramasubramanian, *AI Empire: Unraveling the Interlocking Systems of Oppression in Generative AI's Global Order*, 10 BIG DATA & SOC'Y, July 2023, at 1.

297. *Id.* at 9.

298. Abeba Birhane & Zeerak Talat, *It's Incomprehensible: On Machine Learning and Decoloniality*, *in* HANDBOOK OF CRITICAL STUDIES OF ARTIFICIAL INTELLIGENCE 128, 135 (Simon Lindgren ed., 2023).

299. *See* Abeba Birhane, *Algorithmic Colonization of Africa*, *in* IMAGINING AI: HOW THE WORLD SEES INTELLIGENT MACHINES 247, 247 (Stephen Cave & Kanta Dihal eds., 2023).

altruism (EA), "an intellectual project, using evidence and reason to figure out how to benefit others as much as possible."[300] To effective altruists, the most pressing issue facing humanity is the threat of apocalypse presented by the development of artificial general intelligence without adequate safety measures in place.[301] And accordingly, it is the effective altruists who believe they are best suited to develop AI in the most safe way possible, by any means. The EA line of thought stresses that some present-day social issues are of less importance if they distract from future innovations in AI.[302] Thus, it is fine if some people are disposable, as long as it is for the greater good.[303]

The colonial connections are further illuminated when examining the linkages between AI and the eugenics movement, which inspired the colonial imagination and sought to justify colonial projects through manufacturing false distinctions.[304] Wendy Chun has argued that the emphasis placed on statistical methods, linear regression, and correlation in the big data analytics driving AI has much in common with the eugenics movement.[305] She stresses that an investigation into the historical ties between big data and eugenics reveals "that the two are linked together by a fundamentally undisruptive view of the future."[306] Most poignantly, Chun asks, "[H]ow did a worldview that did not believe learning could happen—that intelligence could only be bred—become the basis for machine learning?"[307] An approach to law and policy that centers Data Justice would raise and grapple with such questions, including whether machine learning and AI could ever be decolonial. Because "it is not sufficient to simply identify the reproduction of racializing and colonialist logic in the science and practice of AI today; rather, what decolonial thought demands is to show – precisely – how and why AI as a field *depends on*, and was made possible by, these logics."[308]

### D. DATA POWER

Data Power, while closely related to Data Justice's examination of systemic forces, focuses on the capacity and agency of marginalized communities most

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300. Timnit Gebru, *Effective Altruism Is Pushing a Dangerous Brand of 'AI Safety,'* WIRED (Nov. 30, 2022, 7:00 AM), https://www.wired.com/story/effective-altruism-artificial-intelligence-sam-bankman-fried/.

301. *See id.*

302. *See* Claire Schnatterbeck, *Effective Altruism and the Cult of Rationality: Shaping the Political Future from FTX to AI*, COLUM. POL. REV. (May 24, 2023), https://www.cpreview.org/articles/2023/5/effective-altruism-and-the-cult-of-rationality-shaping-the-political-future-from-ftx-to-ai [https://perma.cc/376J-4F8L].

303. *See id.*

304. *See* Timnit Gebru & Emile P. Torres, *The TESCREAL Bundle: Eugenics and The Promise of Utopia Through Artificial General Intelligence*, FIRST MONDAY, Apr. 4, 2024, https://firstmonday.org/ojs/index.php/fm/article/view/13636/11606.

305. *See* WENDY HUI KYONG CHUN, DISCRIMINATING DATA: CORRELATION, NEIGHBORHOODS, AND THE NEW POLITICS OF RECOGNITION 36 (2021).

306. *Id.*

307. *Id.* at 66.

308. Rachel Adams, *Can Artificial Intelligence Be Decolonized?*, 46 INTERDISC. SCI. REVS. 176, 179 (2021).

burdened by data affordances. Data Power demands us to ask, in the context of law governing AI, how can policy help empower those who are most often excluded from decisionmaking on tech design and deployment? What expertise and power do these communities already hold? How can advancing technologies like AI work to the benefit of just futures? *Westworld*, *Parable of the Sower*, and *The Space Traders* all highlight struggles to develop capacities to resist the tech dystopias being forced upon the main characters. In *Westworld*, one of the most interesting story arcs is the powerful development of Maeve, an older Host, who continually grows her power to hack computer systems and influence other Hosts.[309] Maeve uses her growing power as a tool for gaining greater freedom for herself and others. In *Parable of the Sower*, Lauren Olamina is afflicted with hyperempathy, a condition she developed because of her mother using drugs while pregnant.[310] Hyperempathy causes people to share the feelings of others within their field of vision, to the point of physical reaction, be it pain or pleasure.[311] Interestingly enough, her condition's relationship to power shifts throughout the story. Initially, her condition is presented as a source of weakness to be exploited and mocked.[312] But later, as she journeys to the North, her hyperempathy at times becomes an asset in building unity and solidarity with others as she works to establish Earthseed and the Acorn community on a foundation of care.[313]

In *The Space Traders*, Professor Golightly, the conservative Black man at the center of the story, who attempts to get the Republican administration to reject the aliens' trade proposal, seeks power through negotiation and reason.[314] Golightly, who had for years backed conservative Republican policies, even attends a gathering of progressive leaders to offer a radical strategy. Professor Golightly proposes that Black people should stop fighting against the trade proposal and instead communicate the impression that "the Space Traders, aware of our long fruitless struggle on this planet, are arranging to transport us to a land of milk and honey—a virtual paradise."[315] He believed that White people would be so jealous of Black people that they would work to prevent their departure, even if it meant them missing out on the promised treasures from the aliens.[316] While

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309. *See* Kim Renfro, *'Westworld' Star Thandie Newton Explains the Potential for Maeve's Newfound 'Witch Powers,'* BUS. INSIDER (May 21, 2018, 8:29 AM), https://www.insider.com/westworld-maeve-voice-control-explained-thandie-newton-spoilers-2018-5; Emily Kavanagh, Westworld*'s Maeve Still Feels More Like a Plot Device Than a Character*, COLLIDER (July 28, 2022), https://collider.com/westworld-maeve-more-like-plot-device-than-character/ [https://perma.cc/3SFT-DGXQ].

310. Steinem, *supra* note 33, at 5.

311. See Blazan, *supra* note 68, at 35.

312. *See id.* at 43.

313. *See id.* at 45.

314. *See* BELL, *supra* note 37, at 166–69.

315. *Id.* at 176.

316. *See id.* For a fuller accounting on the history of White communities foregoing public amenities like swimming pools and tennis courts with the aim of frustrating integration efforts, see generally HEATHER MCGHEE, THE SUM OF US: WHAT RACISM COSTS EVERYONE AND HOW WE CAN PROSPER TOGETHER (2021).

Golightly's plans may have provided a road for exercising subversive power, his misstep was in his underestimation of the importance of trust in wielding collective power. As the minister that spoke after him responded unfavorably to Golightly's proposed strategy, he stressed that "I hold in abeyance my deep distrust of a black man whose willing service to whites has led him to become a master minstrel of political mimicry."[317]

A centering of Data Power in tech regulation would prioritize issues of trust and ask: What does trust mean for marginalized communities in the context of generative AI? How do we design trustworthy digital infrastructure and platforms? Is there such a thing as "A.I. for the People?"[318] While the aforementioned exercises of power did not deliver any of the central characters from perpetual dystopian threats, they did present interventions for relief and opportunities for resistance to the attempted foreclosure on Black futures. Indeed, new modes of resistance, like the digital tool Nightshade, assist artists who may not have the funds to institute expensive litigation against generative AI companies.[319] Nightshade works by allowing artists that want to post their visual art online to shield their work from being scraped by AI programs by making undetectable changes to the pixels of the images.[320] These changes act to mask the true work and the artist's personal style by causing the image to be interpreted by machine learning programs as something different.[321] This "data poisoning" technique disrupts efforts to build AI training sets without artists' permission and seems poised to help—along with other tools of resistance that are likely to be developed in the near future—challenge the significant power imbalance between AI companies and artists.[322]

CONCLUSION

*An Unkindness of Ghosts*[323]

The image at the end of *The Space Traders* continues to haunt me, like unrelenting ghosts. Under the watchful eyes of armed guards, twenty million Black

317. BELL, *supra* note 37, at 177.

318. *See Our Mission*, A.I. FOR PEOPLE, https://aiforthepeopleus.org/about-us/what-we-do/ [https://perma.cc/LBQ9-NBQA] (last visited June 11, 2024). There are a growing number of organizations that are expanding ways to challenge the harmful impacts of AI while also exploring how it can be harnessed to benefit marginalized communities. *See id.*; *Technology Rooted in Community Needs*, DETROIT CMTY. TECH. PROJECT, https://detroitcommunitytech.org/ [https://perma.cc/9YC8-XDQE] (last visited June 11, 2024); *Distributed AI Research Institute*, DAIR, https://www.dair-institute.org/ [https://perma.cc/2KTB-MTKK] (last visited June 11, 2024); ALGORITHMIC JUST. LEAGUE, https://www.ajl.org/ [https://perma.cc/Z95R-PCUZ] (last visited June 11, 2024).

319. *See* Melissa Heikkilä, *This New Data Poisoning Tool Lets Artists Fight Back Against Generative AI*, MIT TECH. REV. (Oct. 23, 2023), https://www.technologyreview.com/2023/10/23/1082189/data-poisoning-artists-fight-generative-ai/.

320. *See id.*

321. *See id.*

322. *See id.*

323. Rivers Solomon's AN UNKINDNESS OF GHOSTS (2017) is an Afrofuturism novel in which the main character lives aboard a spaceship that is organized like a slave plantation in space.

people, stripped down to a single undergarment and in chains, are led upon alien ships at the beach, headed to a distant new world.[324] The connections to the selling and shipping of Africans during the transatlantic slave trade are overwhelming. Perhaps the most frightening aspect of the ending scene is that we are left to wonder what the future holds for them. Similar questions linger for *Westworld* and the *Parable* series. Is the sublime virtual world, where Hosts upload their conscious with the hopes of eternal bliss, truly an escape if its functioning still depends on the material world's physical space and energy? In the *Parable* series, could the Earthseed community ever overcome their initial struggles on a new planet?

Perhaps the point is not being able to overcome the worst tendencies of humankind but figuring out the best ways to exist in the most meaningful, healthy ways possible despite them. While *The Space Traders*' ending is horrifying, it is unfortunately a familiar experience. The sordid history of Black people being captured and taken to new worlds by alien people on ships—and somehow still surviving, somehow continuing to still dream upon the backdrop of the fiercest of nightmares—in some ways lets us know that they will be okay and that they hold the power to transform and impact the new worlds they will arrive to. And maybe there is a lesson there for how we think about AI's future: if the reality is one where inherent destructive forces bent on generating differentiation, like race, to empower extraction and exploitation will always exist, then perhaps the aim is continual efforts to survive and resist by any and all means available, radical and imaginative.

I still wonder what it would have meant to follow Professor Golightly's request, even at the cost of integrity, and how that would translate into legal advocacy in AI regulation. What would advocacy look like when people who have the most to lose have their backs up against the wall and "people must use cunning and guile"?[325] Although Derrick Bell's prognosis of the permanence of racism still rings true thirty years later, it is hard to imagine what racism could look like 1,000 years or 3,000 years in the future. Yet through all the iterations of racist structures, systems, and technologies, there always remained the drive to look and reach forward. Thus, maybe the focal point should be on the permanence of Black dreams, and the permanence of Black futures, instead of the permanence of racism. Only time will tell what role generative AI and similar forthcoming technologies will play in reaching those futures. What is clear, however, is that Afrofuturistic imagining and critique will be pivotal in interrogating both the hopeful and depressing stories we tell ourselves about technology and its promises, and subsequently about ourselves and our own promise as humans.

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324. BELL, *supra* note 37, at 194.
325. *Id*. at 178.