

Futurescapes of Planning Law: Some Preliminary Thoughts on a Timely Encounter

The concept of the future has been studied in many different disciplines but has not received the same detailed attention in legal scholarship. This is especially curious in a field like planning law, which has a strong and obvious future-orientation. My aim here is to make a case for treating planning law more seriously as an important site of future-making, and to encourage more systematic thinking about the role of law in determining how the future is engaged in the present. One way of achieving this is by introducing a ‘futurescapes’ perspective to legal analysis, to capture the different temporal features of law that shape how the future comes to be understood, legitimated and acted upon. Forging those links helps to address the future not as a backdrop to law but as a key means through which law operates. The discussion illustrates the kinds of questions that might usefully be asked about how law never simply represents the future but actively produces the futures it then seeks to govern.

Introduction

It is uncontroversial to say that land use planning is a temporal field, concerned as it is with issues of sustainability, change, conservation, growth, regeneration and ‘the possibilities that time offers space’.¹ Equally uncontroversial is the suggestion that planning involves a particular orientation to the future and that, even if it falls short of expectations, it is motivated by ‘a belief that action now can shape future potentialities’.² Planning is variously described as a form of ‘persuasive storytelling about the future’,³ as ‘aspirational’⁴ and ‘anticipatory’,⁵ and more concretely as ‘the specification of a proposed future coupled with systemic intervention and/or regulation in order to achieve that future’.⁶ Both as an ideal and as a practice, planning is future-bound. Yet while the relationship between planning and the future has long been accepted as foundational, and has proved a fertile ground for critical scholars in land-use management and planning theory, there has been little express consideration in this context of the part played by law.

My aim in this chapter is to give planning law, and law generally, a greater prominence in research on the future. Modern futures studies began life as an applied science aimed at developing computational tools for forecasting and prediction, but it has grown in disciplinary scope and gained a sharper critical edge in the social sciences and humanities, setting new agendas for engaging with the future not as a fixed object ‘out there’ to be measured, managed and moved into, but instead as a continuous process, always in flux, not separate from but immanent in the present. Pioneers in the field have accorded particular analytic significance to

futures-in-the-making (rather than futures already ‘made’ through statistical modelling, for example),⁷ and to the need for inventive ways of studying the empirically elusive realm of the not-yet.⁸ This has been taken in several directions, opening up new avenues of inquiry into anthropologies of the future,⁹ geographies of the future,¹⁰ futuresscapes of urban regeneration,¹¹ speculative research methods,¹² and socio-technical imaginaries¹³ – to name just a few areas where explicit efforts have been made to build a fuller picture of what specific imaginations of the future ‘do’ – how they configure power relations, serve ideological goals, and determine which accounts of the future are seen as possible, plausible or desirable – in the here and now.

This type of research has not been pursued, at least not directly or systematically, in legal scholarship, despite the future’s pervasiveness in all aspects of legal process and doctrine. The future’s inescapability and diffuseness are the very features, however, that seem to have contributed to the lack of targeted legal engagement. Although there are notable exceptions,¹⁴ the future has generally been subservient to other related frames and issues in the study of law – such as sustainable development, risk, and intergenerational justice – meaning that futurity has been poorly tended as a *legal* problem. This is true of planning law, the most self-evidently future-oriented of all the legal fields. The purpose here, then, is to offer a means of foregrounding the future-making practices of planning law, so that closer attention may be paid to the various ways in which planning law imagines and regularises certain futures and future possibilities.

A ‘futuresscapes’ framework adapted from the work of social theorist Barbara Adam brings a heightened sensitivity to the traces of futurity in law, and to the futures rendered meaningful in distinctively legal ways. One of the important qualities of the relationship between planning law and the future is that it can appear inert and pregiven – simply part of the order of things and not up for debate. Yet that obscures the difference that law makes in actively producing the future rather than just passively encountering it. An advantage of a futuresscapes approach is that it can be used to examine legal future-making in terms of specific modes – for example, the timeframes, temporalities, tempos, timings and time sequences of planning law that shape how futures are anticipated and ‘*lived and felt* as inevitable’.¹⁵ The approach also helps to illustrate that while planning law is always ‘futural’, it is not uniformly or consistently so. The relationship is dynamic and manifests itself in many ways, through different combinations of temporal structures and processes, and this is fundamental to the effects that law is able to achieve in the present. To begin to address these issues, the chapter draws on two specific aspects of English

planning law that apply to the onshore exploration and development of unconventional oil and gas: the application of local development plans; and the Secretary of State's statutory powers to call-in planning applications and recover planning appeals.

About Time: Futures Theory and Law

Law is sometimes depicted as the ultimate custodian or venerator of the past,¹⁶ especially in common law jurisdictions where the invocation of precedent 'perpetually reclaims the past for the present'.¹⁷ Examples of law's path dependence, status quo bias and respect for tradition, for example, have tended to feed overgeneralised claims, however, that law is innately past-oriented. So much so that it can be difficult to avoid resorting to platitudes about law being backward-looking, nostalgic even, and too slow to keep pace with social transformation.¹⁸ I too have used such caricatures in my research and teaching, because even though they leave little room for complexity, they have at least a ring of truth. Ask any law student to describe the discipline, and it is unlikely that they would respond with 'progressive', 'innovative' or 'modern'. Still, these ideas are in danger of overestimating the importance of the past in law.¹⁹ One consequence of the prominence of historical time is that the problem of the future tends to have been overlooked.²⁰

Any notion that law's relationship with time is lodged only in history has been comprehensively dispelled by a significant and insightful body of work in socio-legal and critical legal studies, which has brought a new level of precision to the field, detailing the varying temporalities that contemporary legal systems and techniques use or construct.²¹ The scholarship has done much to broaden the focus beyond historical context by illuminating the diversity of ways in which law discursively and practically shapes what we interpret and experience as time. It goes against the commonly held and often tacit view that law and time are analytically distinct, providing original concrete analyses of them as mutually dependent entities that interact and shape each other. Whereas legal scholars, like social theorists generally, have tended to treat questions of law separately from those of time, the recent line of work focuses on their interconnections and shows how we gain explanatory power by thinking of legal processes, institutions and doctrine as fundamentally temporalised.²² Law is full of temporal structures – for instance, it determines when (e.g. sunset clauses), in what order (e.g. consultation and pre-decision matters), how quickly (e.g. determination deadlines) and for how long action (e.g. injunctions, temporary stop notices) can be taken.²³ Law also operates more subtly, though, to construct a particular sense of time, such as rhythm, intensity, potential and accentuation, in the moment. It is through the

richer, more finely textured accounts of law's temporal dynamics that these felt-realities of time have come to be regarded as a form of legality.²⁴ Time is not just an object of legal intervention – it is also a mode of legal reasoning; a means of marshalling evidence, framing interactions and stabilising powerful normative frameworks; a medium through which social relations, values and meanings become embedded in legal and regulatory practices. Law's relationship with time is anything but uniform and one-directional.

Yet although the literature has made major conceptual inroads into the temporalities and temporalising effects of law, and prompted a much greater engagement with other disciplinary and interdisciplinary studies of time, there has been no sustained engagement, as there has been in other fields, with the future. There are some brilliant exceptions to this, for example the work of Emily Grabham on the futures conceived, and critically the futures excluded, under the UK's Gender Recognition Act 2004;²⁵ Annelise Riles on 'placeholders' for resolving ambiguity about the near future;²⁶ Renisa Mawani on the significance of certain, envisioned colonial futures to the claimed authority, sovereignty and legitimacy of British imperial law;²⁷ Sarah Keenan on title registration as a means of protecting the transcendental, future entitlement of white settler subjects to indigenous land;²⁸ Davina Cooper on prefigurative institutional action; and Christos Boukalas on the emptying of futures and suppression of potential change in security and economic law and policy.²⁹ Still, these examples are not typical of the discipline overall and it is fair to say that legal scholarship generally has viewed the future in 'shreds and patches', to borrow a phrase from anthropologist Nancy D. Munn.³⁰ This is in contrast to legal history, which has become its own sub-genre.

It would be a mistake, though, to regard legal *history* and legal *futurity* as direct opposites. As many works on temporality have shown, the present is always infused with both pasts and futures – with both 'experience' and 'expectation',³¹ with both 'retentions' and 'protentions'.³² The past, present and future cannot be disentangled because they are integral to each other.³³ 'All our pasts', says Dipesh Chakrabarty, 'are futural in orientation'.³⁴ In Munn's words: 'Ways of attending to the past also create modes of apprehending certain futures or of reconstructing a particular sense of the past in the present that informs the treatment of "the future in the present"'.³⁵ However self-contained the past, present and future might appear, the research reveals porousness and fluidity, opening the door to more processual understandings of temporality as a sphere of 'dynamic simultaneity'.³⁶ For Adam, [t]here is no single time, only a multitude of times which interpenetrate and permeate our lives'.³⁷

What this means is that the future, and its manifestations in the present, cannot be satisfactorily understood or explained in isolation from the multiple, intersecting historical trajectories that are also implicated in the framing of times yet to come. The treatment of the future as a simultaneous co-presence of temporal features is elaborated by Adam in her conceptualisation of ‘timescapes’,³⁸ and latterly ‘futurescapes’.³⁹ The suffix ‘scape’ – as in landscape or cityscape – signals that thinking about time necessarily has implications for how we imagine space and spatial relations.⁴⁰ It has further significance because it says something about the approach to analysis, which is to see time as a domain that is always in formation, always incomplete and open to being re-formed. Adam explains that a landscape, and by extension a timescape, ‘tells a story of immanent forces, of interdependent, contingent interactions that have given rise to its existence’.⁴¹

A futurescape is similarly conceived, except it reflects a deeper frustration over the lack of sociological tools and methods, and until relatively recently the lack of enthusiasm, for taking the social reality of futures seriously. Social scientists are well-equipped to study ‘present-futures’, that is, the realm of prediction, plans, promises, models, strategies and other rational instrumentalities for deciphering what the future ‘will be’. By contrast, ‘future-presents’ are less amenable to empirical investigation by conventional means because they occupy ‘the inaccessible, invisible, latent world of processes’.⁴² A futurescapes perspective enables a more nuanced account of the future as a ‘precarious achievement’⁴³ that is continually being made in everyday practices, not only through individual acts of projection but also through iterative, emergent processes that remain ‘imperceptible as events’⁴⁴ but nonetheless have future-making effects. Significantly, because the approach attends to *how* futures and their socio-political effects are achieved (rather than assuming their coherence or stability), it is open to diverse and often contradictory possibilities. Thus the futurescape is not simply a list of temporal features to be ticked off one-by-one. Instead, it describes a critical sensibility that invites us to question how the future animates the contemporary condition without reducing away its more elusive qualities. For example, the future may be encountered as a particular mood, feeling, ambience or other collective affect that presses upon the present. Hence the terms futurescape and futurity are used not as academic-speak for ‘the future’ but to signify the actual diversity and messiness of temporal features that are often assumed to be straightforwardly accounted for.⁴⁵

Futurescapes and other integrative approaches like it have been influential beyond their disciplinary origins,⁴⁶ but they have yet to find their way into the bulk of legal research.⁴⁷ Here, I want to suggest planning law as one possible entry point. There are already examples of critical engagement with futures in planning theory.⁴⁸ A logical next step is to ensure that planning rules and regulations figure more prominently in those debates to avoid the law being treated as an incidental issue or afterthought.

It is not a new problem that legal analysis can be weakly represented in or missing altogether from multidisciplinary spaces for social inquiry. That is certainly the case with futures studies, and it is also a claim made about the philosophical and theoretical foundations of planning. Patrick McAuslan began his seminal book *The Ideologies of Planning Law* with the observation that: ‘Alone of all the disciplines involved in land use planning in the United Kingdom, law is considered to be, at least by its practitioners and publicists, in no need of a fundamental examination’.⁴⁹ More than forty years on, it remains a motivating force for planning law scholarship. And so, one reason for encouraging critical reflection on planning law from a futures-perspective is that it arises out of a commitment among academics to chip away at planning law’s reputation for being too technical, or worse, too mundane, to be of interest to theorists. There is something to be gained from ‘taking on the technicalities’,⁵⁰ as Riles compellingly puts it, so that legal doctrine and argumentation may be reclaimed or rediscovered for theory.⁵¹ In that spirit, connecting planning law and futures theory is not an occasion for lament, but rather an opportunity for exploring the possibilities that the two fields offer each other.

Finding Futures in Planning Law

To illustrate how the approach just outlined could be put to use, I will draw on two different aspects of the English planning regime as applied to hydraulic fracturing, or ‘fracking’, for unconventional oil and gas such as shale gas. They are: the role of the statutory development plan in determining planning applications, and the scope of the Secretary of State’s powers to call-in applications and recover appeals. Although the illustrations differ in their legal particularities, each addresses the future not as a passive object of governance, but as an active form of legality that produces legal meaning and effect. The purpose is not to claim any generalisable findings, as that would be impossible from such a narrow base. Instead the example is intended to raise more questions, and by doing so, start conversation about the directions that this type of analysis could take.

The development of unconventional oil and gas, typically shale gas, provides an intensely futural context in which to ground the discussion, because it involves ‘heroic’ future narratives of technological innovation;⁵² promises of a cleaner, cheaper and more secure energy supply;⁵³ fears about the short- and long-term consequences of the drilling technique itself and of prospective shale gas exploitation;⁵⁴ and framings of shale gas a key part of the UK’s efforts to meet its 2050 emissions reduction target and interim carbon budgets,⁵⁵ and as a ‘bridging fuel’ to a greener future.⁵⁶ This is borne out in conflicts over the siting of shale gas operations, which expose the diverging ways in which participants in the planning process make sense of time. As Anna Szolucha demonstrates, the grant of planning permission for exploratory shale gas works at Preston New Road, Lancashire, invoked very different modes of time-reckoning – for example, an accelerated capitalist temporality built on the promise of a new future of progress and growth, compared with the temporal tactics adopted by protestors to slow down the construction and operation of the drilling site.⁵⁷

Planning disputes can be especially revealing of the multiple and competing futures of any given place. It is more usual, however, to see disputes characterised as conflicts between localised ‘not-in-my-backyard’ politics and the broader public interest. No doubt, a critical source of disagreement in the planning and regulation of shale gas fracking has been the different scalar frames employed in defining the problem and proposing its resolution.⁵⁸ Chris Hilson has carefully examined how certain scalar frames have come to dominate (e.g. the local risks of fracking weighed against the national need for energy supply) whereas others have been repressed or filtered out of the system altogether (e.g. the global climate consequences of fossil fuel extraction). In this sense, planning law serves as a ‘funnel’⁵⁹ for arguments about which scales are most important for any given decision. But planning law also funnels and filters different temporal relations, including of course different orientations to, imaginations of and engagements with possible futures.

An obvious meeting point for planning law and the future is the statutory development plan. The drilling operations associated with fracking amount to ‘development’ and therefore require planning permission from the local mineral planning authority.⁶⁰ It is a central tenet of the local planning regime that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.⁶¹ A development plan is prepared by the local planning authority, and sets out a vision and a framework for

development in the authority's area. It comprises local and neighbourhood plans, and any 'saved policies' carried over from former regional plans. The development plan must include policies on the local planning authority's strategic priorities,⁶² and make 'sufficient provision'⁶³ for a number of key land uses, such as housing, community facilities, the conservation and enhancement of the natural, built and historic environment, and, importantly for current purposes, the provision of minerals and energy.

A question that has arisen in the determination of planning applications for fracking operations, is how to apply development plans which include policies on mineral resources but which make no specific provision for the development of shale gas. The issue in such circumstances is whether the development plan is to be regarded as 'absent', 'silent' (the terminology used in previous planning policy⁶⁴) or 'out-of-date'.⁶⁵ If so, a weighted balance, commonly referred to as a 'tilted' balance, applies, whereby development which is sustainable should be approved without delay unless, *inter alia*, the adverse impacts of doing so 'significantly and demonstrably' outweigh the benefits.⁶⁶ This is in contrast to a standard balancing exercise, which does not start from the same presumption in favour of development.

Whether the tilted balance is triggered is a matter of planning judgment, not of legal reasoning, however the Courts have clarified how the triggers operate. For example, a development plan that lacks policies specifically targeted at the type of development under consideration (such as fracking) is not automatically rendered out of date.⁶⁷ Provided the policies of the development plan are still 'relevant' to the decision to grant or refuse planning permission, the tilted balance will not apply.⁶⁸ Thus, in a decision on fracking, a development plan may be considered relevant where it includes policies on mineral resources and development management generally, which do not explicitly address shale gas or fracking but which nevertheless have a real role to play in the determination of the application.⁶⁹ Those general policies can be seen as offering a future-proof framework to deal with technological innovation not envisaged or planned at the time of their inception. For example, it has been noted that 'although a local development document is intended to present as a coherent suite of policies, that objective is not inconsistent with the inclusion of some environmental policies being intended and designed to operate on a longer time scale than that which may be contemplated by the plan period'.⁷⁰

There is a further point, which is that judgments over the relevance of a local development plan, through its classification as in-date or out-of-date, for instance, shape how the future is ushered

into the present. Such classificatory practices determine whether and with what consequence future risks and benefits are assessed against each other, through the application of either a standard or tilted balance. These different future-oriented logics operate with powerful performative force to organise how planning decisions are made and reasoned; they govern the ‘knowledge moves’⁷¹ entailed in [...INSERT—HELP!]; they set the threshold for tipping the balance against approval (e.g. where adverse impacts that ‘significantly and demonstrably’ outweigh the benefits); and they influence the forms of reasoning that decision-makers offer. In this regard, the future enters the present as an organising epistemology, or ‘epistemological ordering frame’,⁷² constraining or enabling certain ways of imagining, projecting and acting ahead of time.⁷³ This opens up to investigation an array of questions about the contingent interpretive processes (e.g. ‘relevance’) and pragmatic steps (e.g. the engagement or disengagement of the ‘presumption in favour’) through which certain representations of the future are made effective. In particular, it shows the future not as a category of analysis so much as a category of practice, highlighting the need to account for the processes through which specific configurations of the future are assembled or ‘held together’.⁷⁴

It is these processual features of future-making – for instance, the sense-making practices and discursive resources relied upon in applying non-specific policies of a statutory local development plan to proposals for new technological developments – that a futurescapes approach takes as its starting point. The approach is less concerned with what we ‘know’ as the future, than with the work – in this context, the often routine legal work – that goes into producing and sustaining particular ideas about the future in social and legal consciousness and practice. As the discussion so far has suggested, a concept as rudimentary as ‘relevance’ creates a particular temporal dynamic, in that the applicability of the tilted balance depends on the relationship between the proposed future development and pre-existing policies of the local development plan. It offers at least a sense of the past, present and future as aspects of each other, rather than as contrasting ‘types’ of time, which offers a promising broadening of the temporal features examinable in planning law.

Opening up planning law studies to broader conceptualisations of futurity raises the possibility that futures are envisioned, regularised and practiced in a wider range of planning law provisions than has been appreciated. As a result, provisions which are not explicitly futural, or which are so routine and unremarkable that their futures-work goes without saying, become new contenders for analysis. Therefore, in order to take planning law seriously as a site of future-

making, there is a case for focusing on the numerous less obvious ways that futures are anticipated and acted upon.

In that respect, a useful illustration is offered by the Secretary of State's statutory powers to call-in planning applications and recover planning appeals for her own determination, specifically in the context of shale gas operations involving fracking. The illustration is historical, given that the UK Government has now withdrawn its support for fracking, but it gives an idea of some of the avenues waiting to be explored in investigating how – by which legal mechanisms and temporal modes – planning law operates through futures that, by definition, may never actually happen. In Juliet Davis's words, planning histories 'are inescapably histories of futures'.⁷⁵ As will be shown, the Secretary of State's intervention in planning decisions has come to be understood predominantly in terms of jurisdictional scale, even though the administration and exercise of such ministerial power can also involve rather specific invocations and institutionalised practices of future-making. The discussion below begins to bring out some of the distinctive insights that a futurescapes perspective can offer legal analysis in this setting.

Supplementing Scalar Analyses with a Futurescapes Approach

The Secretary of State has various statutory powers to intervene in the planning process. They include default powers enabling the Secretary of State to prepare or revise a local development plan, if she considers that the local planning authority is failing properly to carry out its functions in that regard.⁷⁶ In respect of planning applications, the Secretary of State may give a direction restricting the grant of permission by a local planning authority, for a specified period or until the direction is lifted.⁷⁷ She may give a direction for a development to be treated as a project of national significance requiring a development consent order, as opposed to local planning permission.⁷⁸ She may issue guidance on matters such as the community infrastructure levy, a tax on development to fund the infrastructure it will rely on, which local planning authorities must take into account in adopting the levy.⁷⁹ This is just to name a few of the devices that allow for ministerial involvement in local policy formulation and decision-making, and the list goes on.⁸⁰ The existence of such powers reflects central government's historical importance in securing consistency in the execution of national planning policy at the local level,⁸¹ as well as its continued role in providing strategic direction, oversight and co-ordination across the planning system.⁸² It explains why the planning system has been described as hierarchical,⁸³ because although local planning authorities operate with a degree of autonomy, that autonomy is restricted by parameters set centrally.

My focus here is on one aspect of central government intervention: the ability of the Secretary of State to exercise jurisdiction over individual decisions, by ‘calling-in’ planning applications⁸⁴ and ‘recovering’ planning appeals⁸⁵ for her own determination. It may seem odd to include this example at all, given that the powers of call-in and recovery are intended to be used only sparingly. In the vast majority of cases, planning applications are determined by the local planning authority,⁸⁶ and appeals are determined by the planning inspectorate.⁸⁷ Even at its height, the overall proportion of called-in applications and appeals recovered by the Secretary of State has been small. The data reveal a more complicated picture – for instance, ministerial intervention has a higher prevalence in respect of certain types of development (e.g. onshore wind turbines),⁸⁸ in certain local authority areas (e.g. marginal constituencies),⁸⁹ at certain times (e.g. during political instability),⁹⁰ and under certain styles of leadership.⁹¹ Altogether, though, the incidence of call-in and recovery is low, and the Secretary of State’s invocation of those powers has aroused little academic interest, among either lawyers or planners, except as a general indication of the relationship between central and local government.

The reason that call-in and recovery are viewed in this manner – as a proxy for central-local relations – is that they represent a challenge, or inconvenience, to the general organising principle that planning decisions are to be taken at the lowest level possible.⁹² Quite understandably, ministerial intervention in planning decisions raises questions about the appropriate balance of power in the planning process, and meets with strong criticism when the balance is felt to have tipped too much in the direction of central government.⁹³ This has intensified in recent years, following the passage of the Localism Act 2011 and repeated calls for call-in and recovery to be used only in exceptional circumstances, for cases involving significant national or wider than local issues.⁹⁴ Controversy surrounding ministerial intervention is seen as epitomising a deep tension in the scalar logics of planning, in particular the ‘vertical topography of power’⁹⁵ and the difficulties of reconciling different spatial orders operating within the same system – ‘national’, ‘local’, ‘neighbourhood’, ‘grassroots’. Therefore, the Secretary of State’s rights of call-in and recovery, when discussed at all, are treated as specific aspects of a broader debate about demarcations of space and scale.

Taken in the context of pathbreaking studies in geography and allied areas (such as legal geography, anthropology and political ecology) on the scalar structuration of the state,⁹⁶ the call-in of planning applications and recovery of appeals can be understood as scalar practices that

organise power relations between different layers of government. From that angle, it might be observed that there is nothing innate about a project's classification as development of 'major importance' and 'more than local significance' – those designations are constructed; that is, they are conceptualised and made effective through routine bureaucratic practices (e.g. Written Ministerial Statements, planning guidance) and uses of discretionary authority (provided for by statute) to secure the legitimacy of 'top-down' state actions. Focusing on the separation and hierarchy between 'higher' and 'local' scales of practice, and more precisely on the work that scale does as a politico-legal device, considerably enriches the analysis of contemporary practices of government. But there are other ways of approaching the matter, which can supplement spatial and scalar perspectives.

In particular, the powers of call-in and recovery may lend themselves, in as yet untested ways, to an analysis of the *futures* they envision and act upon. Admittedly, call-in and recovery are not intuitively the most obvious example for thinking about how planning law operates through different future-orientations – but that is a deliberate move on my part to show that non-obvious sites are also where futures take shape, in ways that may otherwise escape scrutiny.

Future-Orientations of Jurisdiction

To begin with, a futures-perspective may help to bring clarity to the ways in which the Secretary of State's statutory powers to determine planning applications and appeals can induce or amplify particular orientations towards the future. The focus here is on the future-orientations that give the jurisdiction its form, setting the conditions of possibility for the distribution of governing authority and the manner of its use. These future-orientations are an additional dimension of what might be described as the 'often hidden architectures ... of discretion',⁹⁷ structuring the operations of law and imposing limits to legal order, yet kept out of the analytical frame because of the tendency in this context, and more generally, to conceptualise jurisdiction in terms of administrative boundaries and the territorial allocation of authority between different levels of government.⁹⁸ The point is that the assertion of jurisdiction can also be viewed as an act of constructing, giving meaning to, and orienting towards futures that are experienced as 'real' (perceived as inevitable), regardless of whether those futures actually come to pass.

Continuing with the example of shale gas operations involving fracking, a futurescapes perspective – one that involves seeing the future not just as an outcome but also a process and an affective state – provides a useful addition to analyses of jurisdiction and power that are

shaped onto the more conventional axis of scale. In September 2015, in a Written Ministerial Statement to Parliament, the Secretary of State for Communities and Local Government announced two temporary changes to the criteria for call-in and recovery. First, where a local planning authority was identified as ‘underperforming’ in respect of planning applications for onshore oil and gas, including shale gas, the Secretary of State would ‘actively consider exercising the power under section 77 of the Town and Country Planning Act 1990 to call-in the applications’. Secondly, the recovery criteria were expanded so that the Secretary of State could give ‘particular scrutiny’ to appeals against refusals of planning permission for exploring and developing shale gas.⁹⁹ Such appeals would be ‘treated as a priority for urgent resolution’.¹⁰⁰

It is noteworthy that the amendments created separate and distinct criteria for shale gas projects, because such changes were not strictly necessary. The Secretary of State’s prior discretion to call-in application and recover appeals was already very wide, and arguably unspecific enough to encompass shale gas projects without any need for amendment. The general criteria list the sorts of situations where a decision may be called-in or recovered because it involves issues of ‘more than local significance’ – for instance, where the project gives rise to substantial regional or national controversy, or where it raises important or novel issues of development control and/or legal difficulties. Although these are not exhaustive of the factors that motivate and legitimate ministerial intervention, it is not a stretch to claim that shale gas operations could easily have come within the scope of the criteria in their original form.¹⁰¹ So there was clearly a perceived need to signal that planning decisions regarding shale gas projects were exceptional, even more so than other called-in applications and recovered appeals – which, given their generally low incidence, were themselves an exceptional feature of the normal planning process. The singling out of shale gas projects made them doubly aberrant, *doubly exceptional*, and as an expression of the potency and reach of the Secretary of State’s jurisdiction, this instituted a particular relation to the future – one organised around the temporal logics of emergency.

A range of work in critical geography, political theory and related fields has charted the role of emergency as an indispensable technique of governance in contemporary liberal democratic states.¹⁰² One reason why the notion of governing through emergency holds appeal is that it offers an alternative to accounts of the future as an empty, other or even absent time. This is especially pertinent in the context of land-use planning, where the future is encountered in innumerable ways and does not comfortably fit narratives of the futureless present. Emergencies scholarship looks instead at how the future is already emergent in the present, full of tendencies

and just-forming potential, building affective registers or ‘atmospheres’¹⁰³ that induce or compel action in the current moment. In this light, emergency does not denote a single temporal sequence, rather it depends on the co-existence of multiple temporalities through which the future is disclosed and related to.

Exceptionality is one such temporality, which works by diagnosing events as rare, time-limited, atypical and therefore in need of some sort of extraordinary governance response. As Ben Anderson and colleagues have comprehensively shown, the ‘state of exception’ has become so often invoked that it is often not exceptional at all, and yet it remains an insistent force in the expression, exercise and legitimation of political and legal authority.¹⁰⁴ In part that force stems from idea that without intervention the future might be otherwise, but it can be further intensified by a sense of urgency that necessitates action now. Together the temporalities of exceptionality and urgency are characterised by the presence of what Anderson describes as an ‘on-rushing future’¹⁰⁵ and an imperative to act quickly, creating the conditions for ‘lightning strikes’¹⁰⁶ of state power. These are inseparable from a temporality of hope that the future is alterable, and that ‘though the outcome of an event or situation is uncertain, correct action may make a difference, and that which is threatened might be averted’.¹⁰⁷ These insights offer a different take on styles of governing, in that they capture how particular futures and futural dispositions – not just scales and spatialities – become be folded into claims of jurisdiction.

This provides a basis for revisiting the example of the Secretary of State’s powers of call-in and recovery – as a way of exemplifying the broader contention that there is scope for planning law to figure more largely in efforts to understand the future as an integral, rather than an additional, part of any analysis of power. Indeed the re-assertion of the Secretary of State’s jurisdiction in respect of shale gas operations could be read as contributing to the performative constitution and experience of the future – or rather of multiple, disparate (urgent, exceptional, hopeful) futures ‘held together’¹⁰⁸ by their not-yet-ness and given real-time purpose by becoming the locus of debate.¹⁰⁹ The prefix ‘re’ (re-assertion of jurisdiction) is intentional to remind that planning legislation already conferred on the Secretary of State very wide discretionary powers of intervention, wide enough to cover shale gas operations – not just in principle but also in practice.¹¹⁰ Hence the simple bureaucratic act of extending the call-in and recovery criteria explicitly to include shale gas operations offered a means through which ministerial power could be symbolically re-affirmed. Thereafter, the debate became not about whether, but about when and under what circumstances shale gas exploration would be approved.¹¹¹ The fact that the

shale gas industry did not, in the end, develop as the UK Government had planned is of little consequence. It does not alter the fact that, whether or not those anticipated futures materialise, their effects can still be felt in the present.¹¹²

The suggestion here is that greater scrutiny of the involvement of distinctively legal mechanisms (jurisdiction being a classic example) in engagements with the future may open up some promising lines of inquiry into the forms of authority and legality that follow from invoking specific future-orientations. The ‘double exceptionality’ of shale gas projects, for instance, is justified on the basis of emergency claims that time for action is running out, through what Adi Ophir calls ‘discursive means of catastrophization’ which work to ‘designate objects to be observed, described, measured and analysed, predicted and interfered with’.¹¹³ These discursive processes construct the future, an imminently catastrophic or threatening future, as the thing to be governed, but more than that they provide powerful narratives and rhetorical devices that ‘tacitly authorize those in power to respond’.¹¹⁴ In this context, the thing to be governed is the ‘underperforming’ local planning authority that is perceived to be too slow in deciding shale gas applications,¹¹⁵ and so ministerial intervention is seen as a necessary means of averting threats of national energy insecurity, missed economic opportunity and so on. But the earmarking of shale gas projects as not just a legitimate but also as a necessary target for the Secretary of State’s exercise of her statutory powers helps to create the conditions in which particular future-orientations (exceptionality, urgency, hope) take hold, becoming institutionally stabilised and etched on the public consciousness.¹¹⁶

One way of taking this further might be to examine the future-making effects of the Secretary of State’s jurisdiction on decision-making in the local planning regime, before the powers of call-in and recovery have even been exercised. The question this raises, which can be addressed empirically, is whether and in what ways the potential for ministerial intervention influences how a local planning authority determines a planning application, or how the Planning Inspectorate determines an appeal. It is clear that the Government’s policy on shale gas, expressed in the same Written Statement that amended the criteria for calling-in applications and recovering appeals, is capable of being a material consideration when deciding permission.¹¹⁷ Less clear are the more subtle ways in which the *prospect* of call-in or recovery might shape how local planning decisions are taken. These effects are more likely to be missed when the powers of call-in and recovery are addressed as issues of jurisdictional scale. The trouble with conventional scalar analysis, Mariana Valverde has observed,¹¹⁸ is that it is underpinned by a zero-sum understanding

of jurisdiction, which in this context means that *either* the Secretary of State has jurisdiction *or* the local planning authority does. But the realities of governance are not so clear-cut. Central and local government may often be in tension or conflict but they are not opposites – their functions and powers can combine, overlap and interact in various ways. Thus there may be value in examining the consequences of Secretary of State’s powers of call-in and recovery for local planning, specifically when those powers are not exercised but are anticipated, pre-empted and experienced as ‘looming or pressing in’.¹¹⁹ It suggests at least that the Secretary of State’s jurisdiction can also be studied as a temporal realm of expectation and imminence.

Concluding Remarks

NOTES:

The importance of planning law as a repository of futures, future-orientations etc.

Future-making as an active undertaking in everyday legal texts, discourses, practices.

The future is not just the product of law, it is an integral part of its development

My aim in pulling these various strands together is to encourage a move away from the definitional question ‘what or when is the future?’ and to focus instead on how the future as an orientation and affect is made effective and authoritative through apparatus of law. The point is not to suggest that official characterisations of shale gas projects as exceptional, urgent and hopeful are necessarily a distortion of the real. It is to show that there are also germane questions to be asked about how such characterisations institute particular relations to the future which, in turn, carry out some of the jurisdictional work of bringing shale gas projects to law, for example by classifying them as not just amendable to ministerial intervention but in need of it.¹²⁰

[INSERT on local development plan]

These are among the unmarked practices of future-making in planning law.

¹ Simone Abram and Gisa Weszkalnys, ‘Anthropologies of Planning – Temporality, Imagination, and Ethnography’ (2011) 61 *Focaal—Journal of Global and Historical Anthropology* 3-18, 3. See also e.g. Simone Abram, ‘The Time it Takes: Temporalities of Planning’ (2014) 20(S1) *Journal of the Royal Anthropological Institute* 129-147; Amy Y. Zhang, ‘Thinking Temporally When Thinking Relationally: Temporality in Relational Place-Making’ (2018) 90 *Geoforum* 91-99; Rebecca Windemer, ‘Considering Time in Land Use Planning: An Assessment of End-of-Life Decision Making for Commercially Managed Onshore Wind Schemes’ (2019) 87 *Land Use Policy* 104024.

² Patsy Healey, *Making Better Places – The Planning Project in the ...* page 19

³ James A. Throgmorton, ‘Planning as Persuasive Storytelling About the Future: Negotiating an Electric Power Rate Settlement in Illinois’ (1992) *Journal of Planning Education and Research* 17-31, 17.

⁴ INSERT

⁵ INSERT

⁶ David Byrne, 'Complexity Theory and Planning Theory: A Necessary Encounter' (2003) 2(3) *Planning Theory* 171-178, 174.

⁷ The phrase, futures 'in the making' is borrowed from the groundbreaking book Barbara Adam and Chris Groves, *Future Matters: Action, Knowledge, Ethics* (Brill 2007). Other key works include Brian Massumi, *Ontopower: War, Powers, and the State of Perception* (Duke University Press 2015); Vincanne Adams, Michelle Murphy and Adele E. Clarke, 'Anticipation: Technoscience, Life, Affect, Temporality' (2009) 28 *Subjectivity* 246-265; Ben Anderson, 'Emergency Futures: Exception, Urgency, Interval, Hope' (2017) 65(3) *The Sociological Review* 463-477.

⁸ Rebecca Coleman, 'A Sensory Sociology of the Future: Affect, Hope and Inventive Methodologies' (2017) 65(3) *The Sociological Review* 525-543.

⁹ See e.g. Arjun Appadurai, *The Future as Cultural Fact: Essays on the Global Condition* (Verso 2013); Peter Pels, 'Modern Times: Seven Steps toward an Anthropology of the Future' (2015) 56(6) *Current Anthropology* 779-796; Rebecca Bryant and Daniel M. Knight, *The Anthropology of the Future* (Cambridge University Press 2019); David Valentine and Amelia Hassoun, 'Uncommon Futures' (2019) 48 *Annual Review of Anthropology* 243-260. For an early, influential call for more focused attention on the future in cultural anthropology, see Nancy D. Munn, 'The Cultural Anthropology of Time: A Critical Essay' (1992) 21 *Annual Review of Anthropology* 93-123, esp. 112-116.

¹⁰ See e.g. Ben Anderson, 'Preemption, Precaution, Preparedness: Anticipatory Action and Future Geography' (2010) 34(6) *Progress in Human Geography* 777-798; Craig Jeffrey and Jane Dyson, 'Geographies of the Future: Prefigurative Politics' (2021) 45(4) *Progress in Human Geography* 641-658.

¹¹ See e.g. Juliet Davis, 'Futurescapes of Urban Regeneration: Ten Years of Design for the Unfolding Urban Legacy of London's Olympic Games, 2008–2018' (2019) 34(5) *Planning Perspectives* 877-901;

¹² Alex Wilkie, Martin Savransky and Marsha Rosengarten (eds), *Speculative Research: The Law of Possible Futures* (Routledge 2019).

¹³ Sheila Jasanoff and Sang-Hyun Kim (eds) *Dreamscapes of Modernity: Sociotechnical Imaginaries and the Fabrication of Power* (University of Chicago Press 2015).

¹⁴ Notably, Renisa Mawani, 'Law as Temporality: Colonial Politics and Indian Settlers' (2014) 4(1) *UC Irvine Law Review* 65-95; Nomi Claire Lazar, 'Constitutional Preambles and the Uncertain Future' in Luigi Corrias and Lyana Francot (eds) *Temporal Boundaries of Law and Politics: Time Out of Joint* (Routledge 2018) chapter 7; Irene van Oorschot, *The Law Multiple: Judgment and Knowledge in Practice* (Cambridge University Press 2020) chapter 6.

¹⁵ Vincanne Adams, Michelle Murphy and Adele E. Clarke, 'Anticipation: Technoscience, Life, Affect, Temporality' (2009) 28 *Subjectivity* 246-265, 248.

¹⁶ Richard A. Posner, 'Past-Dependency, Pragmatism, and Critique of History in Adjudication and Legal Scholarship' (2000) 67(3) *University of Chicago Law Review* 573-606, 573.

¹⁷ Carol J. Greenhouse, 'Just in Time: Temporality and the Cultural Legitimation of Law' (1989) 98(8) *Yale Law Journal* 1631-1651, 1640.

¹⁸ On the descriptive inaccuracies of the 'law lag', for example, see Sheila Jasanoff, 'Making Order: Law and Science in Action' in Edward J. Hackett et al (eds) *Handbook of Science and Technology Studies* (MIT Press, 3rd edn 2007) chapter 26.

¹⁹ For critique, see Andrew J. Wistrich, 'The Evolving Temporality of Lawmaking' (2012) 44(3) *Connecticut Law Review* 737-826.

²⁰ Nancy Munn

²¹ Standout examples include Carol J. Greenhouse, 'Just in Time: Temporality and the Cultural Legitimation of Law' (1989) 98(8) *Yale Law Journal* 1631-1651; Renisa Mawani, 'Law as Temporality: Colonial Politics and Indian Settlers' (2014) 4 *UC Irvine Law Review* 65-95; Mariana Valverde, *Chronotopes of Law: Jurisdiction, Scale and Governance* (Routledge 2015); Emily Grabham, *Brewing Legal Times: Things, Forms, and the Enactments of Law* (University of Toronto Press 2016); Fleur Johns, 'The Temporal Rivalries of Human Rights' (2016) 23(1) *Indiana Journal of Global Legal Studies* 39-60; Luigi Corrias and Lyana Francot (eds) *Temporal Boundaries of Law and Politics: Time Out of Joint* (Routledge 2018); Siân Beynon-Jones and Emily Grabham (eds), *Law and Time* (Routledge 2019); Chris Hilson, 'Framing Time in Climate Change Litigation' (2019) 9(3) *Onati Socio-Legal Series* 361-379; Sarah Keenan, 'From Historical Chains to Derivative Futures: Title Registries as Time Machines' (2019) 20(3) *Social and Cultural Geography* 283-303; Tanzil Chowdhury, *Time, Temporality and Legal Judgment* (Routledge 2020). This list is by no means exhaustive but it gives a flavour of the rich writing on the topic.

²² See especially Mariana Valverde, *Chronotopes*, CITE.

²³ INSERT Khan

²⁴ See esp. Mawani; Valverde

²⁵ Emily Grabham, 'Governing Permanence: Trans Subjects, Time, and the Gender Recognition Act' (2010) 19(1) *Social and Legal Studies* 107-126.

²⁶ Annelise Riles, INSERT

²⁷ Renisa Mawani, 'Law as Temporality: Colonial Politics and Indian Settlers' INSERT CITE.

²⁸ Sarah Keenan, 'From Historical Chains to Derivative Futures: Title Registries as Time Machines'; Sarah Keenan, (2016). *Smoke, curtains and mirrors: The production of*

race through time and title

registration. *Law and Critique*, 28(1), 87–108.

²⁹ Christos Boukalas, 'No Future: Pre-emption, Temporal Sovereignty and Hegemonic Implosion' (2021) 28(2) *Constellations* 252-268.

³⁰ Nancy D. Munn, 'The Cultural Anthropology of Time: A Critical Essay' (1992) 21 *Annual Review of Anthropology* 93-123, 116.

³¹ Koselleck

³² Husserl

³³ Heidegger CITE.

³⁴ Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton University Press 2000) 250.

³⁵ Munn

³⁶ Doreen Massey – phrase borrowed from Massey

³⁷ Barbara Adam, *Timewatch: The Social Analysis of Time* (Polity Press 1995) Ch 1 CITE PAGE.

³⁸ Barbara Adam, *Timescapes of Modernity*

³⁹ INSERT Barbara Adam

⁴⁰ See also Doreen Massey, *For Space*; Mariana Valverde, *Chronotopes*.

⁴¹ Barbara Adam *Timescapes of Modernity* 54.

⁴² Barbara Adam, *Futurescapes*

⁴³ Cite.

⁴⁴ Ben Anderson and others, 'Slow Emergencies: Temporality and the Racialized Biopolitics of Emergency Governance' (2020) 44(4) *Progress in Human Geography* 621-639, 631.

⁴⁵ For inspiration in a different context, see Julie McLeod, 'Marking Time, Making Methods: Temporality and Untimely Dilemmas in the Sociology of Youth and Educational Change' (2017) 38(1) *British Journal of Sociology of Education* 13-25, 13.

⁴⁶ See e.g. Violina P. Rindova and Luis L. Martins, 'Futurescapes: Imagination and Temporal Reorganization in the Design of Strategic Narratives' (2021) *Strategic Organization* 1-25.

⁴⁷ See, however, Grabham; Valverde.

⁴⁸ See e.g. Simone Abram, 'The Time it Takes: Temporalities of Planning' (2014) 20(S1) *Journal of the Royal Anthropological Institute* 129-147; Amy Y. Zhang, 'Thinking Temporally When Thinking Relationally: Temporality in Relational Place-Making' (2018) 90 *Geoforum* 91-99; Rebecca Windemer, 'Considering Time in Land Use Planning: An Assessment of End-of-Life Decision Making for Commercially Managed Onshore Wind Schemes' (2019) 87 *Land Use Policy* 104024.

⁴⁹ Patrick McAuslan, *The Ideologies of Planning Law* (Pergamon Press 1980), 1.

⁵⁰ Annelise Riles, 'A New Agenda for the Cultural Study of Law: Taking on the Technicalities' (2005) 53(3) *Buffalo Law Review* 973-1033.

⁵¹ See also Mariana Valverde, on technicalities

⁵² Kathryn B. Janda and Marina Topouzi 'Telling Tales: Using Stories to Remake Energy Policy' (2015) 43(4) *Building Research and Information* 516-533.

⁵³ INSERT Gov policy.

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⁵⁷ Anna Szolucha, 'Anticipating Fracking: Shale Gas Developments and the Politics of Time in Lancashire, UK' (2018) 5(3) *The Extractive Industries and Society* 348-355.

⁵⁸ For excellent critique, see Chris Hilson, 'Framing Fracking: Which Frames Are Heard in English Planning and Environmental Policy and Practice?' (2015) 27(2) *Journal of Environmental Law* 177-202.

⁵⁹ Valverde

⁶⁰ Town and Country Act INSERT

⁶¹ Planning and Compulsory Purchase Act 2004 section 38(6); see also Town and Country Planning Act 1990 section 70(2).m

⁶² Planning and Compulsory Purchase Act 2004 section 19(1B)-(1C)

⁶³ NFFP para 20.

⁶⁴ INSERT NPPF 2012 para 14 CHECK specifically. Check 2018.

⁶⁵ NFFP para 11(d).

⁶⁶ NPPF para 11; NPPF 2012 para 14.

⁶⁷ Cite cases

⁶⁸ Paul Newman New Homes [2021] EWCA Civ 15, Andrews LJ paras 37-40; CITE OTHER CASES HERE TOO

⁶⁹ Cite Preston Road recovered appeal here;

⁷⁰ *Peel Investments (North) Ltd v Secretary of State for Housing, Communities & Local Government* [2021] 2 All ER 581, paragraph 68, Baker LJ.

⁷¹ Cite Valverde, Jasanoff, Marie Andree Jacob here.

⁷² Cite Marston et al 2005

⁷³ Adam Moore, 'Rethinking Scale as a Geographical Category: From Analysis to Practice' (2008) 32(2) *Progress in Human Geography* 203-225.

⁷⁴ Holding the Future Together: Towards a Theorisation of the Spaces and Times of Transition

⁷⁵ Juliet Davies, 878.

⁷⁶ Planning and Compulsory Purchase Act 2004, section 27.

⁷⁷⁷ Town and Country Planning (Development Management Procedure) (England) (Order) 2015, section 31(1).

⁷⁸ Planning Act 2008, section 35.

⁷⁹ Planning Act 2008, section 41.

⁸⁰ INSERT examples. Also cite here Planning Bill clause 34.

⁸¹ See e.g. Minister of Town and Country Planning Act 1943, section 1.

⁸² INSERT.

⁸³ Victor Moore, *A Practical Approach to Planning Law* (Blackstone 6th edn 1997) 10; Mark Tewdard-Jones, 'Discretion, Flexibility and Certainty in British Planning: Emerging Ideological Conflicts and Inherent Political Tensions' (1999) 18 *Journal of Planning Education and Research* 244-256, 244.

⁸⁴ Town and Country Planning Act 1990, section 77.

⁸⁵ Town and Country Planning Act 1990, section 79.

⁸⁶ INSERT statistics.

⁸⁷ INSERT statistics.

⁸⁸ CIE.

⁸⁹ CITE.

⁹⁰ CITE.

⁹¹ proportion of permissions granted following SoS intervention has dropped significantly under James Brokenshire – CITE.

⁹² Department for Communities and Local Government, Plain English Guide to the Planning System (DCLG 2015) 4.

⁹³ See e.g. CITE. Barker Review.

⁹⁴ Kate Barker, *Barker Review of Land Use Planning. Final Report – Recommendations* (HMSO 2006) paras 3.41, 3.55; INSERT CITE.

⁹⁵ James Ferguson and Akhil Gupta, 'Spatializing States: Toward an Ethnography of Neoliberal Governmentality' (2002) 29(4) *American Ethnologist* 981-1002, 983.

⁹⁶ Examples include INSERT. Adam Moore, 'Rethinking Scale as a Geographical Category: From Analysis to Practice' (2008) 32(2) *Progress in Human Geography* 203-225.

⁹⁷ Jeffrey S. Khan, 'Geographies of Discretion and the Jurisdictional Imagination' (2017) 40(1) *Political and Legal Anthropology* 5-27, 6.

⁹⁸ For further detail, see especially Asha Kaushal, 'The Politics of Jurisdiction' (2015) 78(5) *Modern Law Review* 759-792.

⁹⁹ HC Deb 16 September 2015 vol 599 c32WS.

¹⁰⁰ CITE.

¹⁰¹ In fact, the Secretary of State in recovering an appeal on shale gas exploration has justified the recovery of jurisdiction on the basis of the 'more than local significance' criterion, not the criterion specific to shale gas. CITE.

¹⁰² See e.g. Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (University of Michigan Press 2003); Claudia Aradau and Rens van Munster, *Politics of Catastrophe: Genealogies of the Unknown* (Routledge 2011); Brian Massumi, *Ontopower: War, Powers, and the State of Perception* (Duke University Press 2015); Peter Adey, Ben Anderson and Stephen Graham, 'Governing Emergencies: Beyond Exceptionality' (2015) 32(2) *Theory, Culture and Society* 3-17; Ben Anderson, 'Emergency Futures: Exception, Urgency, Interval, Hope' (2017) 65(3) *The Sociological Review* 463-477.

¹⁰³ Derek McCormack, 'Governing Inflation: Price and Atmospheres of Emergency' (2015) *Theory, Culture and Society* 1-24.

¹⁰⁴ CITE Anderson and others.

¹⁰⁵ Ben Anderson, 'Emergency Futures: Exception, Urgency, Interval and Hope' (2017) 65(3) *The Sociological Review* 463-477, 470.

¹⁰⁶ Brian Massumi, CITE.

¹⁰⁷ Anderson, 470-471.

¹⁰⁸ CITE.

¹⁰⁹ Gisa Weszkalnys, 'Anticipating Oil: The Temporal Politics of a Disaster Yet to Come' (2014) 62(1) *The Sociological Review* 211-235.

¹¹⁰ CITE Roseacre.

¹¹¹ Elen Stokes, 'Regulatory Domain and Regulatory Dexterity: Critiquing the UK Governance of "Fracking"' (2016) 79(6) *Modern Law Review* 961-986.

¹¹² Vincanne Adams

¹¹³ Adi Ophir, 'The Politics of Catastrophization: Emergency and Exception', in Didier Fassin and Mariella Pandolfi (eds) *Contemporary States of Emergency: The Politics of Military and Humanitarian Interventions* (Zone Books 2010) chapter INSERT.

¹¹⁴ Antonio Y. Vázquez-Arroyo, 'How Not to Learn From Catastrophe: Habermas, Critical Theory and the "Catastrophization" of Political Life' (2013) 41(5) *Political Theory* 738-765, 742.

¹¹⁵ HC Deb 16 September 2015 vol 599 c32WS. CHECK COLUMN NUMBER.

¹¹⁶ Jasanoff, *Sociotechnical Imaginaries* CITE.

¹¹⁷ CITE.

¹¹⁸ Mariana Valverde, 'Jurisdiction and Scale: Legal "Technicalities" as Resources for Theory' (2009) 18(2) *Social and Legal Studies* 139-157; Mariana Valverde, 'Games of Jurisdiction: How Local Governance Realities Challenge the "Creatures of Province" Doctrine' (2021) 34 *Journal of Law and Social Policy* 21-38. See also Nicholas Blomley, 'What Sort of a Legal Space is a City?' in Andrea Mubi Brighenti (ed) *Urban Interstices: The Aesthetics and the Politics of the In-between* (Routledge 2016) chapter 1.

¹¹⁹ Rebecca Bryant, 'The Anthropology of the Future' (2020) 32(1) *Etnofoor* 11-22, 21.

¹²⁰ The phrasing here is adapted from Shaunnagh Dorsett and Shaun McVeigh, *Jurisdiction* (Routledge 2012) particularly chapter 6.