

# The Jurisprudence of Dystopian Fiction

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## Abstract

Our traditional understanding of ‘the law’ stems from canonical jurisprudential texts that are conceptually celebrated for their sound understanding of the depths of what law is and what it aims to achieve. However, it is as important to understand what law *should* be as it is to understand what law *should not* be. One way in which one can understand the fears of how law and state power could be manipulated is through dystopian fiction. While fiction may not necessarily be authoritative jurisprudential sources, they nevertheless can emulate and represent the anxieties that a state of chaos and disorder can represent. This paper undertakes an in-depth analysis of three dystopian novels to ascertain how the law is increasingly encroaching upon civil liberties, how it can curtail an individual’s freedoms, and how its coercive powers can be abused in the absence of checks and balances.

**Keywords:** Dystopian Fiction, Law and Literature, 1984, Handmaid's Tale, Scythe, Totalitarianism, Surveillance, Unchecked Power, Law and Morality, Coercion

## Introduction

The concept of ‘didacticism’ is an interesting construction within the field of literary studies. The term ‘didactic’ is defined as “intended to convey instruction and information as well as pleasure and entertainment”.<sup>1</sup> Didactic literature is often praised for its ability to instruct as well as to entertain. Literature that conveys information can camouflage its lessons within its creative expression, which makes the message all the more resounding through its subtleties. The majority of political fiction highlights particular characteristics within a political setup that are flawed or underdeveloped. Thus, political fiction often mirrors concerns and criticisms about the efficacy of a political setup in the narrative of a fictional work.

One branch of such political fiction is dystopian fiction. The term ‘dystopia’ is defined as “an imagined state or society in which there is great suffering or injustice, typically one that is totalitarian or post-apocalyptic.”<sup>2</sup> The political nature of this literature invites a discussion, and a critical analysis of how political forces utilise their power in the pursuance of an agenda. It can be argued that the biggest weapon at the disposal of the state is the law. The ability to manipulate the law to legitimise the state’s agenda makes challenging the state significantly more difficult. Manifestations of law and state power become a dominant motif in dystopian literature; in the context of didacticism, such literature becomes useful in highlighting people’s concerns about the law and state’s legal framework. By negative inference, one can conclude that the author of a work is attempting to portray an ideal legal set up by creating a society that encompasses a totalitarian system characterised by ‘great suffering or injustice’. Thus, literature can serve as an important

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<sup>1</sup> ‘Didactic.’ *Merriam-Webster.com Dictionary*, Merriam-Webster, <<https://www.merriam-webster.com/dictionary/didactic>> accessed 1 May 2020.

<sup>2</sup> ‘Dystopia’, *Lexico*, Lexico, <<https://www.lexico.com/definition/dystopia>> accessed 1 May 2020.

tool in developing an understanding of what law should be, consequently becoming a useful source of jurisprudence.

This paper explores different manifestations of law in three particular dystopian novels: *1984* by George Orwell, *The Handmaid's Tale* by Margaret Atwood, and *Scythe* by Neal Shusterman. I will begin by exploring the nature of law itself as a mechanism of control and power in each of the three novels while attempting to explain a difference in the said manifestations. Secondly, I will discuss how the individual him- or herself interacts with the law, focusing on ideas such as compulsive obedience, rebellion, and dissatisfaction. Thirdly, I will examine how the law influences the interactions between individuals themselves to derive a theory of the extent of the law's ability to influence one's interactions with the other. Finally, I will determine whether there are certain discussions of law that the novels omit, either intentionally or unintentionally, to determine whether the deliberate omission of a discussion of certain legal institutions reveals a particular attitude towards law. Altogether, this will be aimed at deriving an understanding of law solely from the work of the three authors mentioned, to establish that literature can serve as an important source of attitudes towards law. To contextualise this essay, it is noteworthy to present a summary of the novels themselves in light of the themes being discussed in this paper.

## **1984**

George Orwell's novel, *1984*, is considered a canonical dystopian novel. It narrates the story of Winston, a low-ranked officer of the English Socialist ("Ingsoc") Party that governs Oceania, the totalitarian setting in which the novel is set. It is this totalitarianism that Winston attempts to rebel against and assert his individuality – an attempt which he quickly realises to be futile. The omnipresent yet fictional entity, Big Brother, is the symbol for the Revolution that brought about the regime of Oceania. Winston's resentment towards Big Brother is made clear early in the novel, which ultimately fuels his passion to disobey the rule of the Ingsoc Party.

## **The Handmaid's Tale**

Margaret Atwood's *The Handmaid's Tale* revolves around the life of Offred, a handmaid in the fictitious Christian fundamentalist state of Gilead. Handmaids are assigned to various households within Gilead, a state that is marked by an alarming fertility crisis, in order to allow the patriarchs of those households to produce offspring if their wives fail to do so. Thus, the handmaid's role is that of an enslaved surrogate, whereby she has no agency over her own body and the child that she bears. Her only utility to Gilead is her fertility, an 'asset' over which the leaders of Gilead have taken control.

Through Offred's first-person narrative, Atwood depicts life in a patriarchal, theocratic, totalitarian society and the struggle that persists in resisting such a regime. Her narrative shifts from describing the setting through her day-to-day duties to an introspective perspective during the night, explaining the extent of her suffering, sense of helplessness, and the desire for freedom and individuality.

## **Scythe**

Neal Shusterman's *Scythe* is a dystopian novel set in a time where the concept of 'death' has been eliminated and overcome. Human beings have evolved and advanced to the point where they are immune from disease and can be brought back to life, even after the most gruesome forms of 'death'. However, because the state has to prevent overpopulation, it employs 'Scythes' to 'glean' certain members of society which, the Thunderhead, a supercomputer that controls every aspect of society, decides.

The story revolves around two teenagers, Citra and Rowan, who are chosen as Scythe apprentices and undergo the initiation process into the Scythes community. However, only one of them can become a Scythe at the end of the initiation process. Their apprenticeships are conducted by two different Scythes whose perspective on how to conduct their duty to society is starkly different from each other. The dichotomy between these two approaches to duty will be pertinent to the discussion of law in this paper.

### **The nature of law and state power**

Traditional legal positivists, such as John Austin, claim that the law is a sovereign's command backed by a sanction that coerces its subjects into disobedience.<sup>3</sup> HLA Hart claims that the law is a combination of primary and secondary rules, whereby the primary rules impose duties while the secondary rules confer powers to identify and modify said primary rules.<sup>4</sup> Other theorists, namely Michel Foucault, believe that the success of the modern legal setup is its ability to instil a system of self-discipline in its subjects through fear of sanctions as a penalty for recalcitrance.<sup>5</sup> Furthermore, while the Western liberal democratic ideal of a legal setup involves a necessary separation of three powers – the executive, legislature, and judiciary – the setup seen in dystopian fiction is where a sovereign power exists as one entity that creates rules, enforces those rules, and hands down punishments on its own accord.

### **Totalitarianism and Surveillance in 1984**

Orwell creates a dystopia that resonates strongly with Foucault's theory of discipline combined with elements of a Hobbesian Leviathan. The character of Big Brother represents the lawgiver, enforcer, and adjudicator – an all-in-one entity who oversees the entire domain of Oceania. However, the fact that he is never visible, or given any physical manifestation beyond illustrations, imitates a strongly discipline-based notion of power that subsists. The continuous surveillance that his omnipresent character represents exemplifies an almost perfect mechanism of social control, as one cannot escape the purview of Big Brother's eyes. Because of Big Brother's omnipresence and constant surveillance, there is essentially no need for law in its strictly positivistic sense as a means of social control.

There is a clear indication that certain acts against the ideology of the English Socialist Party (hereinafter referred to as the "Ingsoc Party") will be punished. Indeed, "repression and prevarication"<sup>6</sup> seem to be their main strategy in ensuring complete obedience to their regime. An

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<sup>3</sup> John Austin, *The Province of Jurisprudence Determined*, (first published 1832, Universal Law Publishing 2012) 13.

<sup>4</sup> HLA Hart, *The Concept of Law* (2<sup>nd</sup> edition, Oxford, 1994) 79.

<sup>5</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison*, (transl. by Alan Sheridan, Pantheon 1975) 101.

<sup>6</sup> Ransford C Pyle, 'Orwell's Nineteen Eighty-Four and Law' (1984) 8 ALSA F 167, 169.

extremely disconcerting element of this repression is the fact that mere thoughts that contravene the Ingsoc Party's principles will be punished as "Thoughtcrimes"<sup>7</sup> by the Thinkpol. The encroachment upon mere thoughts through enhanced psychological manipulation and surveillance, as compared to merely visible actions, is a frightening expansion of state power, as the freedom of thought is prohibited: "Freedom is the freedom to say that two plus two make four. If that is granted, all else follows."<sup>8</sup> The true extent of power in Oceania lies in the state machinery's ability to guarantee that the concept of 'freedom' in its entirety ceases to exist.

The state's manipulation of language by eliminating certain words entirely contributes to its eradication of potential dissent. The curation of "Newspeak", the language spoken in Oceania, is done "to make heretical ideas literally unspeakable because there is no language in which they can be expressed".<sup>9</sup> By eliminating certain parts of the language, the Party is able to eliminate the mere conceptualisation of thoughts that it deems threatening to its legitimacy. It serves as the foundational element of social control – by preventing an individual from thinking of committing a crime, the state observes complete obedience to its rules without having to exercise power in punishing the individual.

The commentary on the law's ability to control language is paramount to understanding the extent to which law can be used to repress and oppress dissenters. By eliminating the freedom of thought, there is a perceived guarantee that the desire to commit crimes ceases to exist. To paraphrase the line spoken by Winston, 'freedom' boils down to the ability to think for oneself. If said freedom is eliminated, full obedience can be achieved. However, the elimination of freedom is not entirely complete in Orwell's setting; it is very much in the process. Consequently, the constant surveillance and thought policing by institutions such as the Thinkpol ensure that the crime is stopped from even being conceptualised, let alone physically manifesting. Nevertheless, the Ingsoc Party's success in curtailing freedoms boils down to its ability to manipulate its subjects, by law, into a state of complete obedience by eradicating the fundamental bases for transgression.

The inescapability of the law echoes a Foucauldian conception of the panopticon whereby the state is constantly aware of the subject, instilling a sense of self-imposed obedience within the subject to avoid punishment. The "telescreens" that view one's actions within their homes accompanied by the omnipresent Thinkpol create a manifestation of law that combines disciplinary power with swift coercive action if needed. Thus, the state model is ultimately perfect in its mission of controlling the population through the all-encompassing nature of coercive disciplinary state power - the fact that Winston is 'converted' to a Big Brother-loving citizen at the end of the novel proves that the system is essentially flawless in countering recalcitrance. Orwell's manifestation of law is menacing in its coercive, all-encompassing manner, which inevitably eliminates any inclinations of resistance. Should certain 'anti-Oceania' thoughts amount to actions, state power is quickly deployed to punish the offender and 'rehabilitate' them into becoming a 'law-abiding' citizen once again.

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<sup>7</sup> George Orwell, *1984*, (Secker and Warburg 1949), 24. <<https://www.planetebook.com/1984/>> accessed 1 February 2020. (Hereinafter referred to as "*1984*").

<sup>8</sup> Ibid 103.

<sup>9</sup> Julian Symons, 'Orwell's Prophecies: The Limits of Liberty and the Limits of Law' (1984) 9 Dalhousie LJ 115, 127-128.

### Religious Totalitarianism in *The Handmaid's Tale*

In *The Handmaid's Tale*, the 'law' is a clear system of oppression for several identifiable groups of people. The law is extremely patriarchal; there is a clear gender-dynamic that pervades Gilead in which the male figure dominates over the female figure. The commentary on the dangers of patriarchy lies in Atwood's ability to demonstrate how "the male utopia of promiscuity evolves into the female dystopia of Puritanism".<sup>10</sup> The law "is used to harness the power of female sexuality"<sup>11</sup> for the benefit of the male sex, resulting in an entire institutional setup regulating every aspect of the existence of the handmaids. The entire state is run by male figures – Commander Waterford, Offred's master, is one of such figures. There is strict control over the activities of all women in Gilead. For example, women are not allowed to read, work, or participate in state affairs. All women are classed into distinct categories, including Wives of the Commanders, Handmaids, Unwomen (which includes infertile and homosexual women), Marthas (helpers of the Commander's households) and Jezebels (prostitutes). Each of these categories is defined in their relation to the male authority figures they serve.

Furthermore, the monopolisation of reproductive rights by the state is symbolic of the monopolisation of all women's rights that the male leaders of Gilead have achieved. The law disenfranchises the woman from any means of accessing power. The importance of bearing a child is directly linked to "protect the nation, to carry on [their] heritage",<sup>12</sup> mandating the continued monopolisation of the fertility of handmaids in a time where fertility is a scarce resource. Having certain roles defined for all women, attached with a legal mandate to fulfil these roles, emphasises the extremely patriarchal regime that Gilead represents. The law is created by male figures to benefit male figures at the expense of the entire female population disenfranchised from controlling or questioning the law.

The religious fundamentalist regime of Gilead is an important commentary on law and state power. Atwood's dystopia is an example of a theocracy, where restrictive interpretations of Biblical verses and commandments serve as the basis of law and state power. The state of Gilead capitalises on necessary resources and assigns value to those who possess that resource. For example, 'handmaids' are exploited for their ability to produce children for those who are in power and infertile. The authority for the existence of handmaids as a class (that is to be regulated by the state) is predicated on the following Biblical verse:

"And when Rachel saw that she bare Jacob no children, Rachel envied her sister; and said unto Jacob, Give me children, or else I die. And Jacob's anger was kindled against Rachel: and he said, Am I in God's stead, who hath withheld from thee the fruit of the womb? And she said, Behold my maid Bilhah, go in unto her; and she shall bear upon my knees, that I may also have children by her."<sup>13</sup>

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<sup>10</sup> Anne K. Kaler, 'A Sister, Dipped in Blood': Satiric Inversion of the Formation Techniques of Women Religious in Margaret Atwood's Novel 'The Handmaid's Tale.' (1989) 38.2 *Christianity and Literature* 43, 45.

<sup>11</sup> Shira Pavis Minton, 'Hawthorne and the Handmaid: An Examination of the Law's Use as a Tool of Oppression' (1998) 13 *Wisconsin Women's LJ* 45, 49.

<sup>12</sup> *Ibid* 53.

<sup>13</sup> *The Bible*, Genesis 30:1-3, King James version.

The Bible plays a role in defining and regulating the roles of the various classes of people within Gilead. As the law, it defines a strict code of acceptable cultural practices and a set of classes with a clear power-structure inherent within society. There is no definitive rule-making body within Gilead, unlike in Orwell's Oceania, whereby the Party is the clear authority laying down the rules. Similar to Oceania's Ingsoc Party, the elite within Gilead – i.e., Commander Fred Waterford and his comrades – comprises the government which oversees various functions ranging from everyday affairs, such as school curricula, to major strategic and military decisions for the Guardians of the Faith. Gilead, however, is a state run by God. The invocation of the Bible as the finite source of law reinforces the notion that God's law is supreme, immutable, and complete. While there is no direct thought policing (that the reader is made aware of), the fusion of law with God's word makes the law even more rigid and intimidating, as questioning the law of God is equivalent to questioning God's authority, which is essentially blasphemy – punishable by death.

Consequently, punishments in themselves are aptly termed 'Salvaging', as a means to redeem the soul that has erred. It is noteworthy, however, that there is no concept of a trial available to the accused to justify his or her offence. The law's rigidity negates the fundamental need for a judiciary: there is no need to interpret law since the holy text is uniformly known and its meaning undebated. It is of no surprise, then, that Offred notes that "There are no lawyers anymore"<sup>14</sup> as the law does not need to be interpreted, questioned, or understood; it is accepted as it is.<sup>15</sup> The existence of the legal profession is predicated on the existence of a judicial system that functions to interpret the law, and possibly challenge it. Thus, the only manifestation of justice is punishment, which is the domain of the executive.

Because the law exists without the need for a legislature and a judiciary, Atwood's Gilead operates under a Leviathan-esque state with a strong surveillance and coercive nature. The state runs under a unitary power structure, resembling God's oneness as a complete entity, omniscient and omnipresent. The rule of law ceases to exist, and the entire legal structure is ordained by the Bible. Transgressions of any kind are met with swift punishments without a trial, since trials are not necessary where the law is understood to be perfect, complete, and unchallengeable.

### **Morality over Positive Law in *Scythe***

In *Scythe*, Shusterman's dystopia centres on the danger that potential evolutionary perfection may bring about. One would argue that the elimination of death by natural processes would be a 'utopia' rather than a dystopia. However, death is a necessary measure to counter the growing birth rate and potential overpopulation. An interesting characteristic of the dystopia that Shusterman creates is that the society is crime-free – "I wouldn't want the return of crime"<sup>16</sup> – which implies that the society run by the Thunderhead is crime-free, and its citizens fear the return of crime. It is a state of perfect obedience whereby even the desire of committing a crime is eradicated – a common trope across the three dystopian settings discussed in this essay. The eradication of the desire to

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<sup>14</sup> Margaret Atwood, *The Handmaid's Tale* (McClelland and Stewart 1985), 30. <<https://largepdf.com/the-handmaids-tale/>> accessed 1 February 2020. (hereinafter referred to as "*The Handmaid's Tale*").

<sup>15</sup> Ibid.

<sup>16</sup> Neal Shusterman, *Scythe* (Simon and Schuster 2016), 85. <<https://ebooklibrary.space/28954189#>> accessed 1 February 2020. (hereinafter referred to as "*Scythe*").

commit a crime is essential for the sovereign to ensure complete obedience and ‘legitimacy’ to the sovereign’s commands, i.e., laws.

Because the society is governed by an artificially intelligent being, law and governance is essentially devoid of human error, caprice, and corruption. However, the Thunderhead does not have a sense of moral consciousness. As the sovereign, the Thunderhead embodies all existing knowledge; it is (very literally) an all-knowing entity.<sup>17</sup> It oversees the governance of everyday public affairs, e.g., “Bridge repair and urban planning could be handled by the Thunderhead”,<sup>18</sup> along with environmental management, the creation of jobs, and the elimination of poverty.<sup>19</sup> The advent of the Thunderhead allowed for law to be administered without “human arrogance, self-interest, and endless in-fighting.”<sup>20</sup> However, the Thunderhead, being an artificially intelligent entity, governs by facts and quantitative algorithms. It is thus unable to make decisions of legal authority that involve moral consequences. The determination of whose life is to end is a decision that involves several moral considerations, i.e., “conscience and consciousness”,<sup>21</sup> things that the Thunderhead cannot process. It is because of this that the institution of the Scythes was created.

The Scythes thus embody a novel form of state power in determining who lives and who dies. According to Carl Schmitt’s philosophy of law, the sovereign is the entity that decides whether a person deserves to live within their domain, or whether they are to be excluded by the law.<sup>22</sup> This extends to life and death as well: the sovereign has the legitimacy to decide whether a person is to be excluded from the protection given by the law, for example where they have committed a crime. Foucault’s conception of bio-power mirrors Schmitt’s understanding of the domain of sovereignty as well: modern sovereign juridical power is a power to “take life or let live”.<sup>23</sup> This is particularly evident in this novel, whereby the Scythes are bestowed with the power to decide who lives and who dies. Moreover, they have the authority to decide and execute this power at their own will, and can provide immunity from gleaning, i.e., a period of assured immortality, at their pleasure. It is this power to determine who lives and who dies that conforms to both Schmitt and Foucault’s conceptions of modern state power and the state’s ability to implement these decisions at will. Thus, the Scythes can clearly be identified as extensions of state power.

The Scythes are themselves bound by a code of conduct that resonates with a religious-moral philosophy. Aptly named “the Scythe Commandments”,<sup>24</sup> they restrict the arbitrariness of the Scythes in order to prevent the spread of corruption and terror within the societies in which they operate – characteristics one would associate with ‘crime’. Thus, the Commandments act as a constitution of sorts, embodying principles of natural law that impose moral obligations upon Scythes (as they cannot be bound “by laws beyond [the Commandments]”). The existence of moral obligations in the absence of positive legal obligations implies an acknowledgement of the need

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<sup>17</sup> Ibid 25.

<sup>18</sup> Ibid 46.

<sup>19</sup> Ibid 45.

<sup>20</sup> Ibid 46.

<sup>21</sup> Ibid.

<sup>22</sup> Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, (transl. by George Schwab, University of Chicago Press 2005) 5.

<sup>23</sup> Michel Foucault, *The Will to Knowledge: The History of Sexuality* (trans. R Hurley, 1998) 136.

<sup>24</sup> *Scythe* (n 16) 56.

for checks and balances on the exercise of state power, even in a world where society is deemed to have surpassed the need for ‘laws’.

However, the effectiveness of morality as a means of control on power or impulses is questioned severely by the difference in methods between Scythe Curie and Scythe Goddard. Scythe Curie’s meticulousness and diligence to her role in gleaning – she is known to treat her victims compassionately. This is in stark contrast to Scythe Goddard, who capitalises on his position of power and enjoys gleaning through cruel means, such as using a flamethrower and building an entire building down. While both Scythes are bound by the same moral obligations, the efficacy in their enforcement is questioned without a legal framework that guarantees sanctions for counterintuitive behaviour. Thus, the dystopian setting, Shusterman creates resonates the need for an enforcement mechanism of rules to avoid capriciousness and anarchy – ideas that Scythe Goddard embodies.

### **The individual and the law**

While it is important to determine the inherent nature of law and state power within the above dystopian settings, the true sense of ‘law’ can only be derived by looking at how the individual relates to the law. In all three novels, the protagonists exhibit some resistance to the law itself, to varying degrees of success. The reader becomes the outsider to the protagonists’ accounts as the latter’s experiences with the law are explored through various narrative techniques.

### **The Futility of Subversion in *1984***

In *1984*, Winston, the protagonist, very clearly exhibits anti-establishment sentiments. The entire plot revolves around his relationship with the state of Oceania; however, he is a dissident to the regime that is perpetuated. For example, he writes “DOWN WITH BIG BROTHER”<sup>25</sup> in his diary, which he acknowledges is a major thought crime – “Whether he wrote DOWN WITH BIG BROTHER, or whether he refrained from writing it, made no difference.”<sup>26</sup> His writing is a conscious short-lived rebellion against the legal restrictions on freedom of thought. Winston is aware that the law will prevail and that his doom is inevitable – “He was already dead, he reflected.”<sup>27</sup> The act of writing constitutes one of the biggest crimes in Oceania; a direct threat to the legitimacy of the Ingsoc’s rule.

Furthermore, the constant awareness of the law is a testament to the success of the disciplinary power of the state: there is a sense of self-imposed apprehension before committing such actions. Nevertheless, Winston challenges the law by expressing his views – a freedom that he is not allowed. The continued struggle against the oppressive doctrine of Big Brother provides a commentary on the Oceania regime from an outsider perspective to a reader assumed to be accustomed to the liberal democratic concept of the rule of law.

The all-knowing nature of the state, in its totalitarian form of surveillance and model of self-discipline, ensures that Winston cannot successfully challenge the law; if he does, he will be

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<sup>25</sup> *1984* (n 7) 23.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid* 36.

‘cured’ of such sentiments and will become a ‘law’-abiding citizen of Oceania. The conflation of dissent with heresy is a concept that has historical significance. Being an employee of the Ministry of Truth, Winston’s character embodies an irony of sorts – he is in charge of manipulating the truth in the existing records of Oceania, while he himself is eventually punished for expressing his own truth. The law thus proves to be a menacing, all-encompassing entity that is successful in repressing all forms of rebellion eventually – “He had won the victory over himself. He loved Big Brother.”<sup>28</sup>

This notion of the ‘perfection’ of law is paramount to the understanding of law in dystopian settings. The fear of totalitarianism arises from the inability to question a state’s governance, which provides ample opportunity for the rulers to abuse their power and quash all avenues for dissent. A totalitarian state embodies a legal system and a constitution oriented towards “supreme values”,<sup>29</sup> whereby “the entire legal system and constitution and every aspect of human activity is dominated by an all-inclusive supreme value system”.<sup>30</sup> The law becomes a tool to achieve these so-called ‘supreme values’; any threat to these ‘supreme values’ becomes conflated with dissent and must therefore be quashed. In essence, the law’s ability to remove dissent proves successful in its aim to serve the ‘supreme values’ of the Ingsoc Party, i.e., complete obedience to the Party ideology and Big Brother. Therefore, the law successfully achieves its aims of prioritizing the ‘supreme values’ of the totalitarian state, and thus serves as an extremely successful means of social control.

### **The Law as an Oppressor in *The Handmaid’s Tale***

In *The Handmaid’s Tale*, it is through Offred’s thought narrative that the reader is introduced to her attitudes towards the law. Her tone throughout the novel exhibits a confused state of obedience to the Gilead regime; however, she primarily exhibits a sense of dissent against the state structure. As a member of the Handmaid class, Offred is among the most subjugated, controlled, policed and vulnerable people within Gilead. Her value is defined by her usefulness to the state: as a fertile woman (a rarity in Gilead); her role as a Handmaid is decided for her by the state upon her capture. Her liberty is stripped from her, and she is forced into a sort of sexual slavery, whereby her reproductive organs become an asset to the Commander of the household she is posted to. She has no say in the matters of her body anymore – her sexuality becomes “a means to an end – population growth”.<sup>31</sup> While she is “free in her mind”,<sup>32</sup> the law removes all other forms of freedom and agency from her and other women in Gilead.

This denial of freedom is a common trope in classical dystopian fiction as it encompasses a stark contrast with modern conceptions of law. According to John Locke, a state must ensure that its subjects are guaranteed the rights of life, liberty, and property as ‘natural rights’ – rights that society must guarantee in order to preserve the “equality of Men by Nature”.<sup>33</sup> Similarly,

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<sup>28</sup> Ibid 376.

<sup>29</sup> Peter Bernholz, ‘The Constitution of Totalitarianism.’ (1991) 147.3 *Journal of Institutional and Theoretical Economics (JITE) / Zeitschrift Für Die Gesamte Staatswissenschaft* 425, 426.

<sup>30</sup> Ibid 431.

<sup>31</sup> Ibid 66.

<sup>32</sup> Ibid 65.

<sup>33</sup> John Locke, *Two Treatises of Government: The Second Treatise* (1698, London) Chapter II: Of the State of Nature [5].

Rousseau emphasised the importance of freedom to the effectiveness of a liberal democracy, where the state operates as a limited force.<sup>34</sup> The state prioritises the freedom of its subjects in its governance to the extent that freedoms of one individual do not harm or interfere with those of others. The prioritization of the individual is essential to understanding the nature of the current democratic legal system, as the rule of law operates so that an individual's rights and freedoms can be protected without harming the rights and freedoms of another. Without it, there is no limitation on the state's ability to manipulate the law to serve its own interests and impose a regime that is inherently oppressive to those not in power.

Atwood's novel exhibits how the law can be transformed into a tool to legitimise cruelty, turning humans into resources to benefit others. The setting that she has created gives credence to the classical Marxist interpretation of law: the law subjugates the masses for the benefit of the few. However, the law's ability to take away freedoms is masked by a religious narrative which, although distorted, provides the law a benevolent cover. The religious nature of law not only makes it seem less evil or oppressive than it actually is, but it also ensures that the law cannot be questioned or challenged; when Ofglen asks her "Do you think God listens?"<sup>35</sup> Offred realises that she can be hanged for "Subversion, sedition, blasphemy, heresy, all rolled into one" as this particular instance can amount to "treason".<sup>36</sup> Offred's recognition that the mere questioning of God's acknowledgment of prayers instils the fear of punishment in others reinforces the strong connection between religion and state law in Gilead. Her awareness of the extent of the state's control is a frightening realisation of the law's all-encompassing and totalizing nature. Because of the religious nature of the law, it becomes an inescapable reality that forces Offred into submission – the denial of the law is equivalent to the denial of God. Thus, the law is able to perpetuate cruelty under the seemingly benevolent cover of religion which is manipulated to force women into various types of subjugation to the men in Gilead.

### **The Ineffectiveness of Law without Sanctions in *Scythe***

In *Scythe*, it is pertinent to discuss the relation between the Scythes and their Ten Scythe Commandments to determine how one relates to the law. The Ten Scythe Commandments are guiding principles that the Scythes must abide by to ensure that their gleaning duties are done in a manner that is fair and just to the victims. Scythe Curie and Scythe Goddard resemble two starkly different interactions with the Commandments, which in turn shapes their conduct as Scythes.

Scythe Curie ensures that she follows the second Commandment in her gleaning: "Thou shalt not kill with bias, bigotry, or malice aforethought."<sup>37</sup> For example, her gleaning is respectful of the bereaved families, as she makes sure to arrive at the funeral of her victims. She gleans at random and without warning, thus ensuring that her victims are not selected at bias. Her consistent journal entries as fillers in the novel exemplify her following of the sixth Commandment – "Thou shalt lead an exemplary life in word and deed and keep a journal of each and every day."<sup>38</sup> Citra notes how she lives a simple life with few possessions in her house (quotes from her house

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<sup>34</sup> Ibid 12, 28.

<sup>35</sup> *The Handmaid's Tale* (n 14) 154.

<sup>36</sup> Ibid.

<sup>37</sup> *Scythe* (n 16) 56.

<sup>38</sup> Ibid.

chapter), thus following the eighth Commandment – “Thou shalt claim no earthly possessions, save thy robes, ring, and journal.”<sup>39</sup> She binds herself to these rules almost religiously, which emphasises how the Commandments can have a positive moral force but cannot be ‘enforced’ by another, *per se*.

As a Scythe, Scythe Curie is arguably one of the most powerful members of Shusterman’s society; however, it is by virtue of her following the Ten Scythe Commandments that she does not abuse said powers and thus maintains a system of order. This echoes a sentiment similar to that of ‘constitutionalism’. As Hart stated, a state can only be run properly if state officials choose to bind themselves to the same rules that they choose to enforce on citizens.

In stark contrast to Scythe Curie’s character, Scythe Goddard is characterised by a complete dismissal of the essence of his duty as a Scythe. He is unable to stay within the desirable limits of his power that are determined by the Ten Scythe Commandments; consequently, his gleanings become significantly cruel, biased, unjust, and malignant. For example, he abuses his power to obtain a mansion by promising immunity to the owner.<sup>40</sup> Furthermore, the manner in which he carries out his gleanings is marked by the need for a spectacle. He exceeds his Gleaning Quota by the end of the novel when he attempts to wipe out an entire monastery<sup>41</sup> in an attempt to exemplify the extent of his uncontrolled power.

His character symbolises how inefficient the law as a system of rules governing conduct can be if there is no concept of a ‘sanction’. In both *1984* and *The Handmaid’s Tale*, the law forces the individual to self-discipline because there is a heavily punitive force behind the law itself; arguably, the law ‘is’ the sanction. In *Scythe*, while there are mentions of how Scythes may be disciplined for failing in their duties, the Scythedom, as a “self-governing body”,<sup>42</sup> presents a loose, inefficient mechanism for said discipline. Because of its capacity to self-govern and no accountability to a higher sovereign authority, there are ways in which the system can be manipulated through unfair means: Scythe Goddard, for example, is able to manipulate and blackmail High Blade Xenocrates – one of the Scythes in a leadership position in the Scythedom – by kidnapping his daughter, as Scythes are not supposed to procreate as per the ninth Scythe Commandment.<sup>43</sup> Instances like this prove that the system is marred by corruption and ignorance of the rules. A lack of accountability to a higher sanctioning authority proves the ineffectiveness of a set of moral guidelines forming the basis of social control. Thus, Shusterman’s critique of law is inferred from his creation of a society where there is no ‘law’, in the positivistic sense. The Commandments resemble a moral code of sorts, a natural law that must be followed by the Scythes that is not necessarily met with a direct punishment. Because of this non-binding structure, state power that is given to Scythes can be easily abused and corrupted. Thus, Shusterman’s novel implies the need for a strong system of governance particularly for those in power. A system of checks and balances needs to be imposed beyond simple constitutionalist principles, with proper enforcement mechanisms and clear sanctions in place.

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<sup>39</sup> Ibid.

<sup>40</sup> *Scythe* (n 16) 139.

<sup>41</sup> Ibid Chapter 22.

<sup>42</sup> Ibid 100.

<sup>43</sup> Ibid 56.

## **How law influences the interactions between individuals**

The all-encompassing yet concentrated nature of state power presented in dystopian fiction tends to dictate the minutest details of interpersonal relations. The law no longer remains a set of rules, but rather a monitoring force, that aims to eliminate any possibility of recalcitrance by eradicating any thoughts of such. The totalitarian regime in which the law operates exhibits the ability to preempt any expressions of discontent to ensure its effective control. While there are many ways in which interactions are influenced by the law, for the purposes of this essay, I will focus my analysis on the law's manipulation of romantic and sexual interactions between people.

### **Love, Sex, Marriage and Family in 1984**

The law becomes the ultimate decision-maker as to who can interact with whom. It defines rules governing the creation and maintenance of relationships and thus makes it necessary to abide by said rules regardless of personal inclinations towards a given person. Thus, relationships are reduced to an entirely functional purpose. There is no longer a concept of 'love' as it stems directly from the freedom to associate with another on one's own terms – in essence, romantic love is predicated on a crime. Consequently, Winston's romantic relationship with Julia is an act of subversion itself, albeit a short-lived one. However, Winston cannot fully invest himself in this relationship's romantic nature because he is aware that the Party will eventually force the two apart. As a result, his feelings towards her are inherently confused: "He loved her...but that was only a fact, known as he knew the rules of arithmetic. He felt no love for her."<sup>44</sup>

In 1984, for example, the sole purpose of marriage was to have children. 'Love' does not exist as the basis for marriage in Oceania, because the Ingsoc Party believes it cannot "prevent men and women from forming loyalties which it might not be able to control."<sup>45</sup> Therefore, the real purpose of the ban of such marriages was "to remove all pleasure from the sexual act."<sup>46</sup> The abolishment of sexual pleasure as part of a set of "competing pleasures"<sup>47</sup> that the Party aims to eradicate will help ensure complete devotion to Big Brother and the betterment of Oceania. This eradication of sexual pleasure echoes the ideas of Michel Foucault's concept of 'biopower' and the state's ability to legislate on and control sexuality.<sup>48</sup> This extreme sexual repression instigated by the Ingsoc Party highlights "how a certain degree of sexual regulation benefits social organisations".<sup>49</sup> The act of sex itself can lead to rebellious intent, as it can act as the basis for conflicting loyalties. Thus, the state has a direct interest in controlling sexuality through law to prevent 'competing pleasures'.

The reader is further informed that marriage must be "approved by committee appointed for the purpose" who would refuse permission "if the couple concerned gave the impression of being physically attracted to one another."<sup>50</sup> The emphasis on the functionality of marriage is

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<sup>44</sup> 1984 (n 7) 289.

<sup>45</sup> Ibid 83.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid 337.

<sup>48</sup> Ibid 24.

<sup>49</sup> Md. Mominur Rehman and Shaila Zaman, "'1984': A study on repressed sexuality and individual rebellion" (2019) 6.8 International Journal of Multidisciplinary Research and Development 189, 191.

<sup>50</sup> Ibid.

pertinent to understand the law's ability to dictate interpersonal transactions. An individual only owes 'love' to Oceania as a state; any feelings of affection towards another individual could result in a shifting of loyalties. Indeed, "the Party perceives a close connection between sexual abstinence and proper political behaviour".<sup>51</sup> To maintain complete obedience, it is essential for the state to mandate the regulation of interpersonal connections to the extent that emotional attachment becomes insignificant. The law becomes an essential tool to remove all associations of love and sexual attraction to the institution of marriage, because the aim of marriage is to produce children for the future of Oceania; any competing interests within a marriage, i.e., romantic, or sexual attraction, can take precedence over loyalty to Oceania, which is punishable by the state.

Surveillance extends even to the family unit: children, as part of the Youth League organisation, are encouraged to report their parents if they exhibit any disloyalty to Big Brother or the Ingsoc Party – "No one dares trust a wife or a child... any longer".<sup>52</sup> The Party has managed to eradicate the sanctity of the familial bond itself to ensure that it has complete loyalty from its subjects. The creation of legally sanctioned institutions, such as the Youth League, adds legitimacy to the state's interference into the family unit. Thus, the law can radically transform how families interact with one another and determine the level of 'emotional' attachment between individuals.

### **The Law Legitimising Rape in *The Handmaid's Tale***

A similar theme can be seen in *The Handmaid's Tale*. The Handmaids are part of a state-run mechanism built to ensure that households of Commanders and the elite of Gilead produce children for the future of the country. The Handmaids are 'posted' to different houses for the sole purpose of producing children. They are stripped of any agency and are reduced to solely reproductive vessels. As a result of this, Offred describes the Ceremony, i.e., the act of sexual intercourse between the Handmaid and the Commander, as one of routine: "The Ceremony goes as usual".<sup>53</sup> The joy of the sexual act ceases to exist; she narrates that he is simply penetrating the lower part of her body, but she does "not say making love, because that is not what he's doing".<sup>54</sup> The lack of compassion in this entire engagement emphasises on the obligation of this act rather than a desire to do so – "The Commander, too, is doing his duty".<sup>55</sup> The use of the word 'duty' indicates the legal requirement of this act – duty takes precedence over free will. Neither party is engaging in this arrangement freely; however, the state mandates these arrangements regularly.

The notion of consent is completely distorted in this setting. The law does not mandate that a handmaid consent to her role, as consent derives from free will. The lack of free will predicates Offred's position within society. Furthermore, her position in society is sanctioned by the Biblical underpinnings of Gilead's governance. Thus, her consent is inferred as her fulfilling a mission to God, for the betterment of Gilead's future. Because of her lack of consent, the law is ultimately legitimising rape. Her body is usurped by the Commander to whom she is unwillingly subservient to for his benefit. The law reduces Offred's identity to her body: her fertility becomes her defining

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<sup>51</sup> Malcolm R. Thorp, 'The Dynamics of Terror in Orwell's "1984"' (1984) 24.1 Brigham Young University Studies 11.

<sup>52</sup> *1984* (n 7) 336-7.

<sup>53</sup> *The Handmaid's Tale* (n 14) 89.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid* 90.

trait. The reduction of her to a mere body eliminates the need to ask for consent, as she is ‘owned’ by the state and is subject to Commander Waterford’s control.

Offred further notes the strange power dynamic embodied within the act itself. The Commander’s wife, Serena, tries to maintain some control over the situation by holding Offred’s hands “to signify that we are one flesh, one being...that she is in control, of the process and product”.<sup>56</sup> Serena’s own helplessness stems from the fact that the law dictates that she must resort to a surrogate and witness the entire process of sexual intercourse and insemination first-hand. Her lack of consent is important to note as well: while she is married to Commander Waterford, she is mandated to witness him in sexual intercourse with another woman, whose offspring she will then claim as her own. The entire process is one that is a perverted domination of the male sex over the female sex. The centrality of male power within this one scene succinctly encapsulates the nature of Gilead’s overtly patriarchal state. It legitimises non-consensual extra-marital affairs as a necessity to ensure the prolonging of the state. This extreme subjugation of the female population to the male population is carried out by law. Thus, Atwood’s commentary emphasises the potential evil that law can perpetuate should it fall into the wrong hands.

### **The Forbiddance of Love in *Scythe***

In *Scythe*, it is pertinent to note that Scythes are prevented from engaging in any familial or romantic relationships upon the acceptance of their role as a Scythe; the ninth Scythe Commandment is “Thou shalt have neither spouse nor spawn”.<sup>57</sup> Thus, the law destines Scythes to live lives in which they are not allowed to divulge in any romantic relationships or have any families. However, as noted before, such laws are not necessarily ‘binding’ in the conventional sense on the Scythes, as there is no formal mechanism for punishing any disobedience. This rule exists purely on the basis of logic: a Scythe possessing romantic or familial ties cannot be unbiased in their role as they would never glean their family members. For example, High Blade Xenocrates is discovered to have an illegitimate daughter, who Scythe Goddard kidnaps to blackmail Xenocrates into a position of weakness – “If it came out that the High Blade had an illegitimate daughter, it would destroy him. He’d be in serious violation”.<sup>58</sup>

As officials carrying out an essential state duty, any possibilities of bias would result in corruption, and thus a return to the conditions of the pre-Thunderhead state. A Scythe will inarguably be reluctant in gleaning a loved one, which would prove counterintuitive to the fulfilment of their duties. It is thus essential for the law to be more stringent on those who serve as extensions of the state by limiting the extent to which they can initiate and maintain certain types of relationships with other people. The principles that guide the Scythes would benefit the execution of their state duties, much like constitutional provisions that govern the conduct of state officials. The prohibition on romantic or familial love is thus a necessary rule that exists to prevent Scythes, as actors of the state, from faltering in their state duties.

That is also why the budding romance between Citra and Rowan, the Scythe apprentices, poses a threat to their future roles. As Scythes-to-be, both Citra and Rowan were outside of the

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<sup>56</sup> Ibid 89.

<sup>57</sup> *Scythe* (n 16) 56.

<sup>58</sup> *Scythe* (n 16) 262.

law's applicability, and thus, under different circumstances, would have been able to maintain a romantic relationship. However, the application of the Ten Commandments, now that both are becoming Scythes, fundamentally poses a threat to their relationship. During their initiation process, Scythes are "forced to take the life of someone they loved"<sup>59</sup> as a test of their loyalty to their duty – Citra is tested by being forced to kill her brother, Ben, for example. The law demands that its enforcers are devoid of feelings of love – romantic or familial – to ensure that their duties remain supreme to their personal feelings. Any emotions that hinder one's loyalty to the state are threatening to the state's legitimacy. Thus, the law prevents Scythes from engaging in relationships based on love as it perceives a threat to the efficacy of the regime. Scythe Curie's self-imposed abstinence from romantic and familial relations proves far more effective in the execution of her duties than Scythe Goddard's hedonism for this very particular reason. Thus, Shusterman's commentary applies to law governing state officials as well: the 'perfect' state official is one whose judgment is not clouded by biases that arise from emotional attachment. The law can only be executed properly if personal loyalties are set aside, and one's loyalty to the state remains supreme.

### **Conclusion**

After delving into an analysis of three dystopian novels and their relationship with the concept of law, one can derive what 'law' is supposed to be. By creating systems of totalitarianism and arbitrariness, dystopian authors create systems of rule that neglect the entire concept of the rule of law in its contemporary definition. The overarching, omnipresent nature of 'law' undermines the system's political legitimacy as it becomes a rigid, unchanging force backed by an increased level of coercion to keep citizens in place. The growth of state power and a lack of checks and balances ensures that power will be usurped and abused if combined with malicious political intent.

Dystopian fiction highlights the extent to which law and state power has an effect on the individual living within a society. The idea of 'freedom' is a fiction of the past – the individual is completely subservient to the dystopian state, constantly being surveyed with minimal means to escape. Their entire reality is engrossed by the law, which they are thus constantly reminded of. Any attempts at evading the system, or undermining it, results in a swift and successful punishment; indeed, the law cannot be seen to be fallible so as to allow for any insurgence. The law has to ensure that any relations that undermine an individual's loyalty to the law, such as love or family, are eradicated as well. Ideas one believes to be the product of one's own agency, such as a marriage, or even a romantic relationship, are controlled and limited by the state. There is no room for shifting loyalties within the individual's mind: their duty to the state remains the most essential of their duties.

The fictionalisation of these dystopian regimes is perhaps a response to growing trends of corruption and unaccountability that are being witnessed in governments across the world. Literature like these echoes concerns about how law and governance could potentially be shaped if certain flaws within the legal system are not corrected. The three authors discussed have created such regimes in order to highlight the characteristics that law and state power should not embody. Collectively, these novels established jurisprudence by virtue of their dystopias. This literature is helpful in identifying concerns about the state's encroachment on civil liberties, the denial of participation, the curtailment of free speech, a lack of checks and balances on the state's power,

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<sup>59</sup> Ibid 338.

and procedural inequity. A legal analysis of literature such as this is useful in mirroring societal attitudes towards law, governance, and state power and can help voice said concerns in a creatively succinct manner.