How many of you have heard of the term ‘dystopia’?

For those of you who haven’t heard of the term, dystopia is whatever society fears. It is a world in cataclysmic decline, either because of political turmoil, economic ruin, or environmental disaster.

So, now that we have this definition, how many of you think you have experienced it?

Just as a bit of background, I am a student of both arts and social science, and this presentation will be a transposing of legal imaginings into the dystopian templates provided for us by classic novelists. In particular, we will be looking at the dystopian (and possibly utopian) legal orders of *Nineteen Eighty-Four, The Handmaid’s Tale* and *The Dispossessed*.

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### Introduction

In 2019, in the aftermath of the Black Lives Matter movement and swept up in the love and loss of pandemic lockdown, BBC reporter Nick Bryant wrote, in *‘A letter to our newborn American daughter’*, of the world’s many problems:

“The climate emergency; the disparities of wealth and opportunity; sexism and sexual violence; the racial breach; the Pandora’s Box of artificial intelligence and autonomous weaponry; the transnational challenges that make all of us global citizens.”

These days, it’s so easy to think that the world is ending.

So perhaps it is no surprise that these days mainstream media is flooded with dystopias, from the heightened, surreal nightmare of *The Hunger Games* to the gritty, chaotic apocalypse of *Parable of the Sower*. The illusory, elusive perfection of utopias we can only imagine; dystopias, as Margaret Atwood writes, we’ve already had.

#### *Where is utopia?*

Given the illusory nature of the whole idea, our first question must be, ‘Where is utopia?’ Thomas More, who first coined the term in his eponymous 1561 novel, had what seemed like a prophetic answer: “no place”. It is a sentiment that largely captures what most legal and political scholars’ impression of the utopia/dystopia genre: that the planned society delivering promises of perfection and progress always devolves into an extreme impulse to order, and that this impulse becomes a mode of socio-political repression and silencing of dissent that we know as dystopia: *Nineteen Eighty-Four, The Handmaid’s Tale* and *The Dispossessed*.

Over the decades, scholars like Moylan, Sargent, and Levitas have placed varying labels on the types of utopia that have emerged: the anti-utopia; the utopian satire; the critical dystopia; the negative utopia. But, for the sake of clarity, we will be working off of the simplified definitions of DYSTOPIA, ANTI-UTOPIA, and ANTI-ANTI-UTOPIA.

*Definitions*

It is common among the scholarly field to conflate the terms dystopia and anti-utopia, so let us first differentiate between them according to the definitions given by science-fiction writer Kim Stanley Robertson in his article, *Dystopias Now*.

Dystopia is utopia’s opposite: the idea that political orders could get worse. Orwell’s infamous *Nineteen Eighty-Four* is its perfect model. Its distinguishing factor is that it was never created with the intention to be a utopia: it was created to secure power for the totalitarian state, whose only interest is in maintaining and expanding its power, and whose objective is to make its subjects miserable.

The anti-utopia is utopia’s contrary: the idea that utopia itself is wrong and bad, and any attempt to try and make things better is sure to wind up making things worse. This produces the utopia-for-the-few, dystopia-for-the-many that provides the model for Margaret Atwood’s Gilead, the setting of *The Handmaid’s Tale*. Alfred Huxley’s *Brave New World* also falls under this umbrella.

### How legal orders shape dystopias/anti-utopias

The dystopia and the anti-utopia both have ways of repressing individual freedom via operation of the legal order, and this is concentrated into three facets: religion, sexual pleasure, and language.

#### Religion

Funnily enough, *Nineteen Eighty-Four* and *The Handmaid’s Tale* take very different approaches to religion, but aim to achieve the same goal. Orwell’s surveillance state of Oceania outright outlaws conventional religious activity, for fear that loyalty to a religious institution would usurp its own authority; in Orwell’s world, the Party *is* God. Atwood’s Gilead, however, uses religion as a *front* for tyranny, deriving the hierarchy of the Commanders, the Wives as domestic managers, and the Handmaids as sexual surrogates, from the Biblical story of Jacob, Leah, and Rachel. Ultimately, however, both legal models seek to appropriate religious energy for their own purposes, and this manifests in rituals that mimic Christian practices, but also incorporate a horrifying reversal of the Christian emphasis on love:

* The infamous ‘Two Minutes Hate’ in *Nineteen Eighty-Four*, in which Party members gather before a telescreen displaying the alleged treachery of the Party’s enemy Goldstein, which whips the crowd into a frenzy of intensity.
* The ‘Particicution’ in *The Handmaid’s Tale*, in which the Handmaids are whipped into a frenzy by incendiary rhetoric against an alleged transgressor of society and encouraged to savagely beat the victim to death.

#### Sexual Pleasure

Again, *Nineteen Eighty-Four* and *The Handmaid’s Tale* take very similar approaches to sexuality: both attempt to deny the fulfillment of sexual desire in its subjects. This aspect of the legal order is supported by the interpretations of 20th century political philosopher Foucault, who argued that sexuality is a principal means by which modern society controls the behaviour and desires of its citizens. The power of sexual behaviour is therefore amplified: it is not just human instinct, but a political power that can be exercised as a tool of repression or as one of rebellion.

In *Nineteen Eighty-Four,* sexual activity beyond the assigned spouses and the family structures within Oceania are legally and officially forbidden in order to deny private emotional attachments. Importantly, and what many readers will remember from the book, Winston Smith and Julia’s illicit passion constitute a form of rebellion: it “was a blow struck against the Party. It was a political act.” It is part of the book’s dystopian effect that, in its chilling conclusion, the protagonist’s sexual passion is instead assimilated into a socially acceptable love for ‘Big Brother’, the book’s Stalinesque personification of official power.

*The Handmaid’s Tale* demonstrates a fear that sexual activity will lead to the development of ‘love’ between the all-powerful Commanders and their sexual surrogates, the Handmaids; it is emphasised repeatedly that the Handmaids are merely containers, vessels, breeding machines: sexual copulation is strictly impersonal and emotional attachment is not only frowned upon but outlawed. However, like Winston Smith in *Nineteen Eighty-Four,* Atwood’s protagonist, the titular Handmaid, uses sexuality as an instrument of political power as well, exerting her own sexual energies through unauthorised sexual liaisons with her Commander and an emotional attachment to the chauffeur, Nick.

#### Language and Perception of Reality

Language is controlled by the totalitarian state, not just to manipulate the mental workings of its members by producing conformity and obedience, but also because it understands that language harbours powerfully subversive energies. It actively deprives the populace of a vocabulary in which they can express dissidence, to make dissident ideas unthinkable.

In *Nineteen Eighty-Four*, this is put into practice through the development of the “Newspeak” project, which provides citizens with a limited, mechanical vocabulary through which human passions and energies cannot be expressed. It shapes its citizens’ perception of reality itself:

* The Ministry of Truth manipulates news outlets and falsifies reality in order to manipulate history to suit the Party’s narrative.
* O’ Brien, the Party’s mouthpiece, denies the existence of any reality outside the human mind, declaring that “truth” is a function not of reality but of Party policy.

*The Handmaid’s Tale* too limits the ability of the suppressed–here the women–to access language. They are legally banned from reading and writing; they are conditioned to speak in mechanical and predetermined ways, such as the greeting “Blessed be the fruit” and the reply “May the Lord open”. Linguistic practices are exposed as blatant attempts of domination. But Atwood also subtly exposes the opposite of language’s powerful subversive energies through the protagonist’s constant employment of puns and other wordplay in her internal monologues:

‘I sit in the chair and think about the word *chair*. It can also mean the leader of a meeting. It can also mean a mode of execution. It is the first syllable in the word *charity*. It is the French word for flesh. None of these faces has any connection with the others.

These are the kinds of litanies I use to compose myself.’

The plurality of language is an alternative to the monological society; it is a method of constructing an independent sense of self in a strictly conformist legal order.

#### Transition

These three aspects form the very bedrock on which dystopian legal orders are built. They may seem surreal, they may seem like a heightened reality, but they are derived from real-world elements. *Nineteen Eighty-Four* arose from Orwell’s observation of how the far-right totalitarianism of Hitler’s Nazi Party and far-left Stalinist socialism shared frightening similarities in their legal methods of controlling their population. The falling birth rate, religious fundmentalism and environmental toxicity in *The Handmaid’s Tale*, Atwood later explained, all derived from historical events that have already occurred: the French Revolution, the Crusades, the Spanish Inquisition, the burnings at the stake.

No matter how you look at it, the dystopia seems to be a genre of tragedy. Lyman Tower Sargent outlines its narrative: this is the story of the people who dreamed of a better life for all of us and tried to create it; this is the story of those who had differing dreams and the conflicts among them; it is the story of how political dissent turned into a politics of repression, because dissent must be suppressed or terminated or manipulated in order to maintain our utopia; it’s the story of how the dream turned into a nightmare. And then we’ve got *Nineteen Eighty-Four*.

Lyman Tower Sargent calls this the narrative of ‘social dreaming’; which Moylan argues is a general vocation that the utopia and dystopia share. It is the hope that the world can be better and the legal structures that arise out of it; but that extreme impulse to order inevitably produces its nightmare mirror image. If the utopia exists, we are always unconsciously aware that the dystopia will follow in its footsteps.

And that is perhaps something you have already picked up on in the discussion of these books: the idea of dystopia as a genre of warning.

But has this traditional function of dystopian fiction been transferred into the modern-day dystopian novels that have flooded our media? Is *The Hunger Games* a warning against the extreme wealth disparity, the cyberpunk dystopia a critique of AI’s growing dominance and business conglomerates’ growing corporate power, *Ready Player One* set against a world of environmental breakdown. But if dystopia is a warning, there must also be hope that the world we live in can be saved.

The answer, as I will argue in the section, is no.

### Radical pessimism

Radical pessimism, it appears, has become the new trend of utopian/dystopian literature. Vardana Singh has described it as “dystopian porn”: a strand of dark narratives that have compressed humanity’s social anxieties into a fatalist, anti-utopian inoculation that normalizes pessimistic indulgence in a terrifying reality[[1]](#footnote-1), producing a nihilistic pleasure in this anti-utopian pessimism.

So doesn’t this cancel out the entire point of dystopia? Robinson thinks yes. Dystopias have become, in his words, “fashionable, perhaps lazy, maybe even complacent, because one pleasure of reading them is cozying into the feeling that however bad our present moment is, it’s nowhere near as bad as the ones these poor characters are suffering through”; we read dystopias out of indulgence, out of “a sense of comparative safety”. We comfort ourselves with the assurance that the heightened, surrealist, nightmarish worlds of *The Hunger Games* and *The 100* could never happen here. But as the very real Stalinist and Nazi elements of *Nineteen Eighty-Four* and the real-world problems of falling birth rates, gender equality, and theocratic authoritarianism in *The Handmaid’s Tale* remind us, ***it could always happen here***.

Which is why, as our speculative fiction indulges in the forms of dystopia we have already had, and struggles to conjure an imaginative utopia, I propose that Le Guin’s *The Dispossessed* posits the dystopia that best carries out its function. By positing anarchy as the ideal utopia, Le Guin rejects the traditional model of utopia as a perfect, unchanging society.

#### The Anti-Anti-Utopia, or the Critical Dystopia: Le Guin’s *The Dispossessed*

Several labels have been applied to *The Dispossessed*; with the most agreed-upon being Tom Moylan’s definition of the ***‘critical dystopia’***; but, for the sake of simplicity, we will return to the Greimas rectangle we started with and examine Le Guin’s twin worlds of Anarres and Urras through the term, the ***anti-anti-utopia****.* If dystopia is utopia’s opposite and the anti-utopia its contrary, the anti-anti-utopia is dystopia’s contrary, a model that shares the optimism of the utopia without its perfection. It acknowledges the pessimism of the present moment but resists the indulgence to stay in that place. Through the anti-anti-utopia, the warnings of dystopia are always in service to the main project, which is utopia.

#### Anarchy as Utopia?

But is Le Guin’s anarchy an ideal utopia? Obviously not. Critics like Nadia Khouri and Mark Tunick have been quick to point out that Anarres, as utopian as it may seem at first sight, has much darker undertones. The lack of walls denotes an absence of possessiveness and privacy; the absence of law and boundaries meant that the authoritarian state is replaced by the dictatorship of social pressure and public opinion, something that Shevek ominously and vaguely puts as, “they make you go away by yourself for a while” and which is later thrown into sharper focus by the politically astute Bedap, in describing a fellow political advocate:

“They sent me a copy of his card, and the last entry was just ‘Therapy. Segvina Island.’ Therapy! Did Tirin murder somebody? Did he rape somebody? What do you get sent to the Asylum for, beside that?”

We have prisons; Anarres has Asylums. Punishment as a deterrent is a legal and political method that is retained even in the most egalitarian society. And that perhaps illustrates the biggest flaw with anarchism, something that Robert Paul Wolff examines in his essay, *In Defence of Anarchism*. The problem is that anarchy functions on what he calls ***unanimous direct democracy***, a democracy entirely dependent on a society where there is unanimous, or at least substantial, agreement among every member of the society. It is a model that permits each individual to be confronted with laws only he has consented to, but a model that can never reasonably function for an extended period of time. Too often this devolves into a utopia-for-the-few and dystopia-for-the-many.

Wolff describes three scenarios in which a society built on anarchism could survive:

1. First, where there is a collective pursuit of some external national goal, such as national defence, territorial expansion, or economic imperialism. This sounds well and good until we think of real-world contexts: what of the Israeli soldiers of the 20th century? Does their conformity to all-absorbing religious vision, a complete denial of individuality, sound like an ideal? Or what of the American soldiers in Vietnam, who went into the war believing they were there to free the natives, and came home to become the generation in which the teenage dystopia truly took off and became popularised?
2. Second, where there is the collective pursuit of some internal goal which requires the organisation and coordination of large numbers of people, such as city reconstruction or traffic safety. In theory possible, in reality incredibly rare.
3. Third, where maintenance of the industrial economy and the natural operation of the market becomes a sufficient way to coordinate human behaviour on a large scale without coercion or authority. However, as Wolff recognises himself, the fact that men now know how to control the market means that reliance on it is fundamentally irrational: what we would have is the capitalist dystopia that Le Guin portrays on Urras: a society built on possession, consumerism, mutual aggression, objectification of women, and exploitation of the poor.

If Le Guin knew that her utopia was in fact a dystopia, or at least had dystopian traits – and she definitely acknowledges this, in the book’s subtitle *‘An Ambiguous Utopia’* – then why think of Anarres as a utopia at all? Le Guin provides an answer in one of the book’s closing practices:

“Anarres is all dust and dry hills. All meager, all dry… You can’t always have what you want, or even what you need, because there isn’t enough. You Urrasti have enough. … You are rich, you own. We are poor, we lack. … Here you see the jewels, there you see the eyes. And in the eyes you see the splendor, the splendor of the human spirit. Because our men and women are free—possessing nothing, they are free. And you the possessors are possessed. You are all in jail. Each alone, solitary, with a heap of what he owns. You live in prison, die in prison.”

Anarres, in Le Guin’s world, is a desert; it faces the constant economic realities of trying to grow enough to feed its inhabitants in a singularly physical environment. It is far from the rich, colourful environment of its twin, Urras. But it is through its deficiencies that Le Guin displays the importance of difficulty, where people are motivated by the furthering of the common good, the overcoming of difficulty, the sharing of hardship. It is for this reason that her anarchic utopia works: not because the population is tied together by an all-encompassing common goal, but because its inhabitants are aware that utopia is not something to be created once and for all, but something to be constantly recreated, constantly improved.

### Closing

And so, contrary to popular consensus, dystopia and utopia are not binary opposites; they can neither replace each other nor exist in isolation; they are inextricably interlinked in a symbiotic relationship in which each gives the other what it lacks–the reason to go on changing.

It is this formula that modern-day utopia/dystopia fiction lacks. Perhaps in the face of something as impossibly unchangeable as climate change, or as overwhelmingly suppressing as corporate power, or as painful as a politics unhinged, we have grown detached in the face of our helplessness, and indulged in dystopia as a reassurance: *At least it’s not that bad yet. At least it can never happen here*. But dystopia is never meant to allow us to wallow in complacency; it is meant to remind us that *it can always happen here*.

Wreckage is only romantic after a rescue attempt has been made. Ruin is only beautiful if it comes after a movement of resistance.

Dystopia used to be the genre of warning, of resistance, of protest. It has now become a genre of complacency, of indulgence, of submission. It has contradicted its own purpose.

But the sequence that legal and political scholars, as well as general society, seems so hell-bent on–that dystopia always follows utopia–can be reversed. Dystopia can be a stimulant that scares us into working harder on progress, on improvement. It can always be what motivates us to work on a new, constantly recreated utopia.

And so, to close, let us return to Nick Bryant’s letter to his American daughter. Yes, he admits, the world has gone bad. Yes, the world needs to be fixed.

“But to be truthful, Honor, something I’m not hoping for is a speedy return to normal. Because one thing that’s become glaringly evident during these months of global shutdown and these weeks of global protest–normal no longer works.”

## Draft 2

In 2019, in the aftermath of COVID-19 lockdown and swept up in the chaos of America’s Black Lives Matter Movement, BBC correspondent Nick Bryant wrote in his article, *‘A letter to our newborn American daughter’*, of the various problems that have overrun the world:

‘The climate emergency; the disparities of wealth an opportunity; sexism and sexual violence; the racial breach; the Pandora’s Box of artificial intelligence and autonomous weaponry; the transnational challenges that make all of us global citizens.’

In the face of these seemingly unfixable problems, it’s so easy for us to feel like it is the end of the world.

So perhaps it is no surprise that these days mainstream media is flooded with dystopias. As Margaret Atwood puts it, dystopias proliferate because we’ve already had them; utopias have become scant in our literature because of its illusory, elusive perfection we can only imagine.

So let us try to put utopia on a map. Where is utopia? Thomas More, who first coined the term in his eponymous 1561 novel, gave an answer within the very etymological roots of the word: “no place”. It is a sentiment that largely captures most legal and political scholars’ impression of the utopia/dystopia genre: that the planned society delivering promises of perfection and progress is born out of a dangerously extreme impulse to order, and that this impulse becomes a mode of socio-political repression and the silencing of dissent—a mode that we know as dystopia.

Over the decades, scholars have attempted to categorise utopia in varying ways: the literature gives us names such as the utopian satire, the critical dystopia, the negative utopia. But, for the sake of simplicity, we will be working off the simplified definitions that science-fiction writer Kim Stanley Robertson gave in his article, *Dystopias Now*: the DYSTOPIA, the ANTI-UTOPIA, and the ANTI-ANTI-UTOPIA.

Dystopia is utopia’s opposite. If utopia is the idea that political orders could be much better, utopia is the idea that it could be much worse. Orwell’s *Nineteen Eighty-Four* is what most of us know as the model dystopia: the totalitarian state of Oceania and the Party are derived from Orwell’s observation of the frightening similarities between the far-right totalitarianism of Nazi Germany and the far-left socialism of Stalinist Russia, a warning of what a global totalitarian system and a total undermining of democracy could look like.

On the other hand, we have utopia’s contrary, the anti-utopia: the idea that utopia itself is wrong and bad, and that any attempt to try and make things better will end up making things worse. This is the utopia-for-the-few, dystopia-for-the-many model that provides the structure for Gilead in Margaret Atwood’s *The Handmaid’s Tale*.

The dystopia and anti-utopia both employ legal orders that repress individual freedom. Their methods are concentrated into three facets: religion, sexual pleasure, and language.

*Religion*

So let us start first with religion.

* Orwell’s Oceania completely outlaws conventional religious activity, for fear that loyalty to a religious institution would usurp its own authority. In Orwell’s world, the Party *is* God.
* Atwood’s Gilead, on the other hand, uses religion as a front for tyranny. The social hierarchy, which is composed of the male military Commanders, the Wives as domestic managers, and the Handmaids as sexual surrogates, is derived from the Biblical story of Jacob, Leah, and Rachel.

However, both legal orders are founded on the same rationale: both seek to appropriate religious energy for their own purposes. This manifests in rituals that call to mind a horrific, twisted, perverted form of Christianity:

* The infamous “Two Minutes Hate” in *Nineteen Eighty-Four*, in which Party members gather before a telescreen displaying the alleged treachery of the Party’s enemy Goldstein, which whips the crowd into a frenzy of intensity.
* The ‘Particicution’ in *The Handmaid’s Tale*, in which the Handmaids are whipped into a frenzy by incendiary rhetoric against an alleged transgressor of society and encouraged to savagely beat the victim to death.

*Sexuality*

Similarly outlawed, or at least severely restricted, is sexual pleasure. This is founded on the argument of 20th century political philosopher Michel Foucault; that sexuality is a principal means by which modern society controls the behaviour and desires of its citizens.

* In *Nineteen Eighty-Four,* sexual activity beyond the assigned spouses and the family structures within Oceania are legally forbidden in order to deny private emotional attachments. When the protagonists, Winston and Julia, consummate their illicit passion, it is also remarked upon as a form of rebellion: it “was a blow struck against the Party. It was a political act.” It is part of the book’s dystopian effect that, in its chilling conclusion, the protagonist’s sexual passion is instead assimilated into a socially acceptable love for ‘Big Brother’, the book’s Stalinesque personification of official power.
* Meanwhile, the Gileadean state in *The Handmaid’s Tale* demonstrates a fear that sexual activity will lead to the development of love between the Commanders and the Handmaids. The Handmaids are continuously objectified, described as containers, vessels, breeding machines: sexual activity is strictly impersonal and emotional attachment is not only frowned upon but outlawed.

*Language*

And finally, language is strictly controlled, not only because the totalitarian state is aware of how language can manipulate its citizens into conformity and obedience, but because it is aware that language harbours powerfully subversive energies. It actively deprives the populace of a vocabulary in which they can express dissidence, and in doing so makes dissident ideas unthinkable.

* This is the rationale of the Party’s ‘Newspeak’ project in *Nineteen Eighty-Four*, which limits citizens to a limited, mechanical vocabulary through which human passions cannot be expressed. O’Brien, a character who essentially functions as the Party’s mouthpiece, denies the existence of any reality outside the human mind, declaring that “truth” is a function not of reality but of Party policy.
* In *The Handmaid’s Tale*, women’s access to language is similarly legally restricted: they have no access to books, even the Bible; shop signs are pictures instead of words, and they are conditioned to speak in mechanical and predetermined ways, such as the greeting “Blessed be the fruit” and the reply “May the Lord open”.

Ultimately, the rigid control of the dystopian and anti-utopian legal orders expose an essential feature of these societies: these are *planned* structures, derived from an extreme impulse to order, or as Margaret Atwood describes it, a world where the word ‘should’ runs rampant. Popper, in *The Open Society and Its Enemies,* laid out the connections between utopianism and totalitarianism: given the purity and perfection of the end-point, the utopian must be “very thorough in eliminating and stamping out all heretical competing views”, a process that will inevitably involve the crushing of democracy, the suppression of rights, and the ruthless elimination of political enemies and dissidents.

So we have our formula: a sequence that all lawyers and political scholars seem to subscribe to:

Utopia → Dystopia

Utopias begin with the desire to produce an ideal world. But, as the creators of these legal orders eventually realise, not everyone agrees with their ideals; and when people disagree they must eliminated or suppressed or manipulated or terrorised; and what we have is *1984* and *The Handmaid’s Tale*. This is why, as Harvard professor Jill Lepore put it, dystopia follows utopia like thunder follows lightning.

This desire to create an ideal world is what Lyman Tower Sargent calls ‘social dreaming’ – a general vocation, Tom Moylan argues, that utopia and dystopia share. We have seen manifestations of it in the real world, in real history: Joan of Arc fought for a free France; Abraham Lincoln believed in union; Martin Luther King had a dream. The first one was burnt at the stake by the English, the latter two assassinated. Again, dystopia always follows utopia.

So we are forced to conclude that utopia and dystopia are not opposites but deeply interlinked. And perhaps it is this awareness, conscious or subconscious, that has caused our modern media to become flooded with dystopian fiction. No doubt you have heard of them, even been forced to read about them in high school: *The Hunger Games, Parable of the Sower, Fahrenheit 451, The Giver.* But what this has evolved into is a strand of radical pessimism, an indulgence in the terrifying reality of the dystopia, a nihilistic pleasure that has dismissed the traditional function of dystopian fiction as a social warning.

So I will now turn our attention to dystopia’s contrary, a model that shares the optimism of utopia without its perfection: the anti-anti-utopia; or its more scholarly name, coined by Tom Moylan, the critical utopia. This is the legal order and political philosophy that Ursula K. Le Guin pursues in her classic, *The Dispossessed: An Ambiguous Utopia*, which – and this may seem surprising – posits anarchism as utopia.

True to its subtitle, Le Guin’s utopia, set on the planet of Anarres, is far from perfect. Critics like Nadia Khouri and Mark Tunick have been quick to point out that, as utopian as the anarchic Anarres may seem at first sight, it does have darker undertones. The lack of walls denotes an absence of possessiveness and privacy; the absence of law and boundaries means that the authoritarian state is replaced by the dictatorship of social pressure; those who go against public opinion, we are ominously told are forced to ‘go away by [themselves] for a while’ to a place ambiguously titled ‘the Asylum’.

We have prisons; Anarres has Asylums. Punishment as a deterrent is a legal method that is retained even in a lawless egalitarian society. This is because Anarres’s anarchic utopianism, and indeed any kind of utopianism, is dependent on what Robert Paul Wolff calls unanimous direct democracy. This is a democracy entirely dependent on a society where there is unanimous agreement among every member of the society. It is a model that permits each individual to be confronted only with laws that he has consented to, but it is a utopia that can never reasonably function for an extended period of time. Wolff does suggest a scenario in which a society built on anarchy could survive: where there is a collective pursuit of some external national goal, such as national defence, territorial expansion, or economic imperialism. This sounds well and good until we think of real-world contexts: Isn’t this exactly what occurred in Nazi Germany, when the policy of foreign expansion led to the massacres of the Jews and eventually a world war? Or what of the Israeli soldiers of the 20th century? Does their conformity to all-absorbing religious vision, a complete denial of individuality, sound like an ideal?

So why consider Anarres a utopia at all? Le Guin provides an explanation in the book’s closing pages, contrasting the anarchic Anarres with its twin planet, Urras, an almost complete replica of our own capitalist society:

‘Anarres is all dust and dry hills. All meager, all dry… You can’t always have what you want, or even what you need, because there isn’t enough. You Urrasti have enough. … You are rich, you own. We are poor, we lack. … Here you see the jewels, there you see the eyes. And in the eyes you see the splendor, the splendor of the human spirit. Because our men and women are free—possessing nothing, they are free. And you the possessors are possessed. You are all in jail. Each alone, solitary, with a heap of what he owns. You live in prison, die in prison.’

Anarres, in Le Guin’s world, is a desert; it faces the constant economic realities of trying to grow enough to feed its inhabitants in a singularly physical environment. It is far from the rich, colourful environment of its twin planet, Urras. But it is through its deficiencies that Le Guin displays the importance of difficulty, where people are motivated by the furthering of the common good, the overcoming of difficulty, the sharing of hardship. It is for this reason that her anarchic utopia works: not because the population is tied together by an all-encompassing common goal, but because its inhabitants are aware that utopia is not something to be created once and for all, but something to be constantly recreated, constantly improved.

How does this work in real life? Political scholars have come up with different answers. For Popper, the answer lies in democracy: a kind of piecemeal reform, focused on improving institutions, on the elimination of concrete evils, rather than an abstract goal that could transform the very fabric of society. For Michael Walzer, the liberalist commitment to defending basic rights, deliberative processes, and legal procedures serve as a necessary bulwark against utopian excess. The ‘social dreaming’ that Sargent argues underpins the utopia → dystopia cycle is not inevitable as long as there are legal and procedural commitments to check and balance the dangers of utopian thinking. Russell Jacoby pushes for what he calls “iconoclastic utopians”, utopian thinkers and leaders who imagined a world of harmony and pleasure while preserving “the possibility of [its] redemption”, offering “an imageless utopianism laced with passion and spirit”. Van der Walt argues that law and utopia can co-exist, but must be kept necessarily separate: the danger signs flare up when law seeks to service the utopian and the utopian attempts to dispense with law. In other words, utopia *can* be achieved through legal means without it becoming dystopia: but that law must be pragmatic, responding to sociological problems as they arise, labouring ceaselessly to distance itself from the abstraction of radical utopianism. Law cannot be the *genesis* of societies; it must be a *reaction* to pre-existing legal norms and socio-political issues.

So let us return to the sequence that legal and political scholars have religiously conformed to, and what mass media believes in:

Utopia → Dystopia

I propose that this sequence can be altered.

Utopia = Dystopia

We desire utopias because they are to solve our problems once and for all; and they are so difficult to imagine because every time we conjure the ideal we are forced to acknowledge two things: the dystopian methods that are required to achieve them, and the bleak sterility and terrifying stasis that comes at its end. But, contrary to popular belief, dystopia and utopia are not binary opposites: they can neither replace one another nor exist in isolation; they are inextricably interlinked in a symbiotic relationship in which each gives the other what it lacks–the reason to go on changing. The dystopia is not meant to be a literature of submission or indulgence; it is meant to be a stimulant, a warning, that the legal orders underpinning *Nineteen Eighty-Four* and *The Handmaid’s Tale* can always happen here. It warns us not to be complacent, because dystopia is always on the horizon. Utopia is not something to be created once and for all but something to be constantly recreated.

And so, to close, let us return to Nick Bryant’s letter to his American daughter, on what felt like the eve of the world’s end:

“But to be truthful, Honor, something I’m not hoping for is a speedy return to normal. Because one thing that’s become glaringly evident during these months of global shutdown and these weeks of global protest–normal no longer works.”

## Notes: Law and the Utopian Imagination

### Introduction

* Utopian imagination has typically eschewed nostalgia; it finds its ideal in the future, finding its realisation not in the dissolution of social arrangements and institutions but in their dialectical transcendence or radical improvement.
* Utopias are, first and foremost, communities of harmony and order: *Utopia and Its Enemies,* George Kateb–”perpetual peace, guaranteed abundance, and conditioned virtue”; work is rewarding and leisure stimulating; there is no want, strife, or dissension.

The utopian imagination has displayed hostility to legal forms and processes:

* Plato’s *Republic:* The guardians of Plato’s utopia are philosopher kings, true “lovers of knowledge”; it would be absurd to tie the hands of a ruler whose only ambition is to shape a better and more perfect order. **The rule of law has no place in a world ruled by philosopher kings.** 
  + At best law would be irrelevant, a redundant summary of the guardians’ own designs of governance.
  + At worse it would be an encumbrance, a regrettable fetter on the guardians’ ability to creatively steer the ship of state on its ideal course.
  + Law is a system born of imperfection, a device needed to restrain rulers who cannot be trusted to restrain themselves.
* Plato’s *The Laws:* “Mankind must either give themselves a law and regulate their lives by it, or live no better than wild beasts” must the statement suggests we have ceased talking about the creation of an ideal community → the true utopia dispenses with regulation by law.
* Skinner’s *Walden Two:*

The liberal imagination has imagined in kind, fervently rejecting utopian thinking. Liberals are not alone; Schopenhauer’s philosophy of suffering and Nietzsche’s philosophy of power sternly call into question the attractions of a world of mindlessly happy people enjoying conditions of peace and plenty.

If utopian thinkers find law an obstacle to the creation of the perfect community, liberal thinkers locate in law a necessary bulwark against the inevitable excesses of utopia.

Isaiah Berlin, “The Decline of Utopian Ideals in the West”: utopianism is less an alternative political vision to liberalism than a program that contemplates the very elimination of politics.

* Liberalism defends basic rights, deliberative processes, and legal procedures that enable a vigorous politics of contestation, coalition, and compromise.
* Utopianism, with its blueprint of social perfection, eschews politics and legislation as proper means of radical transformation.

Michael Walzer, ‘Reclaiming Political Enthusiasm’: liberalism’s commitment to legal procedures–in particular, those subsumed under the concept of due process–establish a necessary bulwark against utopian excess.

### Law, Utopia, Event: A Constellation of Two Trajectories

* Legal and utopian thinking have a *common point of departure*, departing from which they move in *opposite directions*.
* The relation between law and the utopian imagination can thus be described in terms of a *nonoverlapping contiguity*. They touch one another–or may have touched one another–once; but they take leave and let go of one another, for the sake of pursuing two different responsibilities or two different responses.
* Law and utopian thinking are two responses to the event from which they emerge. They are two modes of responsibility that emerge from and respond to a primordial event or happening. But they respond to the event from which they emerge in two very different ways.

#### The Event, the Common Point of Departure of Legal Thought, and Utopian Imaginations

The human world emerges *from* and *as* an event. Or, to put it more precisely, and to register the irreducible plurality that is at play here: human worlds emerge *from* and *as* events.

The event can be described as the very occurrence of the known or unknown. The event produces an interface between knowledge and utter ignorance. It also produces a register of this interface. It brings forth renewed constellations of mute incomprehension and articulate understanding.

#### The Utopian Response to the Event

Foucault’s madness beyond insanity:

Calvino’s nameless and shapeless upheaval:

Celan’s absurd poetry:

### Law’s Response to the Event

Literature shares with the experience of messianic time the experience of living under the law (living under the law of language) *as if not* under the law, the following statement should offer an accurate assessment of the law’s response to the event: law responds to the event by acting *as if* it is law. Law’s response to the event is not really or is surely not fully *an instance* of law.

Kelsen’s pure theory of law: law never quite exists; the existence of law cannot be posited or asserted; the existence of law must be presupposed. This is because law is, in the final analysis, always a response to the event.

* The problematic and ambivalent status of the foundational norm (*Grundworm*)
* The foundational norm is mentally *unvalid* or *un-validated*. and if so the whole system of law also remains fundamentally invalid.; a pure theory of law cannot assert the validity of any legal norm.

1. Vardana Singh, “What is to Be Done About Climate Change? Some Thoughts as a Writer,” “Symposium on the Climate Crisis,” *Science Fiction Studies* 45, no.3 (November 2018): 429-30 [↑](#footnote-ref-1)