

# The Law of Frank Herbert's *Dune*

Legal Culture Between Cynicism, Earnestness and Futility

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## Abstract

Frank Herbert's *Dune* series has been analyzed with regard to various issues, such as politics, ecology and religion. Its legal aspects have been neglected so far. Contrary to the seemingly common perception that law does not play a significant role in *Dune*, this article will first show that law is indeed ubiquitous in *Dune* and shapes the narrative in important ways. *Dune* develops different legal cultures: a cynical rule *by* law in the Imperium and an earnest rule *of* law among the native Fremens. It reflects on the limits of law in a way that is heavily influenced by a type of collective determinism first developed in Leo Tolstoy's *War and Peace*, a source of inspiration that has not been noticed until now.

*Dune* reflects a profound distrust of organized authority. Ultimately, it undervalues the fact that law can serve to prevent abuse of power. But to do so, the law needs independent guardians which are conspicuously absent in *Dune*.

**Key Words:** Rule of Law, Rule by Law, Science Fiction, Tolstoy, T.E. Lawrence, Limited Government

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# I. Introduction

Frank Herbert's *Dune*, which won both the Hugo and Nebula Award for Best Novel after its publication in 1965,<sup>1</sup> is commonly considered one of the greatest works of science fiction ever written.<sup>2</sup> Yet another film adaptation entered cinemas in 2021.<sup>3</sup> The result of several years of research,<sup>4</sup> *Dune* has been the object of much secondary literature. The books in the series have been analyzed with regard to religion,<sup>5</sup> chaos theory,<sup>6</sup> language,<sup>7</sup> politics,<sup>8</sup> ecology,<sup>9</sup> and history<sup>10</sup>. They have been criticized for misogyny,<sup>11</sup> homophobia<sup>12</sup> and racism,<sup>13</sup> but also praised for anti-capitalist and post-colonial themes<sup>14</sup> as well as for their strong female characters<sup>15</sup>. Yet, the role that law plays in *Dune* has not received much scholarly attention so far.

“Law is the ultimate science“, reads a sign above the Emperor’s door.<sup>16</sup> But, despite such high praise from a main character, the reason for a lack of engagement with the law in *Dune* might seem

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<sup>1</sup> Daniel J. H. Levack, ed., *Dune Master: A Frank Herbert Bibliography* (Meckler: Westport, 1988), 19. The Nebula Award is voted on by other science-fiction authors; the Hugo Award by readers.

<sup>2</sup> Timothy O’Reilly, *Frank Herbert* (Frederick Ungar: New York, 1981), 38; William F. Touponce, *Frank Herbert* (Twayne: Boston, 1988), preface.

<sup>3</sup> After Alejandro Jodorowsky’s plan for a movie adaptation failed to attract funding in the 1970s, *Dune* was first adapted as a movie in 1984 by David Lynch. In 2000, a miniseries by John Harrison premiered on the Sci-Fi Channel. Now, in 2021, the first part of an adaptation by Denis Villeneuve has come to cinemas.

<sup>4</sup> O’Reilly, *Frank Herbert* (note 2), 38 et seq.; see also Vivien Lejeune, *Les visions de Dune: dans les creux et sillons d’Arrakis* (Third Éditions: Toulouse, 2020), 47 et seq.

<sup>5</sup> Steven Hrotic, *Religion in Science Fiction: The Evolution of an Idea and the Extinction of a Genre* (Bloomsbury: London, 2014), 112–117; Sara Teinturier and David Koussens, “Les religions dans *Dune* : émanciper l’ordre politique et la paix galactique” in *Les enseignements de Dune*, ed. Isabelle Lacroix (Presses de l’Université de Québec: Québec, 2020): 67–94.

<sup>6</sup> Donald Palumbo, “Plots Within Plots... Patterns Within Patterns”: Chaos-Theory Concepts and Structures in Frank Herbert’s *Dune* Novels, 8:1 *Journal of the Fantastic in the Arts* 1997, Special Issue: Selected Papers from the Seventeenth International Conference on the Fantastic in the Arts (1997): 55-77; Donald Palumbo, *A Dune Companion: Characters, Places and Terms in Frank Herbert’s Original Six Novels* (MacFarland: Jefferson, NC, 2018), 2 et seq.

<sup>7</sup> See: Olivier Simon, “Tolk de Chakobsa Phrases in *Dune*”, 5 *Conlangs Monthly* April 2015: 28–33.

<sup>8</sup> Kevin V. Mulcahy, “The Prince on Arrakis: Frank Herbert’s dialogue with Machiavelli”, 37:1 *Extrapolation* 1996: 22–36; Peter Minowitz, “Machiavellianism in Frank Herbert’s *Dune* Epic”, in *Political Science Fiction*, eds. Donald M. Hassler and Clyde Wilcox (University of South Carolina Press: Columbia, 1997): 124–147; Tristan Rivard, “Élites, régimes et mutations politiques dans la saga de *Dune* : de la dépendance économique à la dispension écologique par la centralization totale” in *Les enseignements de Dune*, ed. Isabelle Lacroix (Presses de l’Université de Québec: Québec 2020): 127–162.

<sup>9</sup> Susan Stratton, “The Messiah and the Greens: The Shape of Environmental Action in *Dune* and *Pacific Edge*”, 42:4 *Extrapolation* 2001: 303–316; Jeffrey Nicholas, “Facing the Gom Jabbar Test” in *Dune and Philosophy: Weirding Way of the Mental*, ed. Jeffrey Nicholas (Carus: Chicago, 2011): 9–10; cf. O’Reilly, *Frank Herbert* (note 2), 6; Corinne Gendron and René Audet, “*Dune*, une écologie des conséquences” in *Les enseignements de Dune*, ed. Isabelle Lacroix (Presses de l’Université de Québec: Québec, 2020): 35–66.

<sup>10</sup> Kevin Williams, *Wisdom of the Sand: Philosophy and Frank Herbert’s Dune* (Hampton Press: New York 2013), 75 et seq.; Lorenzo DiTommaso, “History and Historical Effect in Frank Herbert’s ‘Dune’”, 19:3 *Science Fiction Studies* 1992: 311–325.

<sup>11</sup> Jack Hand, “The Traditionalism of Women’s Roles in Frank Herbert’s *Dune*“, 26:1 *Extrapolation* 1985, 24.

<sup>12</sup> See Lejeune, *Les visions de Dune* (note 4), 43.

<sup>13</sup> Barbara A. Silliman, *Conserving the Balance: Frank Herbert’s Dune as Propaganda* (University of Rhode Island, 1996), 131.

<sup>14</sup> Timothy Morton, “Imperial Measures: *Dune*, Ecology and Romantic Consumerism”, 21 *Romanticism on the Net* February 2001, available at <http://www.erudit.org/revue/ron/2001/v/n21/005966ar.html>.

<sup>15</sup> Isabelle Lacroix, “*Dune*, ou quand le salut de l’humanité repose sur l’exercice du pouvoir des femmes” in *Les enseignements de Dune*, ed. Isabelle Lacroix (Presses de l’Université de Québec: Québec 2020): 189: “œuvre féministe”; Nicolas Allard, *Dune: Un chef-d’œuvre de la science-fiction* (Dunod: Malakoff, 2020), 111 et seq.

<sup>16</sup> Frank Herbert, *Dune* (Ace Books: New York 1999, first published 1965), 220.

clear at first: relationships of power appear to be all-decisive.<sup>17</sup> If law is mentioned at all, it seems to be merely an epiphenomenon of power, not a force in its own right that shapes the narrative.<sup>18</sup> After all, in one of the later books it is explicitly stated: “Law always chooses sides on the basis of enforcement power. Morality and legal niceties have little to do with it when the real question is: who has the clout?”<sup>19</sup> Maybe *Dune* confirms Richard Posner’s verdict that “works of popular culture are rarely a fruitful subject for law and literature scholarship; the treatment of law is unlikely to be insightful”.<sup>20</sup>

A closer reading of *Dune*, however, reveals not only that law is in fact ubiquitous in the series but also that it plays an important role in the narrative.<sup>21</sup> It has long been recognized that *Dune* references ideas from a wide variety of disciplines, including the work of various philosophers.<sup>22</sup> In the same manner, it depicts a variety of legal practices, develops different legal cultures, and reflects on the normativity and limits of law. Law shapes the narrative even in the Old Imperium that rules *by* law and, beneath a formal show of compliance, has nothing but scorn for the law. In the desert, the Fremen practice a rule *of* law that is deadly serious. Finally, the new theocratic Imperium of Muad’dib fluctuates between these two poles.

This article will briefly introduce the plot of *Dune* as far as is necessary to understand the role of law in it. This short recap of the narrative might easily lead one to dismiss it as yet another heroic or even “white savior” story. But there is more to it than meets the eye at first glance. It has previously been noted how Frank Herbert drew inspiration and used ideas from various other works,<sup>23</sup> be it regarding the languages in *Dune*<sup>24</sup> or the idea of an anti-imperialist holy war<sup>25</sup>. Its structure has even been compared to Homer’s *Iliad* and to Aeschylus’ *Oresteia*.<sup>26</sup> Herbert eclectically

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<sup>17</sup> See e.g. Mulcahy, Prince on Arrakis (note 8).

<sup>18</sup> A bibliography’s summary does not mention any legal aspects: Levack, ed., *Dune Master* (note 1), 20–25.

<sup>19</sup> Frank Herbert, *Heretics of Dune* (Ace: New York 1987, first published 1984), 143, where this quote is ascribed to “Bene Gesserit Council Proceedings”.

<sup>20</sup> Richard Posner, *Law and Literature*, 3<sup>rd</sup> edn. (Harvard University Press: Cambridge, MA, 2009), 549.

<sup>21</sup> Many science-fiction scenarios exhibit a certain view of the law, some more idealist, others more realist, see Marco Benatar, “‘Au mépris du danger, reculer l’impossible’: A la recherche d’un ordre juridique intergalactique” in *Du droit international au cinéma*, eds. Olivier Corten and François Dubuisson (Pedone: Paris, 2015): 29–49.

<sup>22</sup> See the various contributions in: Jeffrey Nicholas, ed., *Dune and Philosophy: Weirder Way of the Mentat* (Carus: Chicago 2011).

<sup>23</sup> Vivien Lejeune, *Les visions de Dune: dans les creux et sillons d’Arrakis* (Third Éditions: Toulouse, 2020), 50; Sami Aoun, “De *Dune* à *Daech*” in *Les enseignements de Dune*, ed. Isabelle Lacroix (Presses de l’Université de Québec: Québec, 2020): 13 et seq.

<sup>24</sup> Simon, “Tolk de Chakobsa” (note 7), who finds that Herbert took phrases from Charles Godfrey Leland, *Gypsy Sorcery and Fortune Telling: Illustrated by Numerous Incantations, Specimens of Medical Incantations, Specimens of Medical Magic, Anecdotes and Tales* (Fisher Unwin: London, 1891), cited from the 1962 University Books reprint. Cf. for example Leland at 153: “Ima trava u okolo Save, I korenja okolo jasenja” with F. Herbert, *Dune* (note 16), 301: “Ima trava okolo! I korenja okolo!”

<sup>25</sup> Lesley Bianchi’s *The Sabres of Paradise* is shown to be a source of inspiration, and of some almost verbatim quotes, by: Will Collins, “The Secret History of *Dune*,” Los Angeles Review of Books, 16/9/2017, <https://lareviewofbooks.org/article/the-secret-history-of-dune/>.

<sup>26</sup> Joel Christensen, “Time and Self-Referentiality in the *Iliad* and Frank Herbert’s *Dune*” in *Classical Traditions in Science Fiction*, eds. Brett Rogers and Benjamin Stevens (OUP: Oxford, 2015), 161–175; Brett M. Rogers, “Now Harkonnen

used various cultural and religious themes, in particular, but not only, the Arabic language and Islam.<sup>27</sup> T.E. Lawrence's *Seven Pillars of Wisdom* has long been recognized as a source of inspiration for Herbert, and its depiction of Arab customary law likely was a role model for Fremen legal practices.<sup>28</sup> What has not been highlighted so far is the central role of an idea first elaborated in Leo Tolstoy's *War and Peace*: "the law of inevitability".<sup>29</sup> On a deeper layer, *Dune* reflects Tolstoy's scathing rejection of the idea of Great Man History and his belief in collective determinism. Against the backdrop of this determinism, it will be explored what role law can play in a society. *Dune* shows that law can indeed be an important factor that influences powerful actors, even despite their cynical attitude towards legal practices.<sup>30</sup> This independent normativity of law vis-à-vis politics is a contentious theme well-known also to international and constitutional lawyers of our world.

*Dune* reflects Frank Herbert's distrust of organized authority. The limited government that is argued for in the series might have benefitted from more rule of law though. A main reason for the apparent impossibility of control over collective action and for the cynical use of the law in *Dune* can be identified in the conspicuous absence of professional lawyers. Unlike *Dune*'s protagonist, who mirrors Frank Herbert's skepticism in this regard, we should not give up on the ability of law and bureaucracy to prevent the abuse of power.

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Shall Kill Harkonnen': Aeschylus, Dynastic Violence, and Twofold Tragedies in Frank Herbert's *Dune*" in *Brill's Companion to the Reception of Aeschylus*, ed. Rebecca Futo Kenney (Brill: Leiden, 2018), 553–581. See also Isabelle Périer, *Mythe et épopée en science-fiction : technoscience, sacré et idéologie dans les cycles d'Herbert, Simmons, Banks, Hamilton, Bordage et Ayerdhal* (Université Stendhal de Grenoble III: Lille, 2010); Johannes Rüster, *All-Macht und Raum-Zeit: Gottesbilder in der englischsprachigen Fantasy und Science Fiction* (LIT: Berlin, 2007), 177; Thomas Le Blanc, *Glaubenswelten: Götter in Science Fiction und Fantasy* (Phantastische Bibliothek: Wetzlar 2007), 169.

<sup>27</sup> See for details: Aoun, "De *Dune* à Daech" (note 23), at 26 et seq. Just like these meant to evoke associations with the desert setting in the readers, the Russian names of the Harkonnens (Count Vladimir et al.) also played on people's prejudice. See O'Reilly, *Frank Herbert* (note 2), 42f. 52., 55; Brian Herbert, *Dreamer of Dune: The Biography of Frank Herbert* (Tor: New York, 2003), 189-190. Of course, the term Jihad has gained a different connotation since 9/11, see on this Allard, *Dune* (note 15), 73 et seq.

<sup>28</sup> T.E. Lawrence, *Seven Pillars of Wisdom: a triumph* (OUP: Delhi et al., 1955, first published for general circulation 1935); see generally on this work as a source of inspiration for *Dune*: O'Reilly, *Frank Herbert* (note 2), 43-44; B. Herbert, *Dreamer of Dune* (note 27), 141, 183.

<sup>29</sup> Leo Tolstoy, *War and Peace* (OUP: Oxford, 2010, first published in Russian 1867), 1308.

<sup>30</sup> A cynical attitude towards the law can be observed in our world's legal systems as well. See e.g. Björnstjern Baade et al., *Cynical International Law? Abuse and Circumvention in Public International and European Law* (Springer: Berlin, 2020). Cf. Richard Weisberg, "Droit et littérature aux États-Unis et en France. Une première approche" in *Imaginer la loi: Le droit dans la littérature*, eds. Antoine Garapon and Denis Salas (Michalon: Paris, 2008): 21: "perte de confiance dans les système juridiques".

## II. Scenario of the Books

This section will provide a short summary of the plot of the *Dune* series as far as is necessary to understand the role of law in it.<sup>31</sup> Then the narrative's deeper layer will be explored with reference to Tolstoy's *War and Peace*, which sets the backdrop for the discussion of *Dune*'s legal cultures and practices.

The analysis will be mainly based on the first two novels of the six-part series by Frank Herbert, that is *Dune* and *Dune Messiah*, in which the role of law is most pronounced. The other four, *Children of Dune*, *God Emperor of Dune*, *Heretics of Dune*, and *Chapterhouse Dune*, will be used mostly to complete the picture that emerges in the first two books. Secondary literature, like the *Dune Encyclopedia* that was "approved" by Frank Herbert, although strictly speaking not "canon",<sup>32</sup> will likewise be explored.<sup>33</sup> The many books with which Brian Herbert and Kevin J. Anderson have expanded the universe of *Dune* will not be taken into account here.

### 1. The Plot

A short disclaimer to those unfamiliar with the books: this spoiler-heavy summary, which serves a specific purpose in this article, cannot hope to capture the books' appeal, especially that of the first novel. The first book, *Dune*, is certainly the most nuanced and best conceptualized of the series.<sup>34</sup> Much of the fascination that the series evokes is, to my mind, owed to the superb writing in this first novel. The narrative in it exhibits a natural elegance that makes all the pieces fall into place effortlessly. The ideas on which it is based, philosophical, political, ecological and otherwise, are interwoven with the narrative in a way that gives it a special kind of credibility and avoids making the reader feel preached to.<sup>35</sup> This elegance of the first novel's world-building cannot be emulated here.

In *Dune*, humankind has settled the galaxy and rules over it in a feudal Galactic Imperium. Since humans had been enslaved by "thinking machines" thousands of years ago, it is prohibited to develop computers of any kind: "Thou shalt not make a machine in the likeness of a man's mind",

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<sup>31</sup> Many aspects of the series that could be discussed in their own right because they are interesting for other reasons will thus be left out. For a fuller summary see: Levack, ed., *Dune Master* (note 1), 20–25.

<sup>32</sup> Cf. B. Herbert, *Dreamer of Dune* (note 27), 544.

<sup>33</sup> Willis E. McNelly, ed., *The Dune Encyclopedia* (Berkley Books: New York 1984), 1.

<sup>34</sup> See the annotations by Mark Willard in Levack, ed., *Dune Master* (note 1), xvi.

<sup>35</sup> Cf. O'Reilly, *Frank Herbert* (note 2), vii–viii; B. Herbert, *Dreamer of Dune* (note 27), 186. Later books in the series increasingly lose this quality and state many ideas and concepts more directly.

as the “Orange Catholic Bible“ states.<sup>36</sup> For a science-fiction novel, the entire setting is, by design, decidedly low-tech, focusing instead on characters, institutions, their relationships and interaction.<sup>37</sup>

The first book follows fifteen-year-old Paul, heir to the Great House of Atreides, who for many generations have ruled a planet that was given to them as a feudal fief by the Emperor. It begins with the Padishah Emperor Shaddam IV of House Corrino commanding Paul’s father, Duke Leto Atreides, to take the planet Arrakis as fief instead. Doing so, they replace their long-time enemies of House Harkonnen who had ruled Arrakis up until that point.

Arrakis, commonly known as *Dune*, is the most important planet in the universe. Because only on this desert planet, the spice *melange* is found. Only with this resource, long-distance space travel is possible. It allows the navigators of the Spacing Guild, which holds a monopoly on interstellar travel, to plot jumps from planet to planet. Without it, the Imperium and humanity’s galactic civilization would collapse.

Having arrived on Arrakis, House Atreides is betrayed, ousted from power and almost annihilated by House Harkonnen in an act of inter-house warfare that is, in principle, lawful.<sup>38</sup> In secret though, the Harkonnens worked with the blessing and unlawful aid of the Emperor who saw a political threat to himself in the popularity of Duke Leto Atreides. The Duke Leto Atreides is killed, but Paul and his mother Jessica flee into the desert. While House Harkonnen assumes control of Arrakis again, Paul and Jessica are eventually taken in by the Fremen, a people that lives in the deep desert and effectively remains beyond the reach of the Imperium due to the harsh natural conditions prevailing there.<sup>39</sup>

Jessica is a member of the Bene Gesserit, an old female-only order that specializes in bringing humans to their full, physical and mental capacity, by training but also through genetics. Overtly, the order professes to serve others, in particular the Great Houses, while covertly pursuing its own aims. Paul is an unplanned result of their multi-generational breeding program, which hoped to create a type of superior human being, the *kwisatz haderach*. Exposed to huge amounts of the spice in the desert, he develops prescient capabilities. Being able to see the future, albeit in an imperfect manner, Paul engages in many struggles to reclaim his legacy as the heir of a Great House. Eventually, he is accepted as one of them among the Fremen, assumes the name Muad’dib and becomes their leader. Building on his prescience and the myth of the *Lisan al Gaib* (the “Voice

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<sup>36</sup> F. Herbert, *Dune* (note 16), 11; see also Nicholas, “Facing the Gom Jabbar Test” (note 9), 7.

<sup>37</sup> *Dune*’s low-tech scenario is, in that regard, similar to George Orwell’s 1984: R. Posner, *Law and Literature* (note 20), 400.

<sup>38</sup> See also on the “Assassin’s Handbook“, which expounds on the “theory and practice of legalized murder under the Great Convention“: McNelly, ed., *Dune Encyclopedia* (note 33), 61.

<sup>39</sup> See for more detail on these: McNelly, ed., *Dune Encyclopedia* (note 33), 40 et seq.

from the Outer World”), which had been spread by Bene Gesserit generations ago to protect their own in times of need, he also becomes the subject of religious veneration, reluctantly, but driven by political necessity. Eventually, Paul leads the Fremen to victory over the Harkonnens but also over the Emperor’s forces, the feared Sardaukar. Threatening to destroy all spice production and thus humanity’s galactic civilization, Paul forces the Emperor to abdicate and give his blessing to a marriage with one of his daughters.

In the second book, *Dune Messiah*, we learn that Paul’s Fremen troops have led a military campaign against those who still resisted him for twelve years, causing immense bloodshed and suffering across the galaxy. Just like this *Jihad*, as it is called in the books, was driven by religious fervor, Paul’s new Imperial Government builds on the religious authority of Paul who became the Emperor Muad’dib. Various forces plot against the new Emperor: the old Emperor Shaddam IV, confined to his own prison planet, but more importantly a group of conspirators that includes Paul’s wife, i.e. the old Emperor’s daughter, the Guild, and the Bene Gesserit. Betrayed by one of the Fremen, Paul is eventually blinded in a nuclear attack. After two children are born to his companion Chani, who officially remained his concubine, Paul walks into the desert, leaving his Imperium to fend for itself. Book three, *Children of Dune*, completes this narrative arc leading up to his son’s ascension to the throne. These first three books are meant as a trilogy.<sup>40</sup> Books four, five and six, *God Emperor of Dune*, *Heretics of Dune* and *Chapterhouse Dune* take place thousands of years in the future, exploring new characters and further story arcs.

## ***2. The Deeper Layer: Collective Determinism and the Law***

Control over the future is a meta-theme that runs through the entire series of Frank Herbert’s *Dune* novels.<sup>41</sup> It manifests itself in two different aspects: control on an individual, personal level and control on a collective, societal level.<sup>42</sup> The former is portrayed as possible, the latter is shown not to be possible at all. Individuals can overcome difficulties, they can even overcome themselves, but the course of events on a societal level cannot be controlled. While collective action is possible – even a sustained interstellar war and the ecological transformation of an entire planet –, such collective action is impossible to intentionally direct. And accordingly, the role of law, which is supposed to steer human action, is called into question.

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<sup>40</sup> O’Reilly, Frank Herbert (note 2), 187-188.

<sup>41</sup> Kieran Tranter, *Living in Technical Legality: Science Fiction and Law as Technology* (Edinburgh University Press: Edinburgh, 2018), 50–51; cf. O’Reilly, Frank Herbert (note 2), 3–4, 154–155.

<sup>42</sup> See also Frank Herbert, *Children of Dune* (Ace Books: New York, 1987, first published 1976), 115.

The freedom to overcome individual limitations is seen in the *Dune* series in various respects. Having renounced the use of computers in the wake of the “Butlerian Jihad” in which humanity freed itself from enslavement by “thinking machines”, humans instead improved themselves to compensate for this lack of digital support: “The Great Revolt [against the machines] took away a crutch [...] It forced *human* minds to develop. Schools were started to train *human* talents.”<sup>43</sup> They pushed their capabilities beyond anything known before. The Bene Gesserit sought to overcome “animal” instincts, they trained, for example, to consciously control every muscle in the body and even their metabolism. Guild Navigators use the spice to plot starship’s courses. Mentats process data and calculate probabilities like a human-computer. Soldiers must train in knife-combat since the only defining technology of *Dune* aside from space travel is shields that make projectile and laser weapons, which we would consider modern, basically obsolete.<sup>44</sup>

The more you are pushed by such general circumstances and by your individual circumstances, Frank Herbert makes clear in *Dune*, the more you will excel – at least those that survive. This is true for the Fremen who live in harsh conditions on Arrakis as well as for the old Emperor’s Sardaukar who were recruited on his prison planet where equally harsh conditions prevailed. Both are shown to be far superior fighters as opposed to the troops of Great Houses that live a comparatively easy life. As a whole, the many trials that the characters have to overcome in *Dune* make it possible to read it as a type of coming-of-age story, a story about the need to adapt to new circumstances.<sup>45</sup> Muad’dib himself is quoted as saying: “God created Arrakis to train the faithful.”<sup>46</sup>

Yet, while humans can transcend their individual limitations in this manner and become capable of incredible feats, humanity as a whole and the societies it consists of cannot be controlled. They cannot consciously choose the way forward and overcome their shortcomings. While later books of the series are open to a different interpretation, which we will come back to at the end, this is made abundantly clear through Paul’s struggle in the first two novels.

At a superficial level, and as far as the story has been reproduced in this article thus far, the story of the boy Paul who becomes the Emperor Muad’dib and conquers the known universe is a classic example of Great Man History. This view of history believes in the great importance of individuals and has most prominently been expounded in Thomas Carlyle’s classic 1841 work *On Heroes, Hero-*

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<sup>43</sup> F. Herbert, *Dune* (note 16), 11 (italics in the original).

<sup>44</sup> Shields that can be worn on the body or protect entire buildings deflect fast projectile weapons but can be breached by rather slow knife movements. If a laser (*lasgun*) is fired at it, the shield as well as the gun explode in a quasi-nuclear detonation.

<sup>45</sup> The 2021 movie’s director Denis Villeneuve and the comedian Stephen Colbert see it this way: <https://youtu.be/lvIasUKWgYs>. Herbert’s first biographer likewise saw the theme that characters in Herbert’s work are confronted with existential threats and in adapting to these necessities develop and adapt: O’Reilly, *Frank Herbert* (note 2), 2-3.

<sup>46</sup> F. Herbert, *Dune* (note 16), 301.

*Worship, and The Heroic in History*: “the history of what man has accomplished in this world, is at bottom the History of the Great Men who have worked here”.<sup>47</sup> *Dune* would not be *Dune* though if it didn’t have a deeper layer. Frank Herbert is clearly critical of the idea that individuals can save societies, even heroes, even one who can see the future and is as close to omniscient as any human has ever been.<sup>48</sup> But Herbert’s idea behind this is not merely Bertolt Brecht’s sentiment, expressed by Galileo in the homonymous play of 1940. In this play, Galileo famously replied to the proposition that a land without heroes is unhappy: “No. Unhappy the land that is in need of heroes.”<sup>49</sup> Herbert’s uneasiness with heroes goes beyond that.

*Dune* breathes a structural critique of Great Man History. Its conception of individual free will and collective determinism is heavily inspired by the epilogue of Leo Tolstoy’s *War and Peace*. While there is apparently no (publicly available) evidence that Herbert used Tolstoy’s work as inspiration, it seems highly likely. Not only is Frank Herbert known to have read widely on the subjects he was writing about.<sup>50</sup> Speaking at a science fiction convention in Long Beach, California, in 1965, he recounted the entire book *War and Peace* in the form of a Japanese haiku – that is in a poem of 17 syllables.<sup>51</sup> To do that, he must have been intimately familiar with the work.

In any case, the similarities are striking. *Dune* reflects Leo Tolstoy’s conviction that those who are seen as the Great Men steering the course of history are, in fact, “history’s slaves”.<sup>52</sup> It is not these men’s “genius” that caused historical events, it is not even that their genius allowed them to seize an opportunity that makes history. What shapes history is rather the many small events that shape who these men were, “all those small events [which] were inevitable”.<sup>53</sup> Much like Paul is prepared by the Atreides family for his role, and shaped by the Bene Gesserit’s genetic breeding program and the training his mother gives him, “[i]t is not Napoleon who prepares himself for the accomplishment of his role, so much as all those around him who prepare him to take on himself the whole responsibility for what is happening and has to happen.”<sup>54</sup> Paul realizes this at one point, when he is still trying to prevent the coming *Jihad*: “*My mother is my enemy. She does not know it, but she is. She is bringing the jihad. She bore me; she trained me. She is my enemy.* [Note: Frank Herbert used italics for characters’ inner monologue and inconsistently capitalized certain key terms.]”<sup>55</sup> Many

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<sup>47</sup> Thomas Carlyle, *On Heroes, Hero-Worship, and The Heroic in History* (Chapman & Hal: London, 1898, first published 1841), 1. For a scathing, brilliant persiflage of the idea of Great Man History, see Tolstoy, *War and Peace* (note 29), 1272.

<sup>48</sup> See the annotations by Mark Willard in Daniel Levack, ed., *Dune Master* (note 1), xvi-xvii, 10–11.

<sup>49</sup> Bertolt Brecht, *Life of Galileo* (Methuen: London, 2006, first published in German 1940), 98 (scene 13).

<sup>50</sup> See B. Herbert, *Dreamer of Dune* (note 27), passim, see e.g. at 216: Frank Herbert based another work he was writing, *The Santaroga Barrier*, on Martin Heidegger’s “*Sein und Zeit*”, a notoriously difficult to comprehend work of philosophy.

<sup>51</sup> B. Herbert, *Dreamer of Dune* (note 27), 208.

<sup>52</sup> Tolstoy, *War and Peace* (note 29), 649.

<sup>53</sup> Tolstoy, *War and Peace* (note 29), 1213-1225, quote at 1219.

<sup>54</sup> Tolstoy, *War and Peace* (note 29), 1222.

<sup>55</sup> F. Herbert, *Dune* (note 16), 312.

historians, Tolstoy complains, do not realize this and still base their histories on “heroes endowed with extraordinary, superhuman capacities”. “Napoleon ordered an army to be raised and go to war. We are so accustomed to that idea and have become so used to it, that the question why six hundred thousand men went to fight, when Napoleon uttered certain words seems to us senseless. He had the power, so what he ordered was done.”<sup>56</sup> “Historians of culture” on the other hand, Tolstoy argues, see ideas as the driving force of history but cannot really explain “how a book, *Le Contrat social*, had the effect of making Frenchmen begin to drown one another”.<sup>57</sup>

The inevitability of the things to come is heavily foreshadowed in *Dune*, when Paul still harbors some hope that he will be able to prevent the outcome he fears so much: “... he could still sense the green and black Atreides banner waving ... somewhere ahead ... still see the jihad’s bloody swords and fanatic legions. *It will not be*, he told himself. *I cannot let it be*. [...] The green and black Atreides banner would become a symbol of terror. [...] *It must not be*, he thought. *I cannot let it happen*.”<sup>58</sup> But it is all for naught in the end: “Everything he touched brought death and grief. And it was like a disease that could spread across the universe.”<sup>59</sup> “Here was the unborn jihad, he knew. [...] And Paul saw how futile were any efforts of his to change the smallest bit of this. He had thought to oppose the jihad within himself, but the jihad would be. His legions would rage out from Arrakis even without him. They needed only the legend he already had become. [...] A sense of failure pervaded him.”<sup>60</sup>

In *Dune Messiah*, it is evident in the bitter resignation which the Emperor Muad’dib displays twelve years later that he knows intimately what Tolstoy means when he writes: “A Tsar is history’s slave. History, that is, the unconscious, general, swarm-life of mankind, uses every moment of the life of rulers as a tool for its own purposes.”<sup>61</sup> When Chani suggests to Paul that, maybe, what he fears won’t happen: “What? Deny my own oracle? How can I when I’ve seen it fulfilled thousands of times? People call it power, a gift. It’s an affliction! It won’t let me leave my life where I found it!”<sup>62</sup> At one point a solution is suggested: “To buy an end for the Jihad, to silence the volcano of butchery, he must discredit himself.”<sup>63</sup> But this ultimately is no solution either. Even seemingly absolute power left Paul powerless to prevent the crusade he sees coming with his prescient abilities.<sup>64</sup>

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<sup>56</sup> Tolstoy, *War and Peace* (note 29), 1279.

<sup>57</sup> Tolstoy, *War and Peace* (note 29), 1276.

<sup>58</sup> F. Herbert, *Dune* (note 16), 300, 309.

<sup>59</sup> F. Herbert, *Dune* (note 16), 442.

<sup>60</sup> F. Herbert, *Dune* (note 16), 467.

<sup>61</sup> Tolstoy, *War and Peace* (note 29), 649.

<sup>62</sup> Frank Herbert, *Dune Messiah* (Ace Books: New York, 1987, first published 1969), 303.

<sup>63</sup> F. Herbert, *Dune Messiah* (note 62), 158.

<sup>64</sup> F. Herbert, *Dune* (note 16), 299; cf. Minowitz, “Machiavellianism” (note 8), 139.

Paul is thus quite aware of his role, unlike Napoleon who, in Tolstoy's mind, was in 1812 "more convinced than ever that it depended on him" while having "never been so much in the grip of inevitable laws, which compelled him, while thinking that he was acting on his own volition, to perform for the swarm-life – that is to say for history – whatever had to be performed."<sup>65</sup> This is precisely what Paul, unlike Napoleon, knows:

"From the moment the Jihad had chosen him, he'd felt himself hemmed in by the forces of a multitude. [...] Any delusions of Free Will he harbored now must be merely the prisoner rattling his cage. His curse lay in the fact that he saw the cage. He saw it!" "The Jihad had seized him, fixed him onto a glidepath from which the terrible gravity of the Future would never release him."<sup>66</sup>

This is what Paul refers to when he states, before walking away into the desert at the end of *Dune Messiah*, that "his physical presence" is no longer needed and that: "Now I am free."<sup>67</sup> His actions no longer concern the course of history, and he is therefore no longer predetermined but free to do as he pleases with his own life.

So, when Frank Herbert, or at least Paul as the protagonist of *Dune*, believes in this collective determinism that Tolstoy describes in *War and Peace*, what role can law still play? When Chani muses: "If the people only knew your love ...", he replies: "You can't build politics on love [...] People aren't concerned with love; it's too disordered. They prefer despotism. Too much freedom breeds chaos." She replies that he's not a despot and that his laws are just. But he won't have it:

"Ahh, laws ... What's law? Control? Law filters chaos and what drips through? Serenity? Law – our highest ideal and our basest nature. Don't look too closely at the law. Do, and you'll find the rationalized interpretations, the legal casuistry, the precedents of convenience. You'll find the serenity which is just another word for death."<sup>68</sup>

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<sup>65</sup> Tolstoy, *War and Peace* (note 29), 650.

<sup>66</sup> F. Herbert, *Dune Messiah* (note 62), 231.

<sup>67</sup> F. Herbert, *Dune Messiah* (note 62), 324.

<sup>68</sup> F. Herbert, *Dune Messiah* (note 62), 249.

### III. The Importance of Legal Culture in *Dune*

Paul's disillusionment with law reflects his socialization. In the Old Imperium, law is merely used as a tool of the powerful who cynically profess to abide by it while covertly circumventing and abusing it. Fremen law on the other hand is taken seriously. The law of Muad'dib's Imperium oscillates between these poles.

#### 1. *Cynical Rule by Law in the Old Imperium*

In the first novel, during the reign of Emperor Shaddam IV, law is regularly portrayed as a characteristic feature of the Imperium. All relevant actors refer to law, see the need to legally justify their actions and make decisions that take the legal situation into account. But, more often than not, law in the Old Imperium seems to be a cynical affair, a formalistic tool of power, not really a force in its own right.<sup>69</sup> All the Great Houses, including the Atreides, act strategically to pursue their self-interest, also through a rule *by* law.<sup>70</sup> Despite all this, law continues to bind actors in the Old Imperium.

##### a) *The Old Imperium's Constitution*

The Old Imperium of Shaddam IV is held together by a delicate balance of military, economic and political power.<sup>71</sup> Its political constitution, in substance if not in name, is the Great Convention.<sup>72</sup> This Convention was born out of the struggle against the “thinking machines” and out of the experience that humanity's very existence is precarious.<sup>73</sup> Under it, the Great (and Minor) Houses meet in an institution reminiscent of international organizations of our world, such as the United Nations: to represent their interests against the Emperor, the Houses come together in the *Landsraad*. Great Houses may lawfully engage in inter-house warfare (*keanly* and “war of assassins”). As the *Dune Encyclopedia*, which elaborates on Herbert's work and was “approved” by him,<sup>74</sup> explains: a “formal declaration of intent” has to be filed with the Imperial Registrar and the Landsraad Secretariat.<sup>75</sup> Much like the relative prohibition on the use of force that marked the UN's

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<sup>69</sup> Cf. Tranter, *Technical Legality* (note 41), 47.

<sup>70</sup> Eva Erman and Niklas Möller, “What's Wrong with Politics in the Duniverse?”, in: *Dune and Philosophy: Weirding Way of the Mentat*, ed. Jeffrey Nicholas (Carus: Chicago, 2011): 63–64.

<sup>71</sup> Erman and Möller, “What's Wrong with Politics in the Duniverse?” (note 70), 65.

<sup>72</sup> Cf. an earlier draft scene of *Dune* in which Duke Leto discusses it with Paul: Frank Herbert, Brian Herbert & Kevin J. Anderson, *The Road to Dune* (Hodder & Stoughton: London, 2005), 244–246.

<sup>73</sup> Erman and Möller, “What's Wrong with Politics in the Duniverse?” (note 70), 66.

<sup>74</sup> See above endnote.

<sup>75</sup> McNelly, ed., *Dune Encyclopedia* (note 33), 64.

predecessor, the League of Nations, the expectation of this arrangement was that warfare would thus not be completely eliminated but at least limited. In one aspect, *Dune* is even more progressive than the state of international law in our world: the use of nuclear weapons, which Great Houses may possess, is strictly prohibited by “the Injunction” of the Great Convention: “Use of atomics against humans shall be cause for planetary obliteration.”<sup>76</sup> Reflecting the religious prohibition already mentioned, the Convention also forbids to make a device in the likeness of the human mind.<sup>77</sup> The Convention puts great emphasis on formality, establishing a “primacy of form over substance”, which is evidenced by the fact that each of its sections begins with the words: “The forms must be obeyed.”<sup>78</sup>

#### *b) Law as an Instrument of Power*

The role of law in the Old Imperium first becomes clear when House Atreides takes over the fief of Arrakis. They invoke a traditional legal formula, which is posted all over the planet above Duke Leto’s signature: “Our Sublime Padishah Emperor has charged me to take possession of this planet and end all dispute.” But Duke Leto bitterly reflects on the “ritualistic formality”: “*Who was fooled by that fatuous legalism? Not the Fremens, certainly. Nor the Houses Minor who [...] were Harkonnen creatures almost to a man.*”<sup>79</sup>

When the Atreides “eliminate“ 259 Harkonnen affiliates that had remained on Arrakis, Duke Leto orders to “forge certificates of allegiance over the signatures of each of them“ and to “file copies with the Judge of the Change“ who had been appointed by the Emperor and the Landsraad High Council to oversee the change of fief. “We’ll take the legal position that they stayed under false allegiance. Confiscate their property, take everything, turn out their families, strip them. And make sure the Crown gets its ten per cent. It must be entirely legal.”<sup>80</sup> Observing this, Paul has qualms, not moral ones (he “knew the actual no-holds-barred convention that ruled in kanly”) but he feared it would be ineffective (“*This’ll only make the others fight all the harder.*“).<sup>81</sup>

Imperial law remains important to Paul’s thinking even after the Atreides were betrayed by the Emperor who supported the Harkonnen attack. Having fled to the desert, Paul meets Liet Kynes, the Judge of the Change.<sup>82</sup> Paul shows him his ducal signet ring and asks if he knows its significance.

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<sup>76</sup> F. Herbert, *Dune* (note 16), 437.

<sup>77</sup> Frank Herbert, *God Emperor of Dune* (Ace: New York, 1987, first published 1981), 32-33.

<sup>78</sup> F. Herbert, *Dune* (note 16), appendix; see also McNelly, ed., *Dune Encyclopedia* (note 33), 370.

<sup>79</sup> F. Herbert, *Dune* (note 16), 77.

<sup>80</sup> F. Herbert, *Dune* (note 16), 89–90; cf. Minowitz, “Machiavellianism” (note 8), 136.

<sup>81</sup> F. Herbert, *Dune* (note 16), 90.

<sup>82</sup> See for his involvement with the Fremens: McNelly, ed., *Dune Encyclopedia* (note 33), 46 et seq.

Kynes answers that Paul is “technically“ the Duke, now that his father is dead, to which Paul replies that he, Paul, is a “soldier of the Imperium ... *technically* a hatchetman“. Even though the Emperor’s forces, the Sardaukar, supported the Harkonnen attack which killed his father, Paul still relies on Imperial law: “The Sardaukar are one thing, the legal source of my authority is another“. But Kynes hints at the existence of a parallel, Fremen jurisdiction: “Arrakis has its own way of determining who wears the mantle of authority“.<sup>83</sup>

At that point, Paul’s plan is not to rely on military might alone to reinstate his House but to use legal and political avenues to find redress. He asks Kynes to provide him with proof of the Emperor’s involvement in the attack, by showing Sardaukar in Harkonnen uniforms. Once he has put a Harkonnen back in power on Arrakis, “let the Emperor face the possibility of a Bill of Particulars laid before the Landsraad“. To this idea of initiating what seems to be a type of impeachment proceeding – although this is never specified –, Kynes replies: “Granted that the Landsraad High Council accepts your case [...] there could only be one outcome: general warfare between the Imperium and the Great Houses“. Paul sees that this is correct but plans to blackmail the Emperor with precisely this possibility. He will ask to marry one of his daughters to gain the throne. Paul goes on to explain the rationale behind the constitutional structure of the Imperium. What the Great Houses fear most, he argues, is to be picked off one by one by the Emperor, whom they can only resist together: “That’s why there *is* a Landsraad. This is the glue of the Great Convention. Only in union do they match the Imperial forces.” And finally: “Law is the ultimate science”, Paul quotes. “Thus it reads above the Emperor’s door. I propose to show him law.”<sup>84</sup>

Even the Harkonnens, who are depicted as quite unscrupulous slave-traders, know the importance of law in the Imperium. “*Proces verbal! That was a report of a crime against the Imperium!*”, Baron Harkonnen thinks to himself, when a servant of the Emperor alludes to the possibility of him being charged accordingly.<sup>85</sup> This “proces verbal” seems to be inspired by the almost homonymous French legal instrument of “procès-verbal” that gives a report drawn up in a certain way special probative value. Great Houses can be charged with treason, but only “before a full Landsraad Council”.<sup>86</sup>

In the Old Imperium, law is thus clearly an issue on the minds of political decision-makers. Its highly formalized character seems to give it great importance. But merely formal adherence to the rules also allows for a cynical use of the law to advance political interests. While everyone is eager to seem to comply with the law, the facts are manipulated and the law circumvented and abused as

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<sup>83</sup> F. Herbert, *Dune* (note 16), 218–219.

<sup>84</sup> F. Herbert, *Dune* (note 16), 219–220.

<sup>85</sup> F. Herbert, *Dune* (note 16), 320.

<sup>86</sup> F. Herbert, *Dune* (note 16), 319.

fits. In the *Dune Encyclopedia*, it is explained that the Assassin's Handbook contains legal "commentary" on the Great Convention and on *kanly*, and provides "numerous suggestions of how these might be circumvented or turned to the advantage of the assassin", e.g. by bribing Imperial representatives.<sup>87</sup>

Thus, Imperial law is sophisticated, highly formalized, yet no one seems to sincerely believe in it. It is only respected as far as it cannot be covertly circumvented or its breach cannot be backed by force. Not only clearly "evil" characters like the Harkonnens do so, but also the Atrides who the reader is supposed to empathize with.<sup>88</sup> Indeed, "authority in Dune consists in the ability to enforce law through coercion, threats and sanctions".<sup>89</sup> Law is ultimately upheld by a threat of force,<sup>90</sup> as is clearly proposed in *Dune for the Injunction*: "It's fear, not the injunction that keeps the Houses from hurling atomics against each other".<sup>91</sup> In later books, the idea is reiterated even more bluntly: "What glue had actually held the Old Empire together? Many things, some small and some large, but mostly economic. Lines of connection thought of often as conveniences. And what kept them from blasting one another out of existence? The Great Convention. 'You blast anyone and we blast you.'"<sup>92</sup>

### c) *Law that Binds Nonetheless*

But even in this scenario, in which none of the relevant actors take the law seriously, it still exerts an influence on their actions. Law is far from ineffective even under these conditions. The law is often violated, but violations that are severe enough lead to enforcement action by other political actors. This shows that "binding rules are possible" after all.<sup>93</sup> Even the old Emperor plotting his return in the second novel is considered unwilling to risk "an *illegal* atomic attack".<sup>94</sup> In the first book, the old Emperor also refuses to let the planet Arrakis be watched since the Emperor "cannot legally post a watch on Arrakis".<sup>95</sup> The threat of "outlawing" a House that violates the Great Convention is as effective in the universe of *Dune*,<sup>96</sup> as it can be in the international relations of our

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<sup>87</sup> McNelly, ed., *Dune Encyclopedia* (note 33), 63.

<sup>88</sup> See for this identification of the reader with the Atrides: Minowitz, "Machiavellianism" (note 8), 124. Although Herbert himself saw House Atrides as using the "common people" for its ends and as "arrogant": O'Reilly, *Frank Herbert* (note 2), 45.

<sup>89</sup> Erman and Möller, "What's Wrong with Politics in the Diverse?" (note 70), 66.

<sup>90</sup> Erman and Möller, "What's Wrong with Politics in the Diverse?" (note 70), 65–66.

<sup>91</sup> F. Herbert, *Dune* (note 16), 437.

<sup>92</sup> Frank Herbert, *Chapterhouse Dune* (Ace: New York 1987, first published 1985), 134–135.

<sup>93</sup> Erman and Möller, "What's Wrong with Politics in the Diverse?" (note 70), 67.

<sup>94</sup> F. Herbert, *Children of Dune* (note 42), 128 (italics in the original).

<sup>95</sup> F. Herbert, *Dune* (note 16), 316. And since the Fremen bribe the guild so that the price for orbital satellites will remain out of reach.

<sup>96</sup> See McNelly, ed., *Dune Encyclopedia* (note 33), 372.

world<sup>97</sup>. Ultimately, the effect of law cannot be reduced to its enforcement. Like other social practices, it relies on its acceptance as legitimate by the relevant actors. In later books, which look at the Old Imperium from a historical perspective, thousands of years later, an observer wonders at “that oddly important set of words called ‘Great Convention’”, and how it could play such a decisive role in the universe. “If you dishonored the Convention, your peers turned against you with united violence. More than that, there had been the intangible, ‘Face,’ that some called ‘Pride’.”<sup>98</sup>

And while it is true that the law in the Old Imperium, like all law, relies on political will and power to enforce it, it nonetheless remains a factor that influences the behavior of characters and institutions, without any one of them being able to unilaterally and arbitrarily change it. As the *Encyclopedia* states, the Great Convention was indeed defied once by a Great House that did not believe that the other Houses would stand by the Convention “if push came to shove” – but they did, and this “obliteration of House B’ganne was the true ratification of the Great Convention”.<sup>99</sup>

Maybe, the moment in which the binding force of Imperial law becomes most evident is when Paul engages in a marriage of convenience with the Emperor’s daughter. In the tv miniseries adaptation of *Dune* released in 2000, Paul says at one point: “Imperial Law is void where Muad’Dib stands.”<sup>100</sup> This, I would submit, misinterprets the books and completely ignores the source of his authority and the fact that he could not and did not ignore Imperial law to become Emperor. Paul officially relegated Chani, whom he loved, to the status of a “concubine” – to the protest of his mother who objected, saying he should not repeat the same mistake his father had made. To legally ascend to the throne, and thus with legitimate authority, prescient Paul was not able to avoid this marriage of convenience. “*There is my key*”, he thinks when he first sees the old Emperor’s daughter, Princess Irulan, and in the last sentences of the first novel he explains to Chani that “we must weld peace out of this moment, enlist the Great Houses of the Landsraad. We must obey the forms. Yet that princess shall have no more than my name.”<sup>101</sup>

## ***2. Earnest Rule of Law Among the Fremen***

Fremen law could not be more different from the highly formalized, yet cynical, Imperial legal practices of a rule *by* law. The books tend towards portraying Fremen law as a rather “primitive”

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<sup>97</sup> See Oona A. Hathaway and Scott J. Shapiro, *The Internationalists: How a Radical Plan to Outlaw War Remade the World* (Simon & Schuster: New York, 2017).

<sup>98</sup> F. Herbert, *Chapterhouse Dune* (note 92), 365.

<sup>99</sup> McNelly, ed., *Dune Encyclopedia* (note 33), 292.

<sup>100</sup> Cited after: Erman and Möller, “What’s Wrong with Politics in the Duniverse?” (note 70), 66.

<sup>101</sup> F. Herbert, *Dune* (note 16), 456, 459, 474; cf. Minowitz, “Machiavellianism” (note 8), 138.

legal culture, strongly connected to ritual and religion. At least, that is certainly the impression which the book that Herbert began writing in the 1950s, first published 1965, would have made on contemporaneous readers and might still do so today. While the form of Fremen law, which appears to be customary in nature, i.e. shaped by practice accepted as law, lacks the sophistication and formality of Imperial law, and while its contents might often alienate the reader,<sup>102</sup> Fremen legal culture also lacks the cynicism that is characteristic of the Imperial legal practice. Fremen law is strictly applied and taken seriously by the Fremen. They practice a type of rule *of* law that binds even the most powerful.

a) *Fremen Rule of Law and Lawrence of Arabia*

Fremen law may appear as “primitive” in its customary nature and kind of pre-modern to the reader in its harshness, but it is taken deadly seriously by the Fremen. It is applied strictly, changed only in the way custom is changed: by the practice of its subjects who discuss it in a quasi-democratic council, in which every Fremen’s voice must be heard. Even the *naibs*, the Fremen leaders whose word “is law” in their *sietch* community,<sup>103</sup> must, and do, obey Fremen law. Only when this law is corrupted, either by general moral decay or by being used by characters socialized in the Old Imperium, does it stray from this hard earnestness, as we will see in Muad’dib’s new Imperium.

This Fremen legal culture was likely inspired by T.E. Lawrence’s *Seven Pillars of Wisdom*, which has long been recognized as a general source of inspiration for the desert setting.<sup>104</sup> First, the “desert law” that is depicted by T.E. Lawrence is likewise customary in nature: “Judgement was based on custom, by quoting from a great body of remembered precedent.”<sup>105</sup> Secondly, and more importantly, it binds everyone and is observed even when it might be strongly in one’s interest to break it:

“Feisal had planned to raise his father's crimson banner as soon as he arrived in Medina, and so to take the Turks unawares; and here he was going to be saddled with two uninvited guests to whom, by the Arab law of hospitality, he could do no harm, and who would probably delay his action so long that the whole secret of the revolt would be in jeopardy!”<sup>106</sup>

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<sup>102</sup> Of course, generally, it is nothing to write home about that morals in a work of (science) fiction diverge from ours, cf. R. Posner, *Law and Literature* (note 20), 545.

<sup>103</sup> F. Herbert, *Children of Dune* (note 42), 160.

<sup>104</sup> See above endnote.

<sup>105</sup> T.E. Lawrence, *Seven Pillars of Wisdom: a triumph* (note 28), 69, 270, 343.

<sup>106</sup> *Ibid.*, 52.

Thirdly, the Arab legal culture as T.E. Lawrence saw it also strongly associates adherence to the law with moral virtue and a specific way of life: “The Beni Sakhr were a dangerous gang, not pure enough nomads to hold the nomadic code of honour or to obey the desert law in spirit, and not villagers enough to have abjured the business of rapine and raid.”<sup>107</sup>

Fremen law contains many rules that will appear quite barbaric to many readers – although the difference to Imperial law is one of degree. Imperial law for example leaves complete autonomy for Great Houses to choose the institution of slavery, as the Harkonnens did.<sup>108</sup> But, for example, there is an apparent lack of any rules that protect outsiders in Fremen law. While neutral ground is declared and hostages exchanged as security in a later Fremen civil war,<sup>109</sup> no similar protection is given to non-Fremen. Human rights beyond their own community are unknown: “It’s the way to kill offworld strangers found in the desert and take their water as a gift from Shai-hulud [the spice-producing worms that the Fremen worship]”.<sup>110</sup> There is no law of war that protects those “hors de combat”, i.e. those not participating in hostilities any longer due to injury or because they surrendered, as the Geneva Conventions of our world do. Wounded enemies are killed and marked for water-recovery, a task that Fremen entrust to their children.<sup>111</sup> Although, to be fair, even the Fremen’s own wounded can be “spend” if need be.<sup>112</sup> Not even diplomatic immunity is respected: messengers are “sent back without their water” – a clear violation of the Vienna Convention on Diplomatic Relations.<sup>113</sup> Also in other fields, Fremen law may seem quite cruel and premodern: Fremen law calls for those “possessed” to be slain.<sup>114</sup> There is even a special “Trial of Possession” in which “all of the people” assume responsibility as a tribunal,<sup>115</sup> described at one point as “that ancient Fremen examination whose ending most often brought hideous death”.<sup>116</sup> Incest is punishable by death “on the hanging tripod”.<sup>117</sup> In many other respects, Fremen law is shaped by the harsh necessities of desert life.

In *Dune*, Fremen attitude towards their law becomes evident in three key scenes: first, a confrontation of Duke Leto with a Fremen leader over a crysknife; secondly, the application of the “amtal rule” which forces Paul into a fight to the death, followed by the application of water and

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<sup>107</sup> Ibid., 412.

<sup>108</sup> See e.g. F. Herbert, *Dune* (note 16), 313.

<sup>109</sup> F. Herbert, *Children of Dune* (note 42), 202.

<sup>110</sup> F. Herbert, *Dune* (note 16), 410.

<sup>111</sup> F. Herbert, *Dune* (note 16), 456.

<sup>112</sup> F. Herbert, *Dune* (note 16), 207.

<sup>113</sup> F. Herbert, *Dune* (note 16), 426.

<sup>114</sup> F. Herbert, *Children of Dune* (note 42), 63.

<sup>115</sup> F. Herbert, *Children of Dune* (note 42), 353.

<sup>116</sup> F. Herbert, *Children of Dune* (note 42), 81.

<sup>117</sup> F. Herbert, *Children of Dune* (note 42), 113.

family law; and, thirdly, a change in the way new leaders are selected among the Fremen. In all this, it becomes clear that Fremen practice an earnest rule of law.

*b) A Clash of Jurisdictions: Duke Leto and the Crysknife*

A first glimpse of how seriously Fremen take their law can be caught in Duke Leto's first encounter with a Fremen. The *crysknife* that Fremen use may only be seen by Fremen and by those who befriended them; it may not be taken off-world. When the Atrides get one into their hands, the Fremen leader Stilgar allows the Atrides soldier Duncan Idaho who had defended a Fremen and "observed the customs of cleanliness and honor among us" to see it. But Stilgar only "permits" the Duke Leto "to earn the right to unsheath it". A member of the Atrides Strategy Council, in front of which this takes place, acknowledges a clash of jurisdictions, muttering: "Who's he to tell us what rights we have on Arrakis?", and the Duke tries to square the circle: "If it is your custom that this knife remain sheathed here, then it is so ordered – by *me*." The Duke qualifies Fremen law here as "just" custom as opposed to his orders which are law. The Fremen Stilgar, however, is quite clear that Fremen rules apply, using the language of rights and law: "They [the crysknives] are ours. They may never leave Arrakis without our consent." It is likely though that the Duke understood this well, but chose to frame it differently nonetheless to keep his authority before his subjects: his orders are law, and he may respect local customs if he so chooses.<sup>118</sup>

*c) The Amtal Rule, Water and Family Law*

The first time Paul and his mother Jessica are confronted with Fremen law is when they meet a Fremen troop, having fled to the desert to escape the Harkonnen attack. Paul and Jessica "bested" two of this Fremen troop in combat when first encountering them. The one Paul bested, Jamis, then demands his "right to test your part in the legend" – his right to invoke the "amtal rule". "You know the rule", Jamis says to the troop's leader, Stilgar, who answers: "Who knows it better?"<sup>119</sup>

"She [Jessica] must be championed [...] If her champion wins, that's the truth in it. But it is said [...] that she'd need no champion from the Fremen", Jamis adds. So, he demands to fight Paul. Stilgar seeks to prevent it, even threatening to kill Jamis afterwards, should he survive the fight, but Stilgar respects Jamis' right to invoke the rule, telling Jessica: "You must not interfere, Sayyadina [...] This must be; it is the amtal rule." When Jessica tries to frighten Jamis with her Voice – a form of subconscious vocal control mastered by the Bene Gesserit –, Jamis "invokes the silence on her",

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<sup>118</sup> F. Herbert, *Dune* (note 16), 91–92.

<sup>119</sup> F. Herbert, *Dune* (note 16), 291–293.

which Stilgar acknowledges, ordering Jessica not to speak again: “If you speak again, Sayyadina, we’ll know it’s your witchcraft and you’ll be forfeit.”<sup>120</sup>

Paul fights Jamis in what he learns is a fight to the death, and ultimately wins. Some see this killing of Jamis, the first time Paul kills in his life, as the moment when Paul “becomes sovereign“ in the sense that the “crown jurist of the Third Reich”, Carl Schmitt, understood the concept: Paul is now able to kill and thus to determine the state of exception.<sup>121</sup> Others see this application of the amtal rule as one instance of a more general “philosophical idea” which for the Fremen became a “religious ritual”.<sup>122</sup> As the amtal rule is worded in *Chapterhouse Dune*: “To know a thing well, know its limits. Only when pushed beyond its tolerances will true nature be seen.”<sup>123</sup> I would propose that this scene also shows Fremen adherence to their rule of law.

Paul later learns that he is responsible now for the family of Jamis, his two sons as well as his widow. He also inherits Jamis’ quarters and, it is specifically mentioned, his coffee service. Paul can accept Jamis’ wife “as woman or as servant” but after a year, she would be free to choose for herself, he is told. For Jamis’ children though, Paul would “always share some responsibility”.<sup>124</sup>

That water is the most important resource for life on a desert planet, and legally regulated among the Fremen accordingly, becomes likewise evident in this situation. When the water of Jamis’ body is recovered after Paul kills him, Chani, who later becomes Paul’s companion and concubine, explains: “It’s the rule. The flesh belongs to the person, but his water belongs to the tribe [...] except in combat. [...] Combat water belongs to the winner [...] It’s because you have to fight in the open without stillsuits [that normally reclaim water lost by sweating]. The winner has to get his water back that he loses while fighting.”<sup>125</sup> At that time, Jessica and Paul lend water to some in the Fremen troop who direly need it. Stilgar tells the watermaster to take only as much as necessary and to repay her later “ten for one”, and to her astonished reaction he replies: “It’s a wise rule as you will come to see”.<sup>126</sup>

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<sup>120</sup> F. Herbert, *Dune* (note 16), 291–293.

<sup>121</sup> Tranter, *Technical Legality* (note 41), 69.

<sup>122</sup> McNelly, ed., *Dune Encyclopedia* (note 33), 25.

<sup>123</sup> F. Herbert, *Chapterhouse Dune* (note 92), 169.

<sup>124</sup> F. Herbert, *Dune* (note 16), 333.

<sup>125</sup> F. Herbert, *Dune* (note 16), 302.

<sup>126</sup> F. Herbert, *Dune* (note 16), 300.

#### *d) Selecting Political Leadership and Changing Customary Law*

Fremen tribes live scattered over the desert in so-called *sietch* communities, each ruled by a *naib*. They are politically connected in a Council Gathering, a Council of Leaders.<sup>127</sup> A new leader is customarily selected by killing the old leader in a duel. In order for Paul to become a leader of the Fremen, he would therefore have to kill the *naib* of the *sietch* he lives in. “It’s the way”, a Fremen states when the *sietch* community comes together to deal with this issue. And when Paul says that “ways change”, a Fremen crowd answers: “We’ll say what’s to change!” Stilgar, the *naib* Paul would have to kill, adds: “That is the way, too [...] The voice of any Fremen may be heard in Council.” Paul then criticizes that applying the rule would weaken their cause and lays out the legitimacy, factual and normative, of his claim to power. In effect, seeking to show that he need not kill the old leader to legitimately assume authority, he declares: “[T]he sages, the wisest of the wise, listen to me and honor me in Council [...] there isn’t a man here, Stilgar included, who could stand against me in single combat. [...] You know this isn’t idle boast.” “Do you smash your knife before a battle?” “There are men here who will hold positions of importance on Arrakis when I claim those Imperial rights which are mine [...] Must I prove it [that I am the rightful ruler] by leaving every Fremen tribe in the erg without a leader?” But he also adds Imperial authority: “This was my father’s ducal signet [...] I swore never to wear it again until I was ready to [...] claim it [Arrakis] as my rightful fief.” Putting on the ring, he says to an utterly still crowd: “Who rules here? [...] I rule here! [...] This is my ducal fief whether the Emperor says yea or nay! He gave it to my father and it comes to me through my father!”<sup>128</sup>

Since the Fremen community accepted his argument, the rule of leadership succession among the Fremen was changed, at least in Paul’s case, by practice accepted as law. This is a clear example of the inherent paradox of customary law, well-known for example to public international lawyers: customary law can only be changed by a practice contrary to the old rule which might very well be regarded as a breach of that rule but is nonetheless accepted as (new) law.

### ***3. Cynical and Earnest Law in Muad’dib’s Imperium***

The books first hint at, then explicitly state, a moral decay among the Fremen in the new Imperium established by Paul Atreides who is Muad’dib among the Fremen. Chani, Paul’s companion and concubine, sees it clearly in the changing role of water: “Water, once the spirit-soul of Arrakis, had become poison. Water brought pestilence. Only the desert was clean.” And when she sees a Fremen

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<sup>127</sup> F. Herbert, *Dune* (note 16), 417.

<sup>128</sup> F. Herbert, *Dune* (note 16), 412f.

work gang with muddy feet – Fremen who used to grow up with strict water-saving discipline –, she is exasperated by their carelessness: “*Fremen with muddy feet!*”<sup>129</sup> The legal formalism of the Old Imperium is also shown to trickle over into Fremen practices: A *Fedaykin* – a member of Muad’dib’s death commandos – posts a guard over the new Emperor’s children by commanding: “It shall be the solemn duty of the officer in charge ...” and Duncan, one of Paul’s old friends, notices it: “The plodding self-important language of government enraged him. It had seduced the Fremen. It had seduced everyone.”<sup>130</sup> While the Old Imperium’s legal cynicism is thus clearly taking a hold of the new Imperium, in the end Fremen law rules supreme again.

#### *a) Continuing the Old Imperium’s Cynicism in a Theocracy*

Having been socialized into the Old Imperium’s legal culture, Paul, who is now the Emperor Muad’dib, needs no lessons in cynicism. The way in which treaties between major actors are mentioned confirms this. First, he considers signing the “Tupile Treaty” with the Guild. This treaty establishes the “Tupile Entente” as a place where Great Houses, defeated in lawful inter-house warfare, can flee to – thus removing an incentive to use their nuclear weapons as a last resort. The catch for Paul is that the Guild does not reveal the planet’s precise location to keep it safe, and this location may therefore hide other things that could become dangerous to him.<sup>131</sup> Having already agreed to sign this treaty in his Imperial Council, he later wants to make his signature subject to a condition: the Guild should embargo the Ixian Confederacy, which resists him, until they submit to the Imperial Tax.<sup>132</sup> The second time we see Paul sign a treaty an aide comes up to him, asking him to sign the “Semboule Treaty” which had not been introduced to the reader and the contents of which remain unknown. Paul nonchalantly signs it by “scrawling” on the document: “Atreides, Imper.”<sup>133</sup> Lastly, the Treaty of Arrakeen is mentioned, which imposes a limit on the number of troops that the old Emperor is allowed on his prison planet. Allowing this might seem unreasonable, but makes sense in *Dune’s* political framework, if you consider the Tupile Treaty, and it actually finds a historical precedent in Napoleon’s exile on Elba, which Tolstoy could not really fathom either.<sup>134</sup> One might also think of the Treaty of Versailles that limited German troops to 100,000 after World War I.

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<sup>129</sup> F. Herbert, *Dune Messiah* (note 62), 291.

<sup>130</sup> F. Herbert, *Dune Messiah* (note 62), 324.

<sup>131</sup> F. Herbert, *Dune Messiah* (note 62), 70–72.

<sup>132</sup> F. Herbert, *Dune Messiah* (note 62), 77.

<sup>133</sup> F. Herbert, *Dune Messiah* (note 62), 300.

<sup>134</sup> F. Herbert, *Children of Dune* (note 42), 218; cf. Tolstoy, *War and Peace* (note 29), 1222–1223.

While Paul's attitude towards legalizing his relationship with other major actors seems pragmatic, as long as the treaties pertain to specific issues, he is downright hostile towards constitutionalizing his rule in general. The Ixian Confederacy, which still resists him, offers to submit to his Imperium but demands a constitution, questioning the Imperial Tax. Hearing this, sitting in Council, Paul muses: "They want a legal limit to my Imperial will."<sup>135</sup> His companion Chani argues: "Perhaps they could be given the *form* of a constitution ... It needn't be actual."<sup>136</sup> For a Fremen, this attitude towards law seems uncharacteristic at first, but maybe not if you consider that these would be legal obligations towards outsiders, non-Fremen. On the other hand, the Fremen Korba, a priest later turned traitor, is sympathetic to a certain type of constitution. Paul notices: "*Here now! Here's one who may harbor secret sympathies for an imagined rule of Law*", even before Korba suggests: "We could begin with a religious constitution ... something for the faithful".<sup>137</sup> But Paul dismisses the idea:

"There are limits to power, as those who put their hopes in a constitution always discover [...] We will make this an Order in Council. [...] Constitutions become the ultimate tyranny [...] They're organized power on such a scale as to be overwhelming. The constitution is social power mobilized and it has no conscience. It can crush the highest and the lowest, removing all dignity and individuality. It has an unstable balance point and no limitations. I, however, have limitations. In my desire to provide an ultimate protection for my people, I forbid a constitution. Order in Council, this date, etcetera, etcetera."<sup>138</sup>

While the reasoning behind this order seems somewhat strained, the result is clear: the Emperor Muad'dib seeks to rule as an absolutist sovereign. The old Emperor's former "truthsayer", a high-ranking Bene Gesserit, experiences this while travelling aboard a Guild space ship above Arrakis. When she claims to be travelling in "free space", a priest of the *Quizara*, who worship Muad'dib, answers: "There is no such thing as free space [...] Muad'dib rules everywhere. [...] When the Emperor commands, all his subjects obey."<sup>139</sup>

The religious character and cynical nature of the new government is discussed at various points. For example, a Guild ambassador notes: "And rulers are notoriously cynical where religions are concerned. Religion too is a weapon. What manner of weapon is religion when it becomes the government?"<sup>140</sup> Paul's mother, Jessica, writes to her daughter Alia on this issue: "You produce a

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<sup>135</sup> F. Herbert, *Dune Messiah* (note 62), 75.

<sup>136</sup> F. Herbert, *Dune Messiah* (note 62), 76.

<sup>137</sup> F. Herbert, *Dune Messiah* (note 62), 76.

<sup>138</sup> F. Herbert, *Dune Messiah* (note 62), 76.

<sup>139</sup> F. Herbert, *Dune Messiah* (note 62), 101.

<sup>140</sup> F. Herbert, *Dune Messiah* (note 62), 130.

deadly paradox [...] Government cannot be religious and self-assertive at the same time. Religious experience needs a spontaneity which laws inevitably suppress. And you cannot govern without laws. Your laws eventually must replace morality, replace conscience, replace even the religion by which you seek to govern.”<sup>141</sup> Even the Fremen *naib* Stilgar, who in the first novel is described as having turned from a friend into a worshiper (“a lessening of the man” in which Paul saw “the ghost-wind of the jihad”),<sup>142</sup> turns out to be highly critical of Muad’dib being worshiped as a god; he complains that “breaking a law became a sin”, “a smell of blasphemy arose like smoke around any questioning of governmental edicts [...] Yet it was men who created these governmental edicts”.<sup>143</sup>

Paul’s sister Alia later argues: “My brother rules by the natural law of heaven!”<sup>144</sup> Answering her, Duncan Idaho<sup>145</sup> perceptively states the fact that neither she nor her brother believe in this: “Both of you were taught to govern [...] Natural law? What natural law? That myth haunts human history. Haunts! It’s a ghost. It’s insubstantial, unreal. Is your Jihad a natural law?”<sup>146</sup> Shortly after, Duncan tells Alia that he has advised Paul “to judge, to impose order”, which she mistakenly interprets as “dispensing justice”: “Not that! [...] I suggested that he judge, no more, guided by one principle, perhaps [...] To keep his friends and destroy his enemies.” Confronted with this Machiavellian-Schmittian idea, Alia retorts: “To judge unjustly, then.” “What is justice?”, Idaho replies, “Two forces collide. Each may have the right in his own sphere. And here’s where an Emperor commands orderly solutions. Those collisions he cannot prevent – he solves [...] In the simplest way: he decides.”<sup>147</sup> Idaho thus proposes to be more honest and simply decide collisions of interest by fiat, much like Thomas Hobbes proposed in his *Leviathan*.

Idaho expands his critique of the religious law that is employed in Muad’dib’s Imperium more generally: “Well, it doesn’t matter whether the mailed fist is brandished openly by Fremen legions or Sardaukar, or whether it’s hidden in the Atrides Law – the fist is still there.”<sup>148</sup> An “Addendum to Orders in Council” by the Emperor Paul Muad’dib confirms this interpretation by Idaho: “The convoluted wording of legalisms grew up around the necessity to hide from ourselves the violence we intend towards each other.”<sup>149</sup>

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<sup>141</sup> F. Herbert, *Dune Messiah* (note 62), 252.

<sup>142</sup> F. Herbert, *Dune* (note 16), 455.

<sup>143</sup> F. Herbert, *Children of Dune* (note 42), 5.

<sup>144</sup> F. Herbert, *Dune Messiah* (note 62), 150.

<sup>145</sup> Or rather, at that point, a resurrected version of his body, the *Ghola* named Hayt.

<sup>146</sup> F. Herbert, *Dune Messiah* (note 62), 151.

<sup>147</sup> F. Herbert, *Dune Messiah* (note 62), 153–154.

<sup>148</sup> F. Herbert, *Children of Dune* (note 42), 231.

<sup>149</sup> F. Herbert, *Dune Messiah* (note 62), 237.

b) *A Slow Return to Fremen Earnestness?*

A key event in *Dune Messiah* is the use of a “stone burner”, a nuclear weapon the radiation of which blinds people in its vicinity.<sup>150</sup> Paul tasks a weapons specialist with finding out where it was manufactured because: “Atomics. The Great Convention prohibited such weapons. Discovery of the perpetrator would bring down the combined retributive assault of the Great Houses. Old feuds would be forgotten, discarded in the face of this threat and the ancient fears it aroused.”<sup>151</sup>

Paul loses his eyes and thus his vision in the attack. His oracular vision, however, becomes so exact that he can “see” through it what is happening around him. Yet, Stilgar proposes to hide the fact that he has no eyes anymore from the people, which Paul refuses out of hand. “But the law...”, Stilgar gives to think. “We live by the Atrides Law now [...] The Fremen Law that the blind should be abandoned in the desert applies only to the blind. I am not blind. [...] None of these men shall be taken into the desert [...] They are to be fitted with new eyes at my expense.”<sup>152</sup> Later, he reaffirms to Fremen *naibs*, who are mentioned as having met for a Grand Council after Paul is blinded,<sup>153</sup> that he can indeed still “see” though his oracular vision and is therefore not blind within the meaning of Fremen law.<sup>154</sup> This purposive interpretation of Fremen law is never disputed.

The attack with the stone burner, it is exposed, was enabled by the betrayal of the priest Korba who is then tried for treason. Korba “protests his innocence” and the charges are read by Stilgar, which are cited to the reader only incompletely: “... that you did conspire with traitors to accomplish the destruction of our Lord and Emperor, that you did meet in vile secrecy with diverse enemies of the realm; that you ... [...] venerable tradition ... support of the legions and all Fremen everywhere ... violence met with violence according to the Law ... majesty of the Imperial person ... forfeits all rights to ... [...] Thus the issue is brought to judgment.”<sup>155</sup>

Korba acknowledges that “[w]e knew the Old Law said that only Families could possess atomics, but the Quizarate [priests] obeyed ...” and Paul finishes: “Obeyed you ... A curiosity indeed.” Korba then demands to confront his accuser: “I have a Fremen right to confront my accuser. [...] A Fremen has rights.” Stilgar then interjects: “He speaks truth, Sire [...] The law is the law. [...] Korba is a Fremen and must be judged by Fremen Law”. Stilgar then quotes Fremen law, “interspersing his own comments on how the Law pertained”. Alia wonders at his conservatism and his strict adherence to the “Dune Code”. Paul thanks him for reminding them of the law, but

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<sup>150</sup> See F. Herbert, *Dune* (note 16), 259.

<sup>151</sup> F. Herbert, *Dune Messiah* (note 62), 239, 243.

<sup>152</sup> F. Herbert, *Dune Messiah* (note 62), 242.

<sup>153</sup> F. Herbert, *Dune Messiah* (note 62), 246.

<sup>154</sup> F. Herbert, *Dune Messiah* (note 62), 256.

<sup>155</sup> F. Herbert, *Dune Messiah* (note 62), 254–261.

in a secret language Stilgar signals (to Paul's approval): "*I'll wring him dry and then take care of the matter.*"<sup>156</sup>

Afterwards, Paul explains to Alia: "Had I ordered Korba slain out of hand, the Naibs would have understood [...] But this formal procedure without strict adherence to Fremen Law – they felt their own rights threatened."<sup>157</sup> Later, Paul's thoughts on this are quoted as "Muad'dib on Law" in the "Stilgar Commentary": "There is a limit to the force even the most powerful may apply without destroying themselves. Judging this limit is the true artistry of government. Misuse of power is the fatal sin. The law cannot be a tool for vengeance, never a hostage, nor a fortification against the martyrs it has created. You cannot threaten any individual and escape the consequences."<sup>158</sup>

While Fremen law is respected in Korba's trial but only for reasons of power politics, at the end of *Dune Messiah* Fremen law rules supreme again, even against the Emperor and his family. When Chani gives birth to twins – even though Paul had seen only one child in his prescient visions – he goes truly blind from that moment on. Immediately this is noticed by others and he knows what they think: "*The blind must be abandoned in the desert.* Fremen tribes carried no dead weight."<sup>159</sup>

Chani dies in childbirth and her body is taken away to preserve its water, because a Fremen's body belongs to him- or herself but the water belongs to the tribe – even that of the Emperor's consort and the mother of the Imperial heirs.<sup>160</sup> And then, Paul walks into the desert "like a Fremen". "He was blind – truly blind", a Fremen says while shrugging "as though that explained it". "Blind Fremen were abandoned in the desert. Muad'dib might be Emperor, but he was also Fremen."<sup>161</sup> Duncan, one of Paul's old friends after all, notes how the Fremen refused to search for him: "Rescue was against their ancient customs."<sup>162</sup>

In later books, this tension between a harsh but pure Fremen law that in its original form has integrity and a corrupted and corrupting Imperial law can be seen, too. In the third book, *Children of Dune*, it is considered whether the Landsraad could take the legal position that the Regency – an interregnum until Paul's heir comes of age – cannot veto certain legislation like the adjustment to taxation or the policing of cartels. It is not discussed whether this position is legally sound but whether it would be pragmatic to take this decision and who has the military supremacy to enforce it.<sup>163</sup>

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<sup>156</sup> F. Herbert, *Dune Messiah* (note 62), 254–261.

<sup>157</sup> F. Herbert, *Dune Messiah* (note 62), 254–261.

<sup>158</sup> F. Herbert, *Dune Messiah* (note 62), 289.

<sup>159</sup> F. Herbert, *Dune Messiah* (note 62), 310.

<sup>160</sup> F. Herbert, *Dune Messiah* (note 62), 318.

<sup>161</sup> F. Herbert, *Dune Messiah* (note 62), 324.

<sup>162</sup> F. Herbert, *Dune Messiah* (note 62), 324.

<sup>163</sup> F. Herbert, *Dune Messiah* (note 62), 142–143

Even after Muad'dib's death, when the terraforming of Arrakis to make it less arid has gained traction, Fremen law, a word which Herbert often capitalizes, still consigns the blind to the desert: "The wording of the Law, although less honored in these modern, water-soft times, remained unchanged from the earliest days."<sup>164</sup> "The traditional Fremen says: 'Look to the Massif,' meaning that the master science is the Law. But the new social structure is loosening those old legal traditions; discipline grows lax."<sup>165</sup> "They trusted the Law [...], these old Fremen.", Paul's son, Leto II, observes.<sup>166</sup>

## IV. Limiting Government Without Law?

Frank Herbert distrusted organized authority and this idea is also reflected in *Dune*. Neither Herbert nor the characters and institutions in *Dune* sufficiently appreciate that the rule of law can prevent abuse of authority. A major reason for Paul's failure to rely more on law seems to be his belief in the collective determinism of Tolstoy's *War and Peace*. But for the rule of law not to devolve into a rule by law, it needs independent guardians which are conspicuously absent in *Dune*.

### 1. Distrust of Organized Authority

The idea that any governance, by law or otherwise, is at best futile and at worst dangerous is evident not only in Paul but also in the author's thinking more generally. Frank Herbert remarked early on: "I had this theory that superheroes were disastrous for humans."<sup>167</sup> It appears that he thinks bureaucracy, and the law it is associated with, can be equally disastrous for us. Herbert shows a strong disdain for the bureaucratic aspect of government, maybe even for government in general,<sup>168</sup> and therefore also for its legal aspect. Frank Herbert's son Brian even characterized *Dune* as an "anti-establishment work".<sup>169</sup>

In the new Imperium of Muad'dib, governance appears as quite a loose affair: "Muad'dib has crowded his Quizarate [priests] in everywhere, displaced the old functions of government. But he has no permanent civil service, no interlocking embassies. He has bishoprics, islands of authority. At the center of each island is a man."<sup>170</sup> But even this arrangement Paul later criticizes as too

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<sup>164</sup> F. Herbert, *Children of Dune* (note 42), 39.

<sup>165</sup> F. Herbert, *Children of Dune* (note 42), 219.

<sup>166</sup> F. Herbert, *Children of Dune* (note 42), 245.

<sup>167</sup> Cited after O'Reilly, *Frank Herbert* (note 2), 5.

<sup>168</sup> Cf. Daniel Immerwahr, "The Quileute Dune: Frank Herbert, Indigeneity, and Empire", *Journal of American Studies* 2021 (forthcoming).

<sup>169</sup> B. Herbert, *Dreamer of Dune* (note 27), 223.

<sup>170</sup> F. Herbert, *Dune Messiah* (note 62), 188.

bureaucratic. Reading the sign “Propagation of Faith” above a door, he thinks: “A more honest label would’ve been *Propagation of Bureaucracy* ... A type of religious civil servant had sprung up all through his universe. This new man of the Quizarate was more often a convert. He seldom displaced a Fremmen in the key posts, but he was filling all the interstices. [...] He stood apart from his rulers – Emperor, Guild, Bene Gesserit, Landsraad, Family or Quizarate. His gods were Routine and Records.”<sup>171</sup>

In *Children of Dune*, Paul’s son, Leto II, states his conviction that law is entirely incidental to good governance: “[The Imperium] requires good government. That does not depend upon laws or precedent, but upon the personal qualities of whoever governs.”<sup>172</sup> Further on, a quote attributed to “the Preacher”, who it can be assumed is Paul returned from the desert, says: “Every civilization depends upon the quality of the individuals it produces. If you over-organize humans, over-legalize them, suppress their urge to greatness – they cannot work and their civilization collapses.”<sup>173</sup> Even more: “Bureaucracy destroys initiative.”<sup>174</sup>

This also reflects what Frank Herbert’s son Brian wrote in the biography of his father: “Frank Herbert burned with anger about ecology, religion and politics.”<sup>175</sup> And while his son also sees in him a “great believer in the Constitution [...] particularly in the rights of individuals”,<sup>176</sup> he also shows the experience Frank Herbert had in Washington D.C. as a speech writer for the Republican senator Guy Cordon, who believed in strictly limiting bureaucracy.<sup>177</sup> In an interview, Frank Herbert heavily criticized bureaucracy as inefficient, as essentially sabotaging government, and romanticizes a time where “[t]he old time cop was judge and jury and everything else“ and could bring a drunk driver home and “tell his wife to hide the keys“. <sup>178</sup> Doing the right thing spontaneously on an individual level seems the only possible way to him, much like to Paul.

The Tolstoy-inspired impression that Paul is under, namely that he is not able to make any meaningful changes to the future, leaves him blind to the ways in which he most certainly could have had at least some impact. The futility of it all, which he seems to feel, prevents him from even caring adequately for the people who fought for him. A veteran of Paul’s wars even has to sell his family valuables to afford medical care for the wounds he suffered in his service. Paul learns of this

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<sup>171</sup> F. Herbert, *Dune Messiah* (note 62), 211.

<sup>172</sup> F. Herbert, *Children of Dune* (note 42), 114. Later, this turns out to be an almost verbatim quote from the Spacing Guild Manual’s entry on “Law and Governance”: F. Herbert, *Children of Dune* (note 42), 148.

<sup>173</sup> F. Herbert, *Children of Dune* (note 42), 306.

<sup>174</sup> F. Herbert, *Chapterhouse Dune* (note 92), 213.

<sup>175</sup> B. Herbert, *Dreamer of Dune* (note 27), 169.

<sup>176</sup> B. Herbert, *Dreamer of Dune* (note 27), 91.

<sup>177</sup> B. Herbert, *Dreamer of Dune* (note 27), 87 et seq., 96.

<sup>178</sup> Cited from: O’Reilly, *Frank Herbert* (note 2), 21, 179.

late in one case and offers to help.<sup>179</sup> Yet again, this is help on an individual level, offered on a chance encounter.

The distrust of organized authority that Frank Herbert sew into *Dune* thus leads to paralysis on a collective level and allows for individual abuse of power. Napoleon, who believed that he could make a difference, left a legal Code that endures (amended) in the national law of France to this day. Even if Tolstoy was right to say that Napoleon overestimated his role, Paul is paralyzed by his prescience. While Paul might not have been able to prevent the *Jihad* – we may trust his prescient abilities on this –, it is almost incomprehensible why he does not even try to use law and administrative governance to reign in its consequences and improve the life of people he obviously cares about. Fremen family law might have served as an inspiration or as something to build on. Paul had experienced the application of this area of law, which sought to safeguard the well-being of the spouse and children of deceased, after killing Jamis.

Maybe, Paul subscribed to the “Bene Gesserit Coda” cited later in the last book of the series, *Chapterhouse Dune*: “Laws to suppress tend to strengthen what they would prohibit. This is the fine point on which all the legal professions of history have based their job security.”<sup>180</sup> But the very first chapter of *Dune Messiah* shows what this leads to. It begins by showing priests handing out death sentences to historians who criticize Muad’dib, without even informing him: “We do not trouble the Holy Family with trivia.”<sup>181</sup>

Paul’s inaction allows for the abuse of power in his Imperium. His mistake ultimately is not the obviously correct statement that any one person’s capacity to intentionally influence the course of the future is limited, and be it the prescient Emperor of the known universe. The mistake is the value judgment that therefore any action is futile. If complete and absolute control is not possible, Paul seems to say, it is not even worth trying. But this should not be the lesson we draw from *Dune*.

It is also not the note that Frank Herbert ended the series on. Instead, in a climactic dialogue in *Children of Dune* that sets the path for the following novels, the Preacher, i.e. Paul returned from the desert, and his son Leto II face off. The Preacher, bitter and seeing himself as “a poor copy” of the Paul that he once was directly states: “You cannot control the future”.<sup>182</sup> But it is revealed that there was indeed a “Golden Path” to save humanity, from an unnamed threat of extinction, and Paul – unlike his son – just did not dare move down that way. This Golden Path involves

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<sup>179</sup> F. Herbert, *Dune Messiah* (note 62), 229.

<sup>180</sup> F. Herbert, *Chapterhouse Dune* (note 92), 119.

<sup>181</sup> F. Herbert, *Dune Messiah* (note 62), 3.

<sup>182</sup> F. Herbert, *Children of Dune* (note 42), 343.

thousands of years of tyranny to teach “a lesson which humankind will never forget”,<sup>183</sup> namely that humanity should be “exceedingly careful about the powers you delegate to any government”.<sup>184</sup>

I would suggest, more mundanely, that humanity can learn this lesson from the experiences of tyranny it has already endured. If limited government is indeed the ultimate aim of this Golden Path, the wholesale rejection of law, in particular constitutional law, that is expressed by Paul seems all the more tragic and paradoxical. If Frank Herbert’s message was to distrust government,<sup>185</sup> he undervalued the fact that law need not only be a cynical tool of government, a sort of rule *by* law. Law can institutionalize distrust against government and thus protect from abuse.<sup>186</sup> It should not be overburdened with tasks that it cannot accomplish. Constitutional lawyers of our world, for example, have legitimate disagreements about the manner in and the extent to which rights should be upheld by courts.<sup>187</sup> But the rule of law has historically proven itself as an important tool to prevent arbitrary use of power. *Dune* does not reflect this sufficiently.

## **2. The Absence of Legal Professionals**

As William Touponce first noticed, *Dune* is “polyphonic” in the sense that “every voice is qualified, questioned, even subverted, by others”.<sup>188</sup> This is also true for the various approaches to law in *Dune*. But despite all the differences between the legal practices of the Old Imperium, of the Fremen and of Muad’dib’s new Imperium, they all share a decisive deficit. While the ubiquity and importance of Imperial and Fremen law refute the idea that “there is no real sense of law-making” in *Dune*,<sup>189</sup> a different aspect seems the real reason why law has such a peculiarly powerful yet cynical role to play. *Dune* follows a general trend of the science fiction genre in that it makes law its subject but does not provide lawyers.<sup>190</sup> It is the absence of professional lawyers, the absence of a profession dedicated to upholding the law that enables the cynical use of law that we see in the series.<sup>191</sup> This becomes evident in the trial of the traitor Korba which is marked by serious

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<sup>183</sup> F. Herbert, *Children of Dune* (note 42), 344–350.

<sup>184</sup> Frank Herbert, *God Emperor of Dune* (Ace: New York, 1987, first published 1981), 281.

<sup>185</sup> See in particular Frank Herbert, Committee of the Whole, printed in: Frank Herbert, *The world of Frank Herbert* (Berkeley: New York, 1977): 94.

<sup>186</sup> See, classically, for the US Supreme Court John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* (Harvard University Press: Cambridge, MA, 1980). For the European Court of Human Rights see: Björnstjern Baade, “The ECtHR’s Role as a Guardian of Discourse: Safeguarding a Decision-Making Process Based on Well-Established Standards, Practical Rationality, and Facts”, 31:2 *Leiden Journal of International Law* 2018: 335–361.

<sup>187</sup> Cf. only Jeremy Waldron, “The Core of the Case Against Judicial Review”, 115 *Yale Law Journal* 2006: 1346; Matthias Kumm, “The Problem of Judicial Review” in *Institutionalized Reason: The Jurisprudence of Robert Alexy*, ed. Matthias Klatt (OUP: Oxford, 2012): 201.

<sup>188</sup> Touponce, *Frank Herbert* (note 2), preface.

<sup>189</sup> Tranter, *Technical Legality* (note 41), 48.

<sup>190</sup> Mitchell Travis & Kieran Tranter, Interrogating absence: the lawyer in science fiction, 21:1 *International Journal of the Legal Profession* 2014: 24.

<sup>191</sup> Cf. McNelly, ed., *Dune Encyclopedia* (note 33), 458, where courts also consist of judges with political positions.

violations of the most basic precepts of the rule of law which allows legal proceedings to be abused as a mere tool of power. It is presided over by Paul's sister Alia who claims this authority on two grounds, one Imperial, one Fremen. She presides over the trial because her brother delegated this task to her and because: "Is it not Fremen law that a Reverend Mother presides when life and death are at issue?" Apparently, the presiding judge cannot be challenged for fear of bias under either Fremen or Imperial law. Not only is Alia the victim's sister, but she is also part of the (theocratic) government. Moreover, the judge apparently can be appointed ad hoc and post-facto. When Korba demands to choose his own counsel, instead of Stilgar who Paul appointed as such, even though he was at the very same time the prosecutor, Paul replies: "You deny the fairness and judgment of Stilgar?", before he has him taken away.<sup>192</sup>

In this respect, Herbert did not base his desert law on the one shown by T.E. Lawrence. The Arab customary law Lawrence depicted knew that legal institutions – even if constituted ad hoc and from case to case – need to be and need to be seen as impartial: "In cases between men of different tribes, the lawman was selected by mutual consent, or recourse was had to the lawman of a third tribe. If the case were contentious and difficult, the judge was supported by a jury of four — two nominated by plaintiff from the ranks of defendant's family, and two by defendant from plaintiff's family. Decisions were always unanimous."<sup>193</sup> This mode of legal dispute settlement closely resembles the arbitration of many international disputes. It could have inspired Herbert to include such safeguards for legal processes at least among the Fremen.

But no independent guardian of the law exists in *Dune*. While there are some institutions that employ titles which imply a legal function, this is not really the case. A prominent example is the "Judge of the Change" who oversees the change of fief on Arrakis. According to the Appendix of *Dune*, his authority can only be challenged before the Landsraad in the presence of the Emperor.<sup>194</sup> But his role seems to be more that of a political arbiter. There are "judges" among the Fremen, but this is only a religious title.<sup>195</sup> Instead of professional lawyers who work in an independent function, the law is generally interpreted by political actors themselves. In that regard, it mirrors the functioning of international law in our world, which does not have a court with compulsory jurisdiction over all actors and all issues, and thus often grapples with similar issues. This auto-interpretation by political actors allows for strained, self-serving interpretations of the law, most notably when Paul draws the fine line between his use of nuclear weapons against a "natural feature

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<sup>192</sup> F. Herbert, *Dune Messiah* (note 62), 254–261.

<sup>193</sup> T.E. Lawrence, *Seven Pillars of Wisdom* (note 28), 69.

<sup>194</sup> F. Herbert, *Dune* (note 16), Appendix.

<sup>195</sup> F. Herbert, *Dune* (note 16), Appendix on "Sadus".

of the desert“, and the Great Convention’s Injunction that prohibits their use only against humans.<sup>196</sup>

Law in *Dune* lacks an independent guardian that could interpret and apply it objectively in the sense that this interpretation and application need not be in the interest of one or the other political actor. A rule of law is possible, but to fulfill this purpose, law needs to be taken seriously. Fremen practices show this. To assure that, the law needs independent guardians, most of all in courts of law, who protect it from being abused or circumvented. And, indeed, the rule of law needs a bureaucracy, but in the best sense as Max Weber described it: a government marked by professionalism, rationality, and accountability.<sup>197</sup> It might not be perfect, it has many drawbacks that Frank Herbert clearly saw, without a doubt. But it might have at least prevented priests from condemning historians to death for uttering a wrong opinion. Of course, this creates the problem that political actors might seek to capture certain institutions but legal safeguards might be implemented against this as well.<sup>198</sup>

No safeguard will make decisions “unpolitical” in the sense that they will be the one “objectively correct” decision. Legal professionals cannot deliver on such a promise either. Paul might even have retorted with Tolstoy that the “law of inevitability” would predetermine their legal decisions as well, and that therefore this attempt at controlling the future is futile as well. But this only confirms that believing in collective determinism does nothing but paralyze. The same could be said for Herbert’s distrust of any kind of organized authority.

Human institutions will always be flawed. They will always have the potential to cause tremendous harm. Herbert is right in pointing this out. But a rule of law implemented by independent guardians can at least prevent legal decisions from being directly influenced by powerful interests in a manner that is incompatible with the purpose of the decision-making procedure. The decision to convict the alleged traitor Korba of a crime, or not, should not hinge on whether his conviction would be convenient regarding the power politics at play. The legality of expropriations should not depend on forged documents. More generally, the interpretation and application of law should not depend to the degree seen in *Dune* on self-serving considerations of some powerful actors. This lesson humanity has learned, even without the benefit of additional thousands of years of tyranny. The old roman law and common law adage that no one should be judge in a case in which he or she has an interest (*nemo iudex in sua causa*) reflects this.

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<sup>196</sup> F. Herbert, *Dune* (note 16), 461. The novel completely fails to mention the disastrous consequences of nuclear fallout.

<sup>197</sup> Max Weber, *Wirtschaft und Gesellschaft* (J.C.B. Mohr (Paul Siebeck): Tübingen, 1922), 650 et seq. Of course, Weber likewise saw the negative aspects of bureaucratic governance.

<sup>198</sup> See for the current debate on court packing in the US, e.g. Marin K. Levy, Packing and Unpacking State Courts, 61 *William & Mary Law Review* 2020: 1121-1158.

In our world as well, some may have little trust in the ability of the law to bind the powerful and many may be disillusioned by legal professional's inability to be entirely objective in the sense that their interpretations of the law demonstrably lead to the one right decision, untainted by any subjective value judgment and completely acceptable to all. But there is a long way between the frustration that we may feel with our imperfect legal systems and the entirely cynical use that is made of Imperial law in *Dune*. The harsh earnestness of Fremen law that allows for a type of rule of law even without legal professionals might not be entirely convincing or realistic either for our diverse and complex societies. At the very least, though, we should not succumb to Paul's feeling of futility. Law and bureaucracy may not be a silver bullet that remedies all of our societies' failings. Waiting for a hero, however, or relying solely on oneself to solve the world's problems, is no alternative. This, too, *Dune* clearly shows.