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Challenging unjust rationings of fairness: law, literature and [dystopian] legal fictions

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*Challenging unjust reasonings of
fairness: Law, literature and
[dystopian] legal fictions*

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Q: Are we living in a sci-fi novel?

- ▶ *'Fantastic rationing'* - as seen in literature and popular fiction
- ▶ E.g. Life span/good health
- ▶ Food/social security
- ▶ Freedom of movement/assembly
- ▶ Information/ knowledge
- ▶ Useful critiques of law/austerity measures – especially dystopian/post-apocalyptic fiction
- ▶ Lessons/warning for law-makers? (Weisberg, 1976; Travis, 2011)

Template? Uncomfortable mirror, predictor of future policies?

- ▶ Klein *et al* (1977:3) – Since the 1960's sci-fi writing has generally become darker, 'focussing on the sufferings of humanity'
- ▶ Echoes of current issues in e.g. Refugee law, Brexit-led reforms, health, social security cuts
- ▶ That which seems egregiously unjust in fiction can easily = normative in domestic law/policy –
- ▶ Especially where justified *otherings* /rights violations are needed to preserve scarce resources
- ▶ *Rights–rationing* = Law's role?

Dignity? Vulnerability?

- ▶ Q: Do some unwritten policies/customs tend to 'dispense with' human dignity, demonise vulnerability?
- ▶ Are they creating new forms of *otherness*? Frailty algorithms?
- ▶ E.g. DNARs, Removal of vulnerable patients to care homes, allocation of ambulances, admissions?
- ▶ Care Act 2014 [via Coronavirus Act 2020] easements?
- ▶ Duties on local councils became mere powers....
- ▶ **Case law: *R(BG and Anor) v Suffolk CC (2021) EWHC 3368 (Admin)***

Which human rights appear most often? e.g. ECHR

- ▶ Art 2 [right to life]
- ▶ Art 10 [freedom of expression, right to information]
- ▶ Art 8 [respect for home, family, private life]
- ▶ Art 3 [freedom from torture, inhuman, degrading treatment]
- ▶ Art 4 [slavery]
- ▶ Art 5 [deprivation of liberty]



Nolan and Johnson '*Logan's Run*' [1967]

- ▶ **2216 - Ageing/over-population eliminated - Life [span] rationed**
- ▶ 'Voluntary' death at 21 ... Life of hedonism, beauty ...
- ▶ Names are recycled - Reproduction = clinical - 'Baby farms?' - Child relinquishment is the norm...
- ▶ Lastday - Sleepshop – Runners – Sanctuary?
- ▶ Deep Sleep Operative (Sandman) *Law's role ?*
- ▶ Legalise rights violations = death penalty and torture -
- ▶ ['Homer' weapon]
- ▶ Myth reliant - rebirth ? Law-maker - computer
- ▶ Justification? Eliminates poverty, hunger, ageing – enables good health, happiness
- ▶ Challenging the system? Escape, testimony, revolt...new planet

Lowry *The Giver* [1993]

- ▶ Post-apocalypse - isolated community
- ▶ Freedom, information, emotions are rationed
- ▶ Aware that they are controlled by drugs, societal censure – complicit?
- ▶ *Law's role?* Deny knowledge [history], collective memory
- ▶ Decision-making = 1 man [‘The titular Giver/Receiver’] – ‘Family life’ rationed/manufactured – no genetic connections
- ▶ Death penalty? Hinted at ...Justified? Peace-keeping, survival
- ▶ Challenge? Escape – ambiguous ending...

THE
GIVER

Ishiguru 'Never let me go' [2005]

- ▶ Humanity rationed – Illness minimised/eradicated - Plenty of 'spare' organs
- ▶ Cloning - Dehumanised clones – Souls? 4 donations, death
- ▶ *Othered* from conception - hidden away in 'orphanages' -
- ▶ Abused/neglected – poverty – lack of possessions
- ▶ No information on 'possible' genitors
- ▶ **Enabling myths** – art – freedom? Familial bonds?
- ▶ Justified? – ageing offset, illness largely a thing of the past
- ▶ Slavery, torture, death for the 'non-human' [less than] clones

Never let me go Cont'd [2005]

- ▶ 'Monsterized' and demonised children, to dehumanise them
- ▶ People recoil from them – disgust, fear [guilt?]
- ▶ Clones are generally calm and stoic
- ▶ Treatment worsens as novel progresses - walled in – hidden from sight
- ▶ Human Rights? They are non-human[s]
- ▶ Emotions are curtailed – family life denied
- ▶ Challenges? Futile

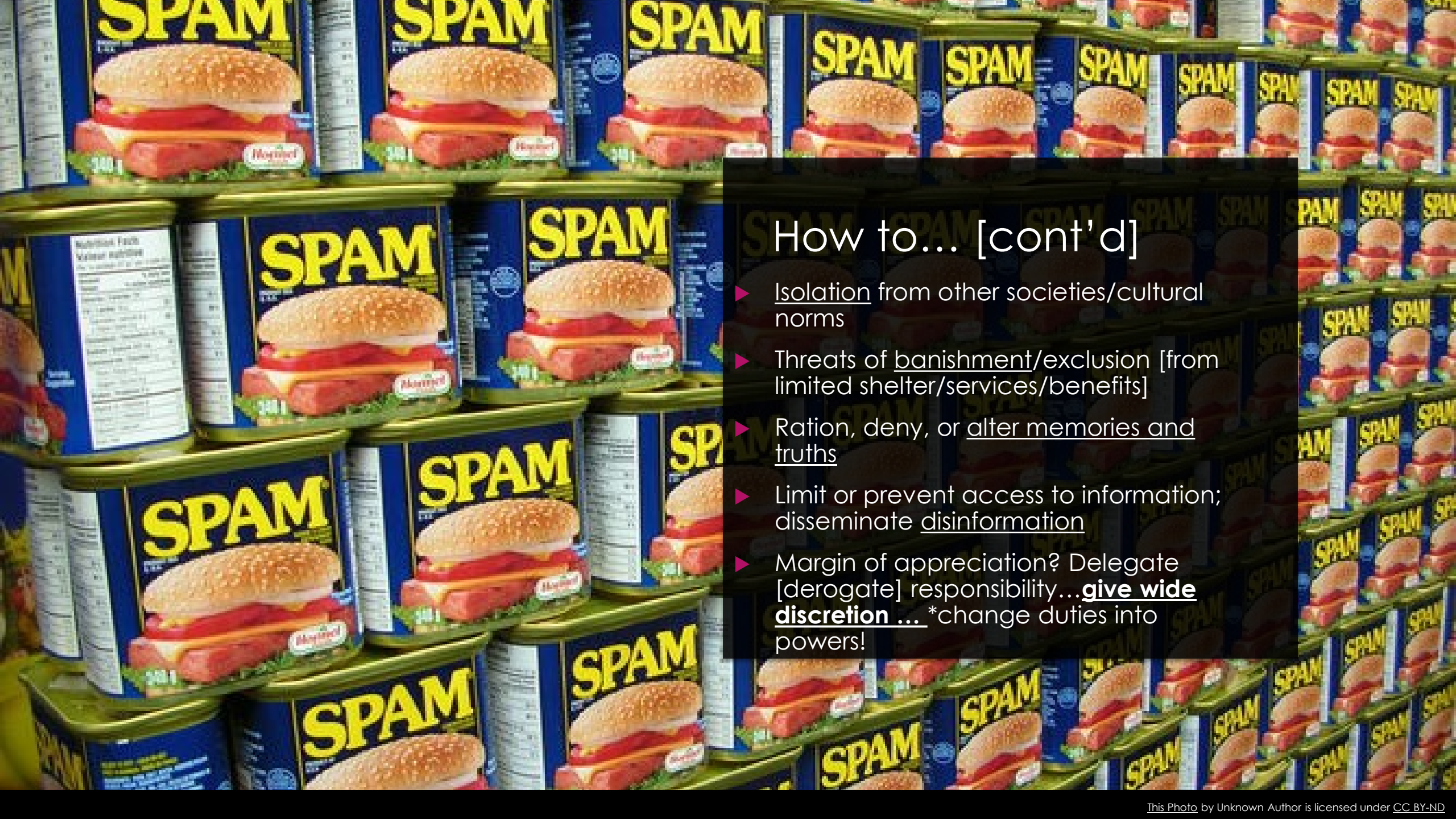
Howie *Silo* Series [2011] *Wool, Shift, Dust*

- ▶ Deprivation of liberty - humans live underground – death penalty for ‘escapees’
- ▶ Leaders use cryogenics to sleep for hundreds of years while earth is ‘reset’ to become non-toxic
- ▶ Unknown to the population, emotions are regulated – truths and knowledge are rationed
- ▶ Memories can be altered/removed to prevent uprisings [via the water] – different layers of law ...
- ▶ Separation from others



Rights rationing/justifiable violations – A ‘how to’ checklist

- ▶ Find **Justification** e.g. scarce resources, preserve peace, defence of necessity
- ▶ Reframe **Vulnerability** – invert notion of the protected characteristic
- ▶ Use **Othering** - ‘greater good’ - algorithmic thinking – ‘*best chance of survival*’
- ▶ **Render** human dignity/rights irrelevant - How?
- ▶ Create a dehumanised environment (Bottling 2006:138)
Aim for ‘*constructed horrific beings...*’ (Carroll, 1990:120)



How to... [cont'd]

- ▶ Isolation from other societies/cultural norms
- ▶ Threats of banishment/exclusion [from limited shelter/services/benefits]
- ▶ Ration, deny, or alter memories and truths
- ▶ Limit or prevent access to information; disseminate disinformation
- ▶ Margin of appreciation? Delegate [derogate] responsibility... **give wide discretion** ... *change duties into powers!

Challenging unjust policies/decisions? Achieving law reform?

- ▶ Arguably, Consultations, Inquiries, Apologies are useful, if limited in effect, past-facing
- ▶ See however: recent Social care case law – e.g. the *Suffolk* decision - successful challenge to policy decision – [direct payments, carers] -
- ▶ Not so much via a human rights-led challenge as an '*Error of law*' contention (Diver and Schwehr, 2022)
- ▶ AND ...literature/fiction are at least raising awareness