UNIVERSITY OF LEEDS

University of Leeds Human Rights Journal

Volume 2, Issue 1, Summer 2014

University of Leeds Human Rights Journal

A Multidisciplinary Undergraduate Journal

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A very special thanks to the Faculty of Education, Social Sciences and Law and the Faculty of Arts for their generous support for this project. We would also like to thank all the staff who invested their time and efforts to contribute to the success of the Journal.

Letter from the Editor

Dear Readers,

It is with great excitement that I welcome you to Volume 2, Issue 1 of the *University of Leeds Human Rights Journal*. The Journal was first conceived in 2012 by History undergraduate Hannah Tigerschiold. The release of our inaugural issue, which was published in Summer 2013, launched the first undergraduate human rights journal in the country. I sincerely hope that for many years to come it will continue to provide undergraduate students at Leeds with valuable opportunities to gain experience of academic publishing and engage with human rights research.

The founding aim of the project was to create a multidisciplinary publication that would provide a platform for students to publish their academic and creative work on the theme of human rights. The multidisciplinary versatility of the Journal is underpinned by our belief that the field of human rights lends itself to being engaged with through different mediums. In this issue readers will find a diverse array of content, including essays, photography, original artwork and poetry covering a range of historical and contemporary human rights issues. Contributions are drawn from students in the Faculties of Arts, Education, Social Sciences and Law, Environment and the Leeds University Business School, reflecting that the dynamic nature of human rights study allows it to transcend traditional barriers that divide academic disciplines.

I am incredibly grateful to all the student contributors who have worked collaboratively with the Editorial Board to improve and perfect their work. Their talent and dedication is reflected in the quality of the content presented here and I want to congratulate them on being chosen from a competitive field of submissions. The process of selecting the content that is presented in this issue was done through double blind peer-reviewing by our Editorial Board, who themselves are drawn from varying academic disciplines and have brought their own personal experience and interests to the project. I am indebted to them for their time and efforts to produce this project over several months, as well as the other members of the team who have contributed to its success through working on marketing and publicity, website building and the design of the publication you see before you. It has been a great pleasure to work with such talented and motivated people and I am certain that they all have very bright futures ahead of them.

Here at Leeds, we have a vibrant culture of political and campaigning activity and our diverse range of societies offers students the opportunity to work on and contribute to causes that they are passionate about. We are also proud to celebrate the diversity of our student body, in which people of different nationalities, faiths and cultures are represented. There is a growing community of students and staff working in Leeds on human rights causes and this year has possibly seen more successful collaborations among different groups than ever before. In November, the University celebrated Human Rights Week, a product of the tireless work, imagination and dedication of students who are committed to stand up to the injustices they see in the world around them. I hope that in the same spirit, this project will grow to become part of the fabric of human rights work on campus.

In solidarity,

Hannah Dudley
Editor-in-Chief, 2013-14

Editorial Board

Hannah Dudley – *Editor-in-Chief*
Hannah Dudley is in her final year of a BA Chinese degree. Aside from language study, her academic interests are centred on development issues in China and the wider East Asia region, with a particular focus on gender, migration and health. She also helps to run Leeds Friends of Syria, which seeks to contribute to international efforts to stop human rights violations in Syria and provide humanitarian relief to those in need. This autumn she will be taking up a place on the Diplomatic Service Fast Stream for the Foreign and Commonwealth Office.

Charlotte Prince – *Managing Editor*
Charlotte Prince is in her final year of a BA Classical Literature and English degree. Her academic research is based on gender and feminist studies and she is particularly interested in exploring related debates through an examination of different cultures and religions. Outside of academic study she has taken up a number of other roles, including Editor-In-Chief for the University's alternative women's magazine *Lippy: No Gloss*. After graduating, she plans to continue her studies at the University and begin a Masters in Middle Eastern and Islamic Studies.

Nada Dastmalchi – *Peer Reviewer*
Nada Dastmalchi is in her first year of BSc Neuroscience degree. Her extra-curricular interests are diverse but with a focus on human rights-related causes, as demonstrated by her position as Treasurer of LUU Amnesty International and her long-standing volunteer commitments with Oxfam. Human nature fascinates her and she hopes to pursue a career that encompasses human rights, education and psychology.

Krystina Mawer – *Peer Reviewer*
Krystina Mawer is in her final year of BA International Development and International Relations degree, a semester of which was spent abroad in Ghana. Her academic interests are centred on development issues with a political focus, with a particular interest in those relating to agriculture, inequality and human rights. Throughout her degree she has been involved with several human rights-related projects, and will next year be undertaking a Masters in International Development.

Kirsty O'Reilly – *Peer Reviewer*
Kirsty O'Reilly is in her final year of LLB Law degree. She is particularly interested in International Human Rights Law and plans to start a Masters in September focused on this field. Her dedication to the human rights plight also extends to her involvement in a number of humanitarian projects and societies, including Amnesty International and the Holocaust Educational Trust.

Katy Sexton – *Peer Reviewer*
Katy Sexton is in her penultimate year of a BA International History and Politics degree. She is particularly interested in Middle Eastern politics and has recently travelled to Israel to study the ongoing Arab-Israeli dispute. She is also organising a TEDx event focusing on innovative technology, which will be held at the University early in the autumn. She is planning to apply for a Masters degree, after which she hopes to pursue a career in Journalism or Public Relations.

Contributors

Academic:

Ruby Maguire
BA Criminal Justice and Criminology
Third year

Emma Wray
BA History
Second year

Abisola Babalola
LLB Law
Second year

Richard Jarram
BA English Literature (International)
Third year

Amy Jaffa
BA International Development and Portuguese
Fourth year

Harvey Coleman
BA French and Politics
Fourth year

Edel Davies
BA French and Management
Fourth year

Creative:

Victoria Leigh
BA Chinese
Fourth Year

Laura Sedgwick
BA History (International)
Third year

Dawn Stevenson
BA International Development and Spanish
First year

Olli Stewart
BA Environmental and Business
Third year

Cover Art:

Charlotte Carter
BA Sociology and International Relations
Second year

Table of Contents

The cornerstone of international human rights protection: evaluating the efficiency of United Nations and regional human rights treaty bodies

By Abisola Babalola

The United Nations and regional human rights treaty bodies have been referred to as the cornerstone of international human rights protection. Over the years however, the bodies have been faced with obstacles that challenge this position. This paper seeks to evaluate the extent to which these treaty bodies have been effective in achieving human rights protection through their complaints and monitoring procedures. To achieve this, the paper focuses on the Human Rights Committee as a UN treaty body and the European System as a regional treaty based system. It must be noted however that the paper will concentrate on the most important and popular, rather than all complaint and monitoring procedures under each system. It will examine the merits and excesses of the procedures of both mechanisms and provide a brief comparison. Furthermore, this essay will depict that although both systems have been useful to state parties, the European Convention of Human Rights (ECHR) has been more effective in dealing with complaints and providing effective monitoring systems because of its judicial authority.

As the United Nations Secretary General Ban Ki-moon has noted, treaty bodies establish a distinctive framework for debate and dialogue concerning alterations in policies and law that are essential to the improvement of equitable development and social justice.[1] Through their careful and methodical study of country situations, they provide early warnings to state parties, whilst also safeguarding the rights of individuals by ensuring that those rights do not remain as empty pledges.[2] In the words of Ban Ki-Moon, the bodies represent an '…indispensable link between universal standards and the individuals they were designed to empower and protect.'[3]

However, to say that treaty bodies are the cornerstones of the international human rights system represents an overestimation of the system. While treaty bodies play a noteworthy role in ensuring the protection of human rights on an international level, they are yet to cover all nation states and are open for optional ratification. Also, where a country has ratified a treaty, the translation of the treaty provisions into their domestic legislation is a matter that is principally dependent on the country since the decisions of the bodies may only be advisory.[4] Nevertheless, it is the case that even states that have failed to translate the provisions of treaties into their domestic legislation, have continued to cite the norms of the treaty to fill gaps in their common law.[5]

1 Ban Ki-moon, 'UN Secretary-General Ban Ki-moon's keynote address to the Global Colloquium of University Presidents at Columbia University [as prepared for delivery]' (2012) < http://www.un.org/sg/statements/?nid=5971> [accessed 26 December 2013] (p.1).
2 Ban Ki-moon, p.1.
3 Ban Ki-moon,' p.1.
4 Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights; Cases, Materials and Commentary* (Oxford: Oxford University Press, 2013) p. 50.
5 Joseph and Castan, p.31.

There are ten UN human rights treaty bodies and three regional treaty based systems.[6] Over the years, there has been a drastic increase in the number of ratifications on the part of UN treaty bodies, and the regional systems have also witnessed a vast increase in the number of applications received.[7] These developments have created the necessity for further strengthening of the systems so as to ensure efficiency in terms of their monitoring and complaints procedures.

To begin with, the Human Rights Committee (HRC) was created within and functioning under Article 28 of the International Covenant on Civil and Political Rights (ICCPR).[8] The ICCPR is perhaps one of the most significant treaties in existence since it seeks to apply to all classes of individuals, contains a broad range of provisions for ensuring human rights protection, and maintains universal coverage.[9] The Committee consists of 18 independent experts on human rights who are required to serve in their personal capacity –i.e. without influence from the governments of their states –after being elected for a term of four years.[10] With regard to Articles 40, 41 and the Optional Protocol to the ICCPR, the Committee has four functions. It receives and inspects reports from state parties; considers communications in the form of individual complaints; considers also interstate complaints and finally, provides detailed guidance to state parties on their international obligations through what is known as 'general comments'.[11]

The reporting procedure represents the most significant of the HRC's monitoring mechanisms since it is compulsory for all state parties.[12] The Committee provides consolidated guidelines that direct states on how to construct adequate reports.[13] The key aim of the procedure is for state parties to highlight factors which hinder the execution of their obligations under the Covenant.[14] However, it is not impossible for some states to exclude certain reprehensible issues and provide reports which fail to represent the full extent of their challenges. To this effect, Non-Governmental Organisations (NGOs) have been incorporated into the reporting system to provide such information as may be useful to the Committee for better monitoring.[15]

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6 International Justice Resource Center, 'Regional Systems' <http://www.ijrcenter.org/ihr-reading-room/regional/> [accessed 26 December 2013] (p.1).
7 Navanethem Pillay, 'Strengthening the United Nations Human Rights treaty body system: A report by the United Nations High Commissioner for Human Rights' (2012) http://www2.ohchr.org/english/bodies/HRTD/docs/HCReportTBStrengthening.pdf [accessed 26 December 2013] (p. 17).
8 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Art 28.
9 Joseph and Castan, p.3.
10 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Art 28(3).
11 International Covenant on Civil and Political Rights, Art 40-41; Optional Protocol to the International Covenant on Civil and Political Rights(adopted 16 December 1966, entered into force 23 March 1976) Art 1.
12 Philip Alston and Ryan Goodman, *International Human Rights: The Successor to International Human Rights in Context* (Oxford: Oxford University Press, 2013) p. 763.
13 Human Rights Committee, 'Guidelines for the treaty-specific document to be submitted by States parties under article 40 of the International Covenant on Civil and Political Rights' (UN Doc. CCPR/C/2009/1, 2010).
14 International Covenant on Civil and Political Rights, Art 40(2).
15 CCPR Centre, 'UN Human Rights Committee: Participating in the Reporting Process-Guidelines for Non- Governmental Organisations (NGO's)' (2010) < http://ccprcentre.org/doc/CCPR/Handbook/CCPR_Guidelines%20for%20NGOs_en.pdf> [accessed December 26 2013].

Despite these developments, the effectiveness of the procedure remains challenged by the non-compliance of States with reporting obligations. A recent study carried out by the United Nations High Commissioner for Human Rights, shows a decrease in the percentage of report submission from 20% in 2010 to 15% in 2011.[16] Similarly, in its 2013 report, the HRC notes that forty States were at least five years overdue in reporting.[17] These include initial reports and therefore connotes that some of these states have failed to submit reports since ratification.[18] Apart from overdue reports, the absence of state delegations from report-defence meetings also poses another challenge to the procedure.[19] This continuous increase in the rate of defiance limits the effectiveness of the Committee's monitoring procedure. [20]

Although the Committee may not compel compliance or force submissions, it has recently undertaken some practices that seek to improve the efficiency of the procedure. Firstly, the Committee now examines reports in the absence of state delegations and is also willing to examine state records on the implementation of the Covenant, if no report is submitted.[21] In such cases, a Special Rapporteur will be assigned to re-establish communications with the concerned state.[22] Secondly, the Committee now provides its State parties with a List of Issues Prior to Reporting (LOIPR).[23] This practice has meant that the Committee provides each state party with key points to develop on in their reports thereby reducing the workload on states by providing a more focused guideline which reflects matters that are of the most concern to the Committee.[24]

Overall, the compulsory nature of the HRC's reporting procedure is questionable and the procedure itself weak. The HRC is quasi-judicial in nature. This means that the Committee does not operate as a court of law and hence its views are not binding upon state parties or politically enforceable. Likewise, the Committee is not authorised to attach legally binding sanctions to its decisions and this in itself hinders its ability to remedy non-compliance with sanctions. Thus the idea of a compulsory reporting procedure cannot live up to its essence.

The second and most important procedure under the HRC is the individual complaints procedure which is based on the First Optional Protocol of the ICCPR. As is clear from its title, the protocol is non-compulsory for state parties and this in turn makes the procedure only available to individuals whose states have ratified the protocol.[25] Nonetheless, the protocol enjoys a large number of ratifications since 114 out of the 167 parties to the ICCPR are parties to its First Optional Protocol.[26] Since its inception, the Committee has

16 Pillay, pp. 20-25.
17 United Nations, 'Report on the Human Rights Committee' (Supplement No. 40 A/68/40 Vol. I, 2013) para 6.
18 United Nations, para 6.
19 Amrita Mukherjee, *Torture and the United Nations: charter and treaty-based monitoring* (London: Cameron May, 2008) p. 89, Joseph and Castan, p.16.
20 Pillay, p. 22.
21 Human Rights Committee, 'General Comment 30: Reporting obligations of States parties under article 40 of the Covenant'(U.N. Doc. CCPR/C/21/Rev.2/Add.12, 2002) para 4b.
22 Human Rights Committee, para 5.
23 Alston and Goodman p. 769.
24 Alston and Goodman p. 769.
25 Optional Protocol to the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) Art 1.
26 United Nations, 'Report on the Human Rights Committee' (Supplement No. 40 A/68/40 Vol. I, 2013) para 1.

received 2,239 individual communications.[27] While this demonstrates that state parties find the procedure fairly beneficial and are therefore willing to engage it, the effectiveness of the procedure is largely dependent on the resources available to the Committee to enable it to meet its growing demand. In its report, the Committee highlighted its concern about its increasing workload that stems from having to check through reports while also dealing with individual communications.[28] Between March 2012 and March 2013, the Committee had received 24 reports. By the end of its 107th Session in March 2013, 36 reports and 332 communications were pending before the Committee.[29] This backlog is as a result of the lack of sufficient staff and facilities to manage its workload.[30] Thus, the significant lapse of time between the submission and consideration of communications compromises the effectiveness of both procedures.

A further challenge that hinders the provision of an effective monitoring and complaints procedure is the non-binding nature of the Committee's views, which in turn creates the problem of non-adherence by state parties. To this effect, the HRC established a monitoring procedure which involves the appointment of a Special Rapporteur to follow up on the implementation of the Committee's views in state where violations have been found.[31] The Committee then requires that state provide information within 90 days, on the steps they have taken to implement the views.[32] Despite this development there are still cases of non-compliance.

For instance, in the case of Singarasa v Sri Lanka, the views issued by the Committee were rejected by the country.[33] In this case, the complainant was detained by the Sri Lankan authorities for supporting a supposed terrorist group.[34] In similarity to the Deolall case, the author claimed that he had been tortured during interrogation and also forced to sign a statement that was written in a language foreign to him (Sinhalese).[35] Furthermore, the author complained about the decision of the High Court, which considered the confession admissible despite the fact that it was attained under duress.[36]

After considering the facts of the case, the Committee concluded that the state party had ' […] violated Article 14, paragraphs 2 and 3(g), read together with article 2, paragraph 3 and 7 of the Covenant'.[37] In response to the committee's views the case was appealed at the Supreme Court of Sri Lanka which responded ' […] alternative remedies specified by the Committee cannot be comprehended in the context of [their] […] court procedure' and that 'the accession and declaration does not bind the Republic qua state and has no legal

27 United Nations, 'Report on the Human Rights Committee' (Supplement No. 40 A/68/40 Vol. I, 2013) para 4.
28 United Nations, 'Report on the Human Rights Committee' (Supplement No. 40 A/68/40 Vol. I, 2013) para 7.
29 United Nations, para 7.
30 United Nations, 'Report on the Human Rights Committee' (Supplement No. 40 A/68/40 Vol. I, 2013) para 14.
31 Mukherjee, p. 89.
32 Mukherjee, p. 89.
33 *Singarasa v Sri Lanka* Communication No.1033/2001,UN Doc. CCPR/C/81/D/1033/2001 (2004).
34 *Singarasa v Sri Lanka*
35 *Singarasa v Sri Lanka*
36 *Singarasa v Sri Lanka*
37 *Singarasa v Sri Lanka*

effect within the Republic.'[38] This response reflects the consequence of the non-binding effect of the decisions of the Committee, which leaves the discretion for compliance at the mercy of state parties. While it has been argued that allowing judicial effect of the Committee's decisions will interfere with the requirements of the rule of law, it has been suggested that an alternative solution will be for states to construct a national legislation which provides for a medium through which the views should be implemented.[39] However, this suggestion has not been popular with state parties.

While these deficiencies highlight the innate weaknesses of the Committee, they also signify the development of international human rights law. States continue to ratify the treaty and its Optional Protocol thereby demonstrating the willingness to abide by the provisions of the Covenant.[40] Like other treaty bodies, the Committee continues to face challenges that on the one hand may be disadvantageous, but on the other hand may also allow for development as the Committee seeks to reform and improve its operations. Therefore, despite its inadequacies, the Committee has made a significant effort to encourage its state parties and other states to fulfil the obligations of human rights protection through its treaty and optional protocol.[41]

With regards to regional systems, the European Convention on Human Rights (ECHR) is of remarkable significance for various reasons. First, it represents the first detailed treaty on human rights in the world and created the first international complaints mechanism in this field.[42] Additionally, it established the first international court for the consideration of human rights issues and now maintains jurisdiction over 25% of the nations of the world.[43] Furthermore, and most importantly, the Convention clearly covers the same area as the ICCPR and thus forms a fair ground of comparison for evaluating the effectiveness of both systems.

In terms of institutions, the European Court of Human Rights is established under the Convention as revised by Protocol No. 11. The Court is composed of chambers, committees and a Grand Chamber. While chambers are charged with the responsibility of examining the admissibility and merit of individual and inter-state complaints, a Committee may strike-off individual complaint cases where a decision can be reached without additional examination.[44] Likewise, the Grand Chamber is charged with deciding communications that have been referred to it either by a chamber or by a complainant.[45] Like the ICCPR, the ECHR does not have a reporting procedure. Nevertheless, its most popular procedures include its inter-state and its individual complaints procedures. The inter-state procedure, which is based on Article 33 of the Convention, allows Contracting State Parties to report violations of the Convention's provisions by other Contracting States.[46] The procedure does not require the ratification of an optional protocol in order for the system to be operative, thereby making complaint rights flow directly from the accession of the Convention.[47]

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38 *Nallaratnam Singarasa v Attorney General* S.C. Spl (LA) No.182/99 (2006).
39 Alston and Goodman, p. 831.
40 Alex Conte and Richard Burchill, *Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee* (Aldershot: Ashgate, 2009)
41 Conte and Burchill
42 Alston and Goodman, p. 897.
43 Alston and Goodman, p. 897.
44 European Convention on Human Rights 1950, Art 28; Art 29(2).
45 European Convention on Human Rights 1950, Art 31, Art 43.
46 European Convention on Human Rights 1950, Art 33.
47 *Austria v Italy*, Application No 788/60 4 YB 140 (1961).

Inter-state procedures have generally not garnered as much publicity as individual procedures under most treaty bodies. The inter-state procedure of the ECHR has not been utilised extensively. With regard to EU member states, this minimal use may stem from the existence of Article 7 of the EU treaty that allows for member states to be suspended when they are accused of consistent and grave violations.[48] The EU procedure is more efficient than the ECHR inter-state procedure and also proposes more dire sanctions in cases of violations.[49] Nevertheless, the ECHR inter-state procedure remains the most feasible means by which disputes between non-EU member states may be resolved.[50] The unwillingness to use the procedure may also stem from of the existence of a comparable process under Articles 41-43 of the ICCPR, which has never been invoked.[51]

Generally, it is obvious that states are unwilling to submit complaints when the matter is not of direct concern to them or when they perceive that their actions may be considered as hostile.[52] The use of the procedure is perceived as motivated by political agendas and thus tends to distort relations between states.[53] This was the case in *Ireland v UK*, where members of the Ireland Republican Army (IRA) carried out terrorist acts in the UK.[54] Due to their actions they were detained by the UK authorities.[55] The government of Ireland complained that the detention and interrogation of the members of IRA amounted to a violation of both Article 3 and 5 of the Covenant.[56] The ECHR considered this case and held that the actions of the UK authorities gave rise to inhuman treatment and was thus a violation of Article 3 of the Covenant.[57] A further weakness of the procedure is the lack of interest displayed by the larger European countries in utilising the procedure.[58] Again, this is as a result of the availability of the Article 7 of the EU treaty that allows for more stringent and immediate penalties.

By contrast to its inter-state procedure, the individual complaints procedure of the ECHR has witnessed what has been described by several authors as a 'case-overload'. This is partly as a result of the fact that the procedure is mandatory and automatic for all contracting state parties.[59] From its inception in 1959 up until 2012, the Court has had a total of 578,796 applications. A large number of cases have, however, been declared inadmissible. While only 19,106 cases were delivered by judgement during this period, 428,889 were either declared inadmissible or struck out and the total number of applications decided was 447,995.[60] It is clear from the statistics that contracting states are interested in the procedure but it is also obvious that the procedure is not as efficient as it needs to be. There remains the problem of a backlog of cases while applications to the procedure remain on the increase.

48 Consolidated Version of the Treaty on the European Union [2008] OJ C115/13, Art 7(3)
49 Alston and Goodman, p. 902.
50 Ibid.
51 International Covenant on Civil and Political Rights, Art 41-43.
52 Alston and Goodman, p. 902.
53 *Ireland v UK* (1978) 2 E.H.R.R. 25.
54 Ibid.
55 Ibid.
56 *Ireland v UK* (1978) 2 E.H.R.R. 25.
57 Ibid.
58 Alston and Goodman, p. 906.
59 Javaid Rehman, *International Human Rights Law* (Harlow: Longman, 2010) p. 221.
60 European Court of Human Rights, 'Overview 1959-2012' (2013) <http://www.echr.coe.int/Documents/Overview_19592012_ENG.pdf> [accessed 26 December 2013].

Nevertheless, unlike the ICCPR, the decision of the court is final and binding on respondent state parties.[61] This makes cases of defiance less common under the procedure. The binding nature of the decisions may also form a reason for the high level of interest displayed by state parties and therefore forms a strong mechanism for monitoring and supervising human rights protection. As individuals from contracting states continue to utilise the system, the court is able to ascertain the most problematic issues and reach decisions which will altogether prevent such violation from re-occurring.

Additionally, the follow-up procedure in the European system ensures better execution of decisions made. After a case has been declared admissible and a decision has been made by the courts on such a case, the Committee of Ministers undertake the responsibility of ensuring that the court's decision is executed.[62] Cases which have not seen the implementation of the court's decision will automatically return to the Committee's agenda for re-examination, until the required measures have been executed.[63] Also, in cases where violations are found, the court may, under Article 41 of the Convention, award the applicant 'just satisfaction'.[64]

The common complexity of both the United Nations and regional human rights treaty-based monitoring bodies presented in this paper stems from a growth in the ratification and accession of treaties without a corresponding growth in financial and human resources. This forms a major hindrance in the ability of both bodies to provide effective monitoring and complaints procedures. The suggestions embedded in the report of the UN High Commissioner for Human Rights perhaps form the most viable solutions to these complexities.[65] Amongst other proposals, the Commissioner has suggested the introduction of a limit on the length of reports expected from State parties.[66] It is expected that this proposal would encourage compliance with the reporting procedure by making the reporting process less onerous.[67] Furthermore, the commissioner proposed the webcasting of public meetings and the utilisation of new technologies so as to increase the accessibility and transparency of the treaty body system.[68] These suggestions, if carried out, may be instrumental in strengthening the complaints and monitoring systems of both the UN and regional treaty bodies.

Nevertheless, at the present time, it is clear that regional treaty bodies provide more effective monitoring and complaints procedures than the UN treaty bodies, mostly because of the legal nature of their decisions. Even so, both systems remain imperative and should be further strengthened as they indeed do play a significant role in the protection of human rights internationally.

61 Rehman, p. 219.
62 Rehman, p. 219.
63 Robin White and Clare Ovey, *The European Convention on Human Rights* (Oxford: Oxford University Press, 2010).
64 European Convention on Human Rights 1950, Art 41.
65 Pillay, pp. 10-11.
66 Pillay, pp. 10-11.
67 Pillay, pp. 10-11.
68 Pillay, pp. 10-11.

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LGBT rights in Lithuania

by Victoria Leigh

In Summer 2013 I completed an internship at *The Lithuania Tribune*. During my time there the Baltic Pride March for Equality was held in the capital Vilnius and in the run-up to the event, I interviewed Swedish Minister of European Union Affairs and prominent LGBT and human rights activist, Birgitta Ohlsson. Mrs Ohlsson, articulating her thoughts on LGBT rights in Lithuania, commented:

> *"Pride parades are a litmus test for human rights in the Europe of today, because they are facing the fundamental right on the freedom of expression, freedom of assembly, and freedom of choosing your own identity, so they are part of the package of being an EU member […] No government has the right to tell the citizens who to love, nor which identity to choose. We are marching for freedom, and equality, and we are marching for a Europe that will never, ever, accept homophobia ruling our streets."*

1. Lithuania Gay League (LGL) volunteer co-ordinator Aliona Polujanova

LGL volunteer co-ordinator Aliona Polujanova, who has been subjected to homophobic behaviour in her home country, commented: "[We posted photos of LGL members online] and one individual commented he would like to "beat" us, and if he saw us in the street we're "dead". We felt obligated to report it as a hate crime; we had to do something about it. It shouldn't be this way, and we shouldn't have to read this stuff."

2. Police on guard in Vilnius to protect Baltic Pride attendees from potential violence

Referring to the presence of homophobic protestors who came to the parade to stir up trouble, a Latvian Baltic Pride attendee commented: "It's their right to be here too. It would be hypocritical of us to be allowed to be here and they not be allowed." During the parade, these protesters tried their best to create disorder by yelling and running up and down Gediminas Avenue, while bystanders in opposition to the parade booed and spat at pride-goers.


POLICIJA

Did the post-emancipation period bring more continuity than change to the British Caribbean?

By Emma Wray

Over the course of the seventeenth and eighteenth centuries millions of African people were imported to the Caribbean to work as slaves, primarily on plantations. In 1807 the British slave trade was abolished and, decades later, on 1st August 1834, so was the British system of slavery. To assume that emancipation brought wide-reaching changes to the British Caribbean, however, is to partially absolve our country of its involvement in such a serious issue of human rights. The imperial government might have abolished slavery, but the hegemony of British colonial planters was upheld and many of the newly-emancipated continued to be dependent on plantation labour. There were, of course, some changes. With an increased consciousness, a number of ex-slaves fled from the estates, enough to have a noteworthy effect on the plantation economy. Still, colonists responded with the importation of indentured labour and the adoption of repressive legislation. This essay concludes that August 1834 neither brought the changes that ex-slaves had hoped for nor the continuity that planters had expected. After emancipation in the British Caribbean, there was a continuity of oppression, but the mechanisms of this oppression were changed.

On 1st August 1834, slavery was officially abolished across the British Caribbean; the period that followed was one of great struggle for colonists and ex-slaves alike. There has been much debate over what it meant to be free and whether emancipation was a 'revolutionary measure'.[1] The consciousness of racial inequality no doubt increased, with greater determination to meet familial aspirations by achieving economic autonomy. Yet the hegemony of the planter class was upheld and racial inequality still existed. This, in turn, meant that many ex-slaves continued to work in the plantation system. Clearly the post-emancipation period brought continuity of oppression. Planters did, however, have to contend with this increased consciousness and a reduced ability to command sufficient labour forces as many ex-slaves were able to migrate from the estates. Their methods of asserting control had to be different. This can be seen in the importation of indentured labour and the adoption of more conscious forms of coercion. The nature of oppression changed.

First and foremost, it is important to consider what emancipation represented to the enslaved. Change was certainly the expectation as previous ambitions became more realistic. One of the key tenets of the abolitionist movement had been the removal of women from plantation labour for domestic reasons.[2] Family welfare was also the chief objective of most freed people. Before emancipation, women had comprised the majority of field labour across the British Caribbean leaving little opportunity to look after family. Once liberated, many black Jamaican women withdrew to spend time at home,

1 Verene Shepherd, *I Want to Disturb My Neighbour: Lectures on Slavery, Emancipation and Postcolonial Jamaica* (Kingston: Ian Randle, 2007), p. 146.
2 Melanie Newton, 'New Ideas of Correctness: Gender, amelioration and emancipation in Barbados, 1810s-50s', *Slavery & Abolition: A Journal of Slave and Post-Slave Studies*, 21:3 (2000), 94-124 (pp. 97-98).

despite threats of eviction from houses and grounds.[3] The decision to confront, rather than succumb to, eviction threats, signifies an increased recognition of their rights and how freedom brought greater determination to fulfil familial aspirations. In her study of subaltern masculinities, Mimi Sheller contends that man's ability to provide for his family was integral to his understanding of what freedom meant.[4] This emphasis on post-emancipation gender perceptions sheds light on the importance of economic autonomy as a means to domestic stability. This was another of the ex-slaves' principal objectives. All the labourers who had been attached to the West Prospect Plantation in Jamaica, for example, deserted the estate by 1842 despite free use of provision grounds.[5] Not only did independent cultivation allow women to work in a less grueling environment, it provided freedmen with a greater degree of bargaining power. After 1838, no group was entirely dependent on wage labour; by 1861 forty thousand of the Jamaican population worked irregularly on estates.[6] The ex-slaves' ability to negotiate fewer hours during the post-emancipation years is representative of their expectation for greater economic flexibility. As idle hopes became firm possibilities, the post-emancipation period brought changes to the consciousness of racil inequality in the British Caribbean.

Nigel Bolland has emphasised the need to differentiate between emancipation as an event and emancipation as a human social condition, prompting an analysis of the reality of the period.[7] Liberation might have increased the potential for black independence, but in actuality the makeup of the pre-emancipation period was largely reflected. Prior to 1834, British colonists had been committed to a social order based on racial inequality, as they sought to advance their economic interests. Following emancipation, this outlook persisted.[8] The adoption of apprenticeship in all British islands but Antigua exemplifies this unwillingness to let go. The system, which was in place until 1st August 1838, bound all ex-slaves, with the exception of children under six, to their owners and, in the majority of cases, estate labour. Hence one can see how colonists chose to postpone the reality of freedom, continuing their racial domination.[9] The fact that many children were liberated, 14,047 in Barbados for example, almost seems inconsequential, as they too were bound to the plantations through their parents.[10] Greater pressure was therefore placed on the parents, especially as planters often withdrew food allowances from children who did

3 Bridget Brereton, 'Family Strategies, Gender and the Shift to Wage Labor in the British Caribbean', in *Gender and Slave Emancipation in the Atlantic World*, ed. by Pamela Scully and Diana Paton (Durham, N.C.: Duke University Press, 2005), pp. 143-161 (pp. 149-151).
4 Mimi Sheller, 'Acting as Free Men: Subaltern Masculinities and Citizenship in Postslavery Jamaica', in *Gender and Slave Emancipation in the Atlantic World*, ed. by Pamela Scully and Diana Paton (Durham, N.C.: Duke University Press, 2005), pp. 79-98 (p. 87).
5 Kathleen Monteith, 'Emancipation and Labour on Jamaican Coffee Plantations, 1838-1848', *Slavery & Abolition: A Journal of Slave and Post-Slave Studies*, 21:3 (2000), 125-135 (p. 129).
6 Douglas Hall, *Free Jamaica, 1838-1865: An Economic History* (New Haven: Yale University Press, 1959), p. 158; Nigel Bolland, 'Systems of Domination after Slavery: The Control of Land and Labour in the British West Indies after 1838', in *Caribbean Freedom: Society and Economy from Emancipation to the Present*, ed. by Hilary Beckles and Verene Shepherd (Kingston: Ian Randle, 1993), pp. 107-123 (p. 111).
7 Bolland, p. 107.
8 Christer Petley, 'Slavery, Emancipation and the Creole World View of Jamaican Colonists, 1800-1834', *Slavery & Abolition: A Journal of Slave and Post-Slave Studies*, 26:1 (2005), 93-114 (p. 94).
9 Shepherd, p. 140.
10 Laurence Brown and Tara Inniss, 'The Slave Family in the Transition to Freedom', *Slavery & Abolition: A Journal of Slave and Post-Slave Studies*, 26:2 (2005), 257-269 (p. 259).

not work, causing widespread child malnutrition.[11] The basic human rights of black Caribbean children continued to be unrecognised after their emancipation, demonstrating how the planters' perspectives had not changed. This attitude, that black Caribbean people were still 'their' labour, persisted after the apprenticeship period. Planters introduced a plethora of rules and regulations to retain their control, for instance contracts to prevent ex-slaves from taking days off, even with valid reasons, else they risked losing a day's wages.[12] Unmoving planter attitudes evidently clashed with the expections of black Caribbean people of flexibility. The imperial government might have abolished slavery and repealed apprenticeship, but the hegemony of British colonial planters was upheld. Conceptions of race were still the basis of social order.

The continued presence of ex-slaves in estate labour reinforces this contention that black Caribbean people were still dominated by white colonists after emancipation. On British islands like Barbados, St Kitts and Antigua, sugar estates monopolised virtually every inch of land. This left recently liberated field slaves with little option but to remain on plantations, as without land of their own they were unable to establish an independent means of income.[13] Many ex-slaves therefore remained dependent on their previous owners. Authority existed on a practical as well as a psychological level. Women as a key component of the labour force, help to highlight this continuity of oppression. A census in 1851 in Grenada shows that over half the island's estate labourers were still female.[14] This was in spite of abolitionist notions surrounding the morality of female work, portraying how their perceived vulnerability was immaterial. Many women needed the fields to maintain their own, and their family's, livelihoods. It is important to note that there were of course differences between islands. In colonies such as Jamaica, Trinidad and British Guiana, where sugar estates did not dominate to the same extent, black Carribean people had greater options following emancipation.[15] Yet this does not mean to say that plantation owners completely lost their power. There appears to have been no mass exodus from Jamaican coffee plantations after 1st August 1838. The 1839 Stipendiary Magistrate Grant reported that it looked 'forward to the cheering prospect of augmented agricultural prosperity'.[16] This shows a continued conviction that the labour of black people was a means of economic development and, in turn, how ex-slaves continued to be exploited on estates. That many of the emancipated did not immediately escape from plantation labour reflects how they were still at the bottom of the economic and social pile. Consequently freed slaves continued to be oppressed.

As alluded to above, not all slaves stayed on the estates after liberation. This fact provides a useful transition into discussions surrounding the meaning of emancipation to the planters. They wanted complete economic continuity but were faced with significant changes. On islands like Jamaica, where more land and more options were available, ex-slaves looked for employment elsewhere. Many migrated to towns, yet the majority acquired independent farmland. The number of freeholds in Jamaica rose from 2,000 in 1838 to 50,000 in 1861; there came to be more peasant properties than estate labourers.[17] Although oppression had continued, one can see that emancipation still had vast implications on estates' economies. Given the opportunity, ex-slaves fulfilled

11 Brown and Inniss, p. 260.
12 Bolland, p. 107.
13 Bolland, p. 110.
14 Brereton, p. 147.
15 Bolland, p. 110.
16 Monteith, pp. 126-127.
17 Shepherd, p. 148.

ambitions to be independent from plantation life. Even in Barbados, where there was almost no land available for small-scale farming, some of the emancipated found means of departure. From 1838 to 1841 it is estimated that between 3,000-4,000 ex-slaves migrated to British Guiana or Trinidad.[18] This may not have been a remarkable amount when one considers that 30,000 were still employed in Barbadian agriculture in 1844, yet one can see that after August 1838 the labour force had altered. In 1848 in Trinidad only 19% of the labour force they had in 1838 could be commanded, showing how these migrations weakened planters' economic control. [19]The Parliamentary Select Committee of 1842 recorded a 'great diminution of the staple production… to such an extent as to have caused serious, and, in some cases, ruinous injury to the proprietors'.[20] This exemplifies the struggle that white colonists faced, as they endeavoured to secure sufficient labourers for profitable sugar production. Oppression may have persisted across the British Caribbean, but the aspirations of freedmen also introduced notable socio-economic changes.

To address such changes, Caribbean colonists asserted their authority using alternative methods. In an effort to conciliate economic concerns, the British government approved the importation of indentured labourers from other areas of the Empire, most notably India. The first boatload was brought across in 1838 and by 1917, 238,909 Indians had been transported to British Guiana and 143,939 to Trinidad; this is compared with 36,463 and 20,657 between 1726 and 1800 respectively. The plantation systems in both countries expanded as a result.[21] Although the slave trade had been remarkably less prevalent on these islands than in other areas of the British Caribbean, this increase in importation after emancipation seems to emphasise how planters found new ways to exploit colonial subjects for their economic benefit. Indentured labourers, in exchange for a free passage to America, were placed under contract to work for a specified time. The extent to which indentured Indian labour was similar to slavery is an issue that has been heavily debated by historians. Douglas Hall has contended that there is no reason to suggest that indentured servitude was imposed upon people there. Yet his evidence - the personal interest and watchfulness of Lord Elgin and Charles Darling - is weak.[22] Elgin was only governor of Jamaica from 1842 to 1846 and Darling was only agent-general for immigration from 1843 to 1847. Contemporaries in the British Anti-Slavery Society made accusations that a form of 'neo-slavery' had been instituted; in several cases treatment was so cruel it warranted investigation.[23] When embracing this notion one risks overlooking the relative flexibility of indentured labour but the term does shed light upon its still oppressive nature, as ignored by Hall. Indian workers were usually contracted for five years so, whilst they were not attached to an owner, they often found themselves attached to an estate. Categorised as 'coolies' despite being of varying backgrounds

18 Newton, p. 107.
19 Bolland, pp. 110-111.
20 The Parliamentary Select Committee, 1842 cited in Richard Lobdell, 'British Officials and the West Indian Peasantry, 1842-1938', in *Labour in the Caribbean: From Emancipation to Independence*, ed. by M. Cross and G. Heuman (London: Macmillan Caribbean, 1988), pp. 195-207 (p. 196).
21 Shepherd, p. 151; 'Estimates Database', *Voyages: The Trans-Atlantic Slave Trade Database*, (2010), <http://slavevoyages.org/tast/assessment/estimates.faces?yearFrom=1501&yearTo=1866> [accessed 16 November 2013].
22 Hall, p. 54.
23 B. Richardson, 'Caribbean Migrations, 1838-1985', in *The Modern Caribbean*, ed. by F. W. Knight and C. A. Palmer (Chapel Hill: University of North Carolina Press, 1989), pp. 203-228 (p. 208).

planters also marginalised Indian identities.[24] Once more, it is shown that oppression continued in to the post-emancipation period. Yet given the shifting demographics, it is clear that the mechanisms of oppression had changed.

Planters utilised these new systems to retain control of the labour of black people. The policy of importation not only represented power over the 'coolies' but the recently emancipated as well. By 1895, Indians made up 87% of the Trinidadian labour force. This introduced greater competition for jobs to the detriment of the ex-slaves, as the cost of indentured labour undercut the demands of black estate labourers. Many freedmen were subsequently forced to work for less.[25] The consequences of importation for the economic flexibility of the emancipated reveal how planters began to attack their new aspirations as a means of control. Brown and Innis have contended that legal freedom was marked with severe physical hardship, reinforcing this view that ex-slaves continued to struggle, but on a different level.[26] Colonists also coerced ex-slaves into working on the estates by impeding the development of a pesantry consisting predominantly of black and asian peoples. By assuming the role of both employer and landlord, planters could demand that labourers work longer hours under the threat of eviction, giving them less time to tend to their provision grounds.[27] In its report on the exodus of ex-slaves from estates, the Parliamentary Select Committee urged that 'laws be enacted against vagrancy and squatting'.[28] Colonists hence refused to sell crown and marginal estate land; land transactions were taxed and squatting forbidden, making it harder for the emancipated to establish an independent economy.[29] This was not limited to the rural population. In 1836, an act was passed to regulate the sale of goods, wares and merchandise, victimising the increased number of female hucksters, or street sellers, in urban areas.[30] By hindering migration, planters suppressed ex-slave ambitions for economic autonomy. This repressive legislation is demonstrative of a more conscious form of oppression; prior to emancipation there had been little need to coerce slaves into working.

On reflection, it is clear that the post-emancipation period brought both continuity and change to the British Caribbean. The liberation of the slaves gave black Caribean people an increased consciousness and hence greater expectations in terms of their domestic and economic autonomy. Yet the emancipated continued to be oppressed. At the bottom of the social hierarchy, many black Caribbean people remained subject to the authority of colonial planters, first through apprenticeship and later through their own economic dependence on the estates. Aspirations were difficult to achieve. The same can be said however for the planters. The freed people's desire for independence meant significant numbers migrated from the plantations, introducing problems when commanding labour. To maintain profits, systems of planter control had to be altered. The importation of indentured labour and the institution of repressive legislation exemplify how they found new people and new ways to oppress. It can therefore be concluded that August 1834 neither brought the changes that ex-slaves had hoped for, nor the continuity that planters had expected. After emancipation in the British Caribbean there was a continuity of oppression but the mechanisms of this oppression were changed.

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24 Richardson, p. 208.
25 Shepherd, pp. 149-151.
26 Brown and Innis, p. 266.
27 Bolland, p. 109.
28 The Parliamentary Select Committee, 1842, cited in Lobdell, p. 198.
29 Shepherd, p. 148.
30 Newton, p. 109.

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The experience of unaccompanied refugee minors in Mayotte

By Harvey Coleman

Mayotte is an overseas département of France situated between East Africa and Madagascar. Due to its administrative status and geopolitical position in the Indian Ocean, it has become somewhat of a beacon in the area for migrants and asylum seekers. This article focuses on the experiences of unaccompanied minors aided by Solidarité Mayotte, an organisation specialising in helping young asylum seekers who are left on Mayotte without a legal guardian. Particular focus is given to the day-to-day experiences of these young people, specifically their education and housing situation, and the French state's failure to adequately provide for them, denying them their rights as child asylum seekers without legal guardians.

In 2011 Mayotte became the 101st *département* of the French Republic following a 2009 referendum, that passed by a 95% vote.[1] This marked a further separation between Mayotte and the rest of the Comorian archipelago, following the original administrative rupture when Mayotte voted against independence from France in 1974, while the other three islands voted in favour of the motion. However, France's presence in Mayotte is not recognised by the United Nations (UN), the African Union or the Arab League.[2] In spite of the numerous referenda held in the archipelago during the 1970s, it has remained a French territory in its entirety. Many Comorians wish to benefit from the economic advantages that are perceived to exist in Mayotte. Thousands illegally cross the 70 kilometres of ocean between Anjouan and Mayotte each year, travelling in *kwassas* (the fishing boats used by the people smugglers) to find a better quality of life. This passage was made legally for centuries until the French government introduced the *Visa Balladur* in 1995, effectively ending legal migration between the islands.[3]

Since 2004 there has been a marked increase in asylum seekers from the Great Lakes region arriving in Mayotte in the same *kwassas*. In 2010 there were 1,800 asylum seekers, barely 1% of the islands' population of around 210,000. They form part of Mayotte's large 'foreign' population of 100,000, 60,000 of which are thought to be *sans papiers* (illegal immigrants).[4] As can often be the case when fleeing persecution in one's country, there are frequently minors who arrive in Mayotte without a legal guardian. Mostly for Comorian children this is due to the 'non-declaration' of the parent travelling with them. The parents are deported, preferring - and hoping - to leave their children with a sister, uncle or neighbour. This was the cause for 87% of the unaccompanied minors present in Mayotte

1 Malango Actualité, 'Départementalisation de Mayotte : le « oui » l'emporte à 95%', *Malango Actualité*, 30 March 2009. <http://www.malango-actualite.fr/article/departementalisation_de_mayotte%C2%A0_le_%C2%A0oui%C2%A0_l_emporte_a_95_-4949.htm> [accessed 7 April 2013].

2 Christophe Boisbouvier, 'Mayotte dit oui, Moroni dit non', *Jeune Afrique*, 7 April 2009. <http://www.jeuneafrique.com/Article/ARTJAJA2517p031.xml0/> [accessed 7 April 2013].

3 Antoine Math, 'Mayotte, terre d'émigration massive', *Plein droit*, 96 (2013) <http://www.gisti.org/spip.php?article3047> [accessed 7 April 2013].

4 Thibaut Lemière, 'Mayotte, terre d'asile ou prison d'exil?', Agoravox (2013) <http://www.tama-mayotte.com/sites/default/files/revuepresse/2012.08.07_mayotte_terre_dasile_ou_prison_dexil_agoravox.pdf> [accessed 7 April 2013].

in 2011 (2,922 in total).[5]

This article focuses on the experiences of unaccompanied children who arrive in Mayotte from mainland Africa seeking asylum. A 2010 European Commission report states that the UN Convention on the Rights of the Child should be 'at the heart of any action concerning unaccompanied minors.'[6] Article 22 of the latter states that minors seeking asylum, whether or not they are accompanied by a legal guardian, must

> receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.[7]

This sentiment was at the heart of the Commission's 2010 action plan on unaccompanied minors across Europe, which sought to bring into focus 'the issue of unaccompanied minors who arrive in Europe: [with] each decision affecting a minor's future [needing to] be taken with the best interests of the child at heart, regardless of his migratory status.'[8]

The research that forms the basis of this article documents the experiences of the young asylum seekers received by Solidarité Mayotte – the only organisation on the island specialising in support for asylum seekers. The charity is the first port of call for the majority of non-Comorian asylum seekers when they arrive in Mayotte. For unaccompanied minors seeking asylum, Solidarité Mayotte acts as the legal representative of the minor throughout the administrative and legal procedures that are involved in an asylum claim, as well as providing material assistance.[9]

The majority of the asylum seekers I spoke to were Congolese (Democratic Republic of Congo), in the most part from the Kivu region in the east of the country. I spoke to them about their experiences in Mayotte and the problems that they faced in day-to-day life. Although their exact migratory journeys differed, all of those I spoke to had passed through Tanzania and the Comoros on their way to Mayotte. There was a great variation in the length of their journey had taken from their home country to Mayotte , ranging from four months, to eight years.[10] Unfortunately, having fled danger in their country, they remain in a vulnerable position after their arrival.

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5 David Guiyot, 'Les mineurs isolés à Mayotte: Contribution à l'Observatoire des Mineurs Isolés,' *l'Observatoire des Mineurs Isolés* (January 2012). <http://www.infomie.net/IMG/pdf/rapport-MIE-mayotte-2012-03.pdf>, p. 43.

6 European Commission, 'Communication from the Commission to the European Parliament and the Council: Action Plan on Unaccompanied Minors (2010 – 2014)', 6 May 2010 < http://ec.europa.eu/anti-trafficking/EU+Policy/Action_Plan_Unaccompanied_Minors_2010_2014 > [accessed 8 March 2014].

7 UNHCR, 'Convention on the Rights of the Child', 20 November 1989 < http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx > [accessed 8 March 2014].

8 European Commission, 'Asylum and migration: EU must do more to protect unaccompanied children', 28 September 2012 <http://europa.eu/rapid/press-release_IP-12-1033en.htm?locale=en > [accessed 8 March 2014].

9 Solidarité Mayotte, 'Bilan de l'accompagnement des mineurs isolés étrangers demandeurs d'asile au cours de l'année 2012', *Solidarité Mayotte*, 2012.

10 A.H. Coleman, 'L'expérience des mineurs isolés étrangers demandeurs d'asile à Mayotte' (unpublished undergraduate study, University of Leeds, 2013).

Education

In 2005, the UN noted the importance of education to unaccompanied refugee minors in providing a 'sense of normality'[11], yet access to education can be difficult in Mayotte for this group. In spite of the French law declaring school to be obligatory for all children up to the age of 17, in some parts of the island some unaccompanied minors have been refused education due to the absence of a legal guardian or birth certificate.[12] In spite of this, almost all the youths I spoke to were in education, with the exception of one young man. Having not been able to take the admission exam before his 17th birthday, he was unable to attend *lycée* (6th form college). Furthermore, as an asylum seeker, he has neither the right to work nor to an apprenticeship.[13]

For those who are able to go to school, they encounter difficulties in integrating into the education system. Returning to education is a difficult transition especially following a long absence – in one case this was an absence of three years.[14] In addition, they must adapt to an alien education system, which was a frequent complaint of those I spoke to. For some their level of French can be an obstacle. The *Maison des Etudes* (House of Study) at Solidarité Mayotte offers 'catch up' classes for those with language difficulties. Of the 29 young refugees that were received by the organisation in 2012, 11 took advantage of these classes.[15]

There is also the issue of getting to school. On average, the journey to school for the young refugees I spoke too took an hour and twenty minutes. The majority had to travel to *lycée* on Petite-Terre - the smaller of the two islands that constitute Mayotte – due to the lack of school places on the island.[16] This, combined with Mayotte's lack of public transport, makes for a long journey. Fortunately, after having taken the ferry from Mamoudzou (Mayotte's capital on Grande Terre, the main island) to Petite-Terre, the students can take a school bus.

At school the young asylum seekers study with mostly Mahoran and Comorian students. Unfortunately it is within this context that some have faced discrimination. One boy told me,

> "One day I was leaving school when I ran into a group of teenagers (Mahoran and *anjouanais*, from Anjouan, one of the Comorian islands) who wanted to beat me up because I was African"

This offers a snapshot of Mayotte's complex racial politics. This can take the form of Mahorans demonstrating against '*anjouanais* delinquency'[17] or the occasional tension between the various migrant communities. They are however mostly united in one aspect:

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11 UNHCR, 'Assistance to unaccompanied refugee minors: Report of the Secretary General', 24 August 2005 < http://www.unhcr.org/43bce4782.html> [accessed 19 January 2014] p.11.
12 Florence Raynal, 'Mineurs isolés à Mayotte : une situation explosive', *Actualités Sociales Hébdomadaires*, 30 November 2012, p.28.
13 Coleman.
14 Coleman.
15 Solidarité Mayotte.
16 Raynal , p.28.
17 Anon., 'Clandestins et délinquance : l'amalgame des associations', *Mayotte Hebdo*, 18 December 2012 <http://www.mayottehebdo.com/index.php?option=com_content&view=article&id=10734:clandestins-et-delinquance-lamalgame-des-associations&catid=72:societe&Itemid=72> [accessed 7 April 2013].

in Mayotte, 92% of the population lives below the poverty line set by the standards of metropolitan France, and yet the cost of living is markedly higher.[18]

Housing

In mainland France, the state provides both accommodation and benefits for asylum seekers while their claim is processed. However neither of these is available to asylum seekers in Mayotte. Also, the shortage of foster families only adds to the insecurity that the young refugees face. Social workers try to find adults from the child's community who can take them in, but this is not always possible.[19]

Fig. 1 Typical living conditions for young asylum seekers in Mayotte. Left: A typical banga. Right: Water access is most often communal and outside. (Photos courtesy of Solidarité Mayotte)

All the minors that I spoke to were living in *bangas*. Originally, the term referred to the traditional hut that adolescent Mahoran boys would move into upon leaving the family home, but is now also used to refer to the shacks made of cloth and corrugated iron that make up the shanty towns found across the island, in particular around Mamoudzou.[20] The young refugees that I spoke to were paying 57 euros per month in rent (including bills, 140 euros) to *marchands de sommeil* (landlords who charge high rent for very poor accommodation) for a single room, which is often shared. The toilets and access to water are outside and the muddy paths leading to the *banga* become dangerous during the rainy season.

As in mainland France, every unaccompanied minor must be under the responsibility of the ASE (*Aide Sociale à l'Enfance*, the government agency in charge of children),[20] however this was only the case for 12 of the 29 unaccompanied minors received by Solidarité Mayotte in 2012. Therefore the organisation assumed responsibility for these young people, giving them money monthly for rent and bills, in addition to a weekly food

18 Math.
19 Raynal, p.26.
20 Guiyot, p.6.

parcel.[21] However, in February 2013, the state stopped providing Solidarité Mayotte with the funding for this programme, with the ASE set to assume this responsibility.[22] However, as of May 2013, this had still not taken place and the young refugees that I spoke to are greatly worried about this issue, unsure how they will pay their rent. The administration of asylum in Mayotte trails far behind that of metropolitan France, particularly in regards to unaccompanied minors. Without state support, these young refugees are living 'from hand to mouth.'[23] Indeed, the ASE fiasco aside, the most frequent complaint was not having enough money to even buy soap.

A 2012 European Commission report on the situation of unaccompanied children in the EU stated that much work remains to be done across the EU in dealing with this persisting phenomenon.[24] The solution lies in a commitment by all governments to their obligations in regards to unaccompanied minors seeking asylum, as laid out in the UN Convention on the Rights of the Child. There is hope in the form of the recently implemented Common European Asylum System, which seeks to improve the situation of asylum seekers across the EU.[25] Whether the new system's objectives will be felt in Mayotte in light of its 2014 accession to the EU status of ultra-peripheral region, a significant step on the long road to *départementalisation*, remains to be seen. Given the minimal attention given to the situation in Mayotte by both the French media[26] and the French government,[27] we must hope that sufficient attention will be paid to this important issue on the island.

The UN proclaimed in 2005 that the obligations of the Convention on the Rights of the Child must be applied equally across the state, without excluding certain zones or regions.[28] This governmental failure forms only part of the wider debate on the *départementalisation* of Mayotte. Was the island ready? Some claim that the Mahoran politicians 'mis-sold' the status change to the voters.[29] Though, while the debate continues, so too does the suffering.

21 Coleman.
22 Coleman.
23 Raynal, p.27.
24 European Commission, September 2012.
25 Cecilia Malmström, 'EU puts common asylum system in place', 12 June 2013 < http://ec.europa.eu/commission_2010-2014/malmstrom/news/archives/2013/06/20130612_en.htm> [accessed 8 March 2014].
26 Math.
27 Madi Abdou N'Tro, *Mayotte, le 101e département français. Et après?* (Paris: L'Harmattan, 2011).
28 Committee on the Rights of the Child (UN), 'General Comment No. 6' (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin', *United Nations*, 1 September 2005, p.6.
29 Abdou N'Tro.

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The right to a life without starvation

by Dawn Stevenson

This piece depicts a starving woman and her child in Bangladesh during the famine of 1974 and is based on an original photograph by acclaimed war photographer Don McCullin. I felt that the raw emotions captured convey the desperate situation of hunger and starvation that millions around the world face. This is in contradiction to the existence of the right to food, derived from the International Convention on Economic, Social and Cultural Rights. I used graphite and white chalk on paper to create a texture that I believe highlights the tormented pain of the mother and child. Through this presentation, I hoped to depict the urgency of addressing challenges that stand in the way of fulfilling this fundamental human right.

China's 'return' to Africa: a critical evaluation of contemporary Sino-African relations in regards to human rights

By Amy Jaffa

A recent growth in Chinese investment in Africa has been subject to extensive international scrutiny in relation to its impact on the human rights of African citizens. This paper assesses contemporary Sino-African relations in terms of their effect on both the individualist, civil and political rights emphasised in the West, and the collectivist, economic rights prioritised in China. It is argued that an understanding of African politics suggests that Sino-African involvement is not conducive to either Western or Chinese interpretations of human rights. Examined from a Western perspective, Chinese investment bolsters pariah states with 'no-strings-attached' financial support. Additionally, Chinese companies operating within Africa have been known to treat their workers in an exploitative fashion. In terms of the Chinese understanding of human rights, a contradiction is identified between the assertion that economic growth is an essential pre-condition to other forms of rights, and the emphasis placed on non-interference. Chinese investments are unlikely to achieve economic benefit for the entire population as pervasive neopatrimonial politics mean that financial gain is not invested in the development of services for the general populace. Furthermore, the paramount observance of national sovereignty results in an inability to exert influence over how financial support is used. It is thus concluded that current Sino-African investments can be deemed to have a negative impact on the human rights of African citizens, whether understood in line with Western or Chinese interpretations.

There has been a 'long-standing' engagement between China and the African continent.[1] The first manifestations emerged as early as 1416, when Chinese explorers sailed to Africa during the Ming Dynasty in search of new opportunities for trade.[2] Chinese families began emigrating to Africa in the 1820s and a Chinese consulate opened in Johannesburg in 1897.[3] However it was not until the end of the 20th century that China began investing heavily in the African continent, spurred by a desire for 'solidarity with the Third World' against global hegemonic powers.[4] China's economic investments and trade agreements have subsequently been labelled 'the most important developments for Africa since the end of the Cold War'.[5] In 2000, China became the continent's third largest trading partner and 48 African leaders attended the first Forum on China-Africa cooperation.[6] This contemporary period of African relations has been referred to as

1 Ian Taylor, *China's New Role in Africa* (London: Lynne Rienner Publishers, Inc, 2009), p. 2.
2 Ian Taylor, *China and Africa: Engagement and Compromise* (Oxon: Routledge, 2006), p. 16.; Deborah Brautigam, *The Dragon's Gift* (Oxford: Oxford University Press, 2009), p. 23.
3 Brautigam, p. 310.; Taylor, *China and Africa: Engagement and Compromise*, p. 16
4 Derek Mitchell, 'China and the Developing World', *Centre for Strategic and International Studies* (2007), pp. 109-131, (p. 109).
5 Alex Vines, 'China in Africa: A Mixed Blessing?', *Current History: A journal of Contemporary World Affairs*, 106 (2007), pp. 213-219 (p. 214).
6 Ian Taylor, 'Sino-African Relations and the Problem of Human Rights', *African Affairs*, 107 (2007), pp. 63- 87 (p. 63); Vines ,p. 213.

'the age of the dragon in Africa' and 2006 was labelled the Chinese 'year of Africa'.[7] Differences between Chinese and Western styles of involvement in Africa have been the subject of much discussion, particularly pertaining to their impact on the human rights of African citizens.[8] As stated by Weatherley, in the view of many western governments and non-governmental organisations 'the words 'China', 'human rights' and 'abuses' have become synonymous'.[9] This paper will focus on the impact of China's return to Africa on the human rights of African citizens.

The United Nations (UN) defines human rights as the 'universal legal guarantees protecting individuals and groups against actions which interfere with fundamental freedoms and human dignity' and indicates thirty articles concerning key areas.[10] However, the very notion of these human rights is 'essentially a contested concept by Beijing and the West'.[11] China's response to criticism surrounding its human rights records is that different nations have reached different stages of development and have differing historical and cultural backgrounds, thus necessitating 'different understanding[s] and practice[s] of human rights'.[12] Whilst the western model of human rights places emphasis on individualist, civil and political rights, the Chinese interpretation prioritises subsistence rights, such as the right to 'food, clothing, shelter, economic development and security'.[13]

Beijing's argument is that these basic socio-economic rights of material and economic wealth 'are more important for the poor than abstract political rights' and should thus be considered as a fundamental precondition.[14]

This paper will argue that Chinese involvement has had a significantly negative impact on the human rights of African citizens, whether those human rights are the individualist, civil and political rights as conceived along the Western model, or collectivist, economic rights as emphasised by the Chinese. Both models of human rights will be analysed, with the use of a Sino-Zimbabwean case study to assess the significance of the negative impact on Western style human rights, and the example of Chinese involvement in Angola to illustrate fundamental weaknesses and contradictions within the Chinese human rights discourse. These two nations, which both have high levels of Chinese involvement and questionable human rights records are in no way unique; alternative examples will be cited such as the Democratic Republic of Congo (DRC), Zambia, and Nigeria.

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7 Christopher Alden, Daniel Large, and Ricardo Soares de Oliveira, China Returns to Africa: A Rising Power and a Continent Embrace (New York: Columbia University Press, 2008), p. 2.
8 Chris McGreal, 'Chinese Aid to Africa May Do More Harm Than Good, Warns Benn', *Guardian*, 8 February 2007; Ana Maria Gomes, *IQ2 Debates: Africa Needs Accountability and Empowerment of Civil Society* (2011), <http://www.youtube.com/watch?v=39KJMLd6_3Q> [accessed 01 April 2013]; Taylor, 'Sino-African Relations and the Problem of Human Rights', p. 64.
9 Robert Weatherley, *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (Basingstoke: Palgrave, 1999), p. 1.
10 United Nations, *The Universal Declaration of Human Rights* (2012). <http://www.un.org/en/documents/udhr/> [Accessed 01 May 2013]; United Nations, H*uman Rights and Prisons: Trainer's Guide on Human Rights Training for Prison Officials*, (Geneva: United Nations Publications, 2005), p. 29.
11 Taylor, 'Sino-African Relations and the Problem of Human Rights', p. 65.
12 James Tuck Hong Tang, *Human Rights and International Relations in The Asia-Pacific Region*, (London: Pinter, 1995), p. 214.
13 Daniel Burnstein and Arne de Keijzer, *Big Dragon: The Future of China: What it Means for Business, the Economy and the Global Order*. (New York: Touchstone, 1999), p. 136.
14 Michael Powles, 'Perspective on Human Rights in China', *New Zealand International Review*, 36(2) (2011) pp. 2-5.

The Western interpretation of human rights focuses on the importance of 'individual freedom'.[15] These include civil-political rights and socio-economic rights. Civil-political rights incorporate the right not to be enslaved or tortured, the right to vote, and freedom of 'movement, speech, conscience, religion, assembly, and association'.[16] Socio-economic rights emphasised by the West include the right to education and adequate working conditions. There has been much criticism of China's impact on these rights, particularly in Western and African media. According to the Ghanaian newspaper *Public Agenda*, China is 'sacrificing human rights protection for natural resources'.[17] A press officer for Amnesty International stated that China is 'putting its economic and trading interests ahead of concern for human rights'.[18] The *East African Business Week* published that China has a 'total disregard for the issue of human rights and accountability' and Human Rights Watch (HRW) stated that China's policies 'weakened the leverage of others trying to promote greater respect for human rights'.[19]

The impact of Chinese involvement on civil-political and socio-economic rights is criticised due to its support for regimes with little respect for human rights, and the poor human rights records in Chinese-run industries in Africa. Firstly China provides economic, political, and military support for various pariah states in which there are no fair voting systems, freedom of speech or protection from acts of brutality. Indeed, many of such acts are carried out on the command of the leaders themselves. Whilst aid from the Bretton Woods International Financial Institutions is conditional on the implementation of neoliberal reforms, Chinese assistance prioritises the respect for national sovereignty and 'non-interference in national political processes'.[20] This 'no-strings-attached' support provides a means of avoidance of Western conditions, including democracy programmes and human rights targets.[21] Thus many consider Chinese involvement to be detrimental, for its role in reducing the efficacy of international pressure for good governance and transparency.[22] This bolstering of autocratic regimes by Chinese investors also undermines African movements for democratisation and constitutional rights. For example, Chinese support is provided for leaders reluctant to cooperate with the governance goals of the New Partnership for Africa's Development,[23] such as Joseph Kabila in the DRC. With Chinese backing there is little incentive to improve governance. Moreover, there is evidence of Chinese weaponry being used directly against African citizens. Chinese weapons and ammunition are 'plentiful in Africa', and are sold without 'political, human rights, or humanitarian conditions'.[24]

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15 Taylor, 'Sino-African Relations and the Problem of Human Rights', p. 67.
16 Weatherley, p. 67.
17 Amos Safo, 'Africa: China's New Scramble for Africa, it is a Fact of Life, Says President Kufuor' Public Agenda, 6 November 2006 <http://allafrica.com/stories/200611061575.html> [accessed 28 April 2013].
18 Integrated Regional Information Networks. Africa: China and Africa- *For Better or For Worse* (2006) <http://www.irinnews.org/printreport.aspx?reportid=59480> [Accessed 20 April 2013].
19 Taylor, 'Sino-African Relations and the Problem of Human Rights', p.64Human Rights Watch, *China-Africa Summit: Focus on Human Rights, Not just Trade* (2006) <http://www.hrw.org/news/2006/11/01/china-africa-summit-focus-human-rights-not-just-trade> [accessed 03 May 2013].
20 Marcus Power, 'Angola 2025: The Future of the 'World's Richest Poor Country' as Seen through a Chinese Rear-View Mirror', *Antipose*, 44(3) (2012), pp. 993-1014 (p. 994).
21 Vines, p. 215.
22 Renato Aguilar and Andrea Goldstein, *The Chinisation of Africa: The Case of Angola* (Oxford: Blackwell Publishing Ltd, 2009), p. 1558.
23 Taylor, 'Sino-African Relations and the Problem of Human Rights', p. 73
24 Vines, p. 216.

Secondly, Chinese investors are criticised for their lack of labour regulation and the poor working conditions for Africans working for Chinese enterprises.[25] Unsafe working conditions in Chinese owned mines in Zambia have led to the deaths of many workers (there were 71 reported deaths in 2005) and protests about 'low wages, unsafe working conditions, and the employment of Chinese instead of locals'.[26] Similar problems are apparent in Sudan, Nigeria and Angola.[27]

In the proceeding section, the Chinese impact on human rights as understood in the West will be assessed through an in-depth case study of Zimbabwe. China has maintained 'close ties' with President Mugabe since before his first election in 1980; a period during which he has received much criticism with regards to his human rights record.[28] China provides Zimbabwe with 'diplomatic support, economic and trade deals, and close military ties' as well as direct financial assistance.[29] Faced with international sanctions, a weak economy and a dislike for western conditional aid, the 'no-strings-attached' support of the Chinese has been extremely important to Mugabe.

Mugabe's party, the Zimbabwean African National Union- Patriotic Front (ZANU-PF), breaches a range of human rights articles on a regular basis. Contrary to Article 23 of the Universal Declaration of Human Rights (UDHR), most Zimbabweans have 'low working conditions and low wages'.[30] Additionally, articles 7, 8, 13, and 17 have been violated through Mugabe's land reform programme.[31] However, ZANU-PF violations of human rights are most evident when considering Mugabe's strategies for the maintenance of power. Kriger examined the Zimbabwean general elections of 1980-2000, and found reoccurring patterns of 'coercive mechanisms' of repression.[32] ZANU-PF mobilized groups to go door-to-door, violently attacking and threatening opposition supporters.[33] Kriger estimated that in the first half of the year 2000, there were 'over 200,000 incidents of political violence'.[34] Violence has been systematically present 'before, during, and after elections'.[35] One ZANU-PF candidate, Olivia Muchena, 'urged her supporters to kill'

25 Vines, p. 216.
26 Vines, p. 216.
27 Mitchell, p. 124; Olukoya Ogen, Contemporary China-Nigeria Economic Relations: Chinese Imperialism or South-South Mutual Partnership?, *China Aktuell*, 37(3) (2008) pp. 77-101; Ineke Keers and Bartjan Pennink, 'Chinese Economic Activities in Sub Saharan Africa: A Substitute for Europe?' *The South East Asian Journal of Management*, 4(2) (2010), pp. 111-141.
28 Joshua Eisenman 'Zimbabwe: China's African Ally', *China Brief*, 5(15) (2005), pp. 9-11 (p. 9)
29 Ibid, p. 9; Olly Owen and Chris Melville, 'China and Africa: a New Era of 'South-South Cooperation'. *Open Democracy*, (2005) <http://www.opendemocracy.net/globalization-africa_democracy/south_2658.jsp> [Accessed 01 May 2013].
30 Amnesty International, *Amnesty International Report 2009; State of the World's Human Rights: Zimbabwe* (2009) <http://report2009.amnesty.org/en/regions/africa/zimbabwe> [Accessed 01 May 2013].
31 David Smith, 'Mugabe and Allies Own 40% of Land Seized From White Farmers- Inquiry' *The Guardian*, 30 November 2010, <http://www.guardian.co.uk/world/2010/nov/30/zimbabwe-mugabe-white-farmers> [Accessed 02 May 2013].
32 Norma Kriger, 'ZANU (PF) Strategies in General Elections, 1980-2000: Discourse and Coercion' *African Affairs*, 104(414) (2005), pp. 1-34 (p. 31).
33 Eldred Masunungure, 'Zimbabwe's militarized electoral authoritarianism' *Journal of International Affairs* (2011), 65(1), pp. 47-64 (p. 56).
34 Kriger, p. 29.
35 Michael Bratton and Eldred Masunungure, 'Zimbabwe's long agony', Journal of Democracy 19(4) (2008) pp. 41-55.

opposition supporters.[36] Mugabe himself threatened those causing disunity with death.[37] The main perpetrators of violence are groups of unemployed youth and war veteran militias, provided with money, food and support by ZANU-PF politicians, the army, and the police'.[38]

Clearly, ZANU-PF resources are used to breach many human rights in order to maintain power during elections. Rights that are flagrantly violated include the freedom to vote, freedom of political belief and the right not to be subjected to cruel and brutal treatment. Articles 2, 22 and 25 are breached in the allocation and withdrawal of food, drought relief and land to reward supporters and punish opposition.[39] Moreover, Articles 7 and 8 are disregarded, as violent offenders mobilised by ZANU-PF are granted 'pardons and amnesties' and not held accountable for their crimes.[40]

Many of the ZANU-PF resources used to infringe Zimbabwean human rights are provided by China. China offers two main types of support: military and economic. Sino-Zimbabwean military ties are 'among the closest on the African continent'.[41] Although China's military deals with Zimbabwe are opaque, Zimbabwe's Defence Minister announced that twelve FC-1 fighter planes and one hundred military vehicles were supplied to the country in 2004.[42] A military deal worth US$240million was all the more remarkable when one considers that Zimbabwe's defence budget at the time was US$136million.[43] In 2005 the Zimbabwean air force received six K8 jet aircraft from China.[44]

In addition to this military support, Mugabe's regime received infusions of credit and various investments from China.[45] China International Water and Electric invested in over 250,000 acres of Zimbabwe, the Ministry of Small and Medium Sized Enterprises has received US$12billion, and the China North Industries Corporation (NORINCO) invested in a multi-billion dollar expansion project of the Zimbabwe Electricity Supply Authority.[46] NORINCO, a company specialising in arms and weapon manufacturing, has been subject to international sanctions after providing Iran with missiles, having controversial dealings with Pakistan and attempting to sell arms to Gadhafi.[47]

This military and economic support from China has a significant impact on human rights in Zimbabwe, and is fundamental to the strengthening of ZANU-PF. It is clear that ZANU-

36 Kriger, p. 28.
37 Masunungure, p. 56.
38 Paul Collier and Pedro Vincente, 'Violence, bribery and fraud: the political economy of elections in sub-Saharan Africa, Public Choice 153(1-2) (2012) pp. 117-147, (p. 137).
39 Kriger, p. 33.
40 Kriger, p. 33.
41 Eisenman, p. 10.
42 Taylor, p. 75.
43 Taylor, p. 75; Eisenman, p. 10.
44 Eisenman, p. 10.
45 Taylor, p. 74.
46 Eisenman, p. 10.
47 Hassaan Ghazali. 'Mass Transit Stonewall' *Pakistan Today*, 15 June 2011, <http://www.pakistantoday.com.pk/2011/06/15/comment/mass-transit-stonewall/> [Accessed 02 May 2013]; 'Chinese Firm Hit With U.S. Sanctions' *The Washington Times*, 23 May 2003 <http://www.washingtontimes.com/news/2003/may/23/20030523-123039-1385r/> [Accessed 04 May 2013]; Graeme Smith. 'China offered Gadhafi Huge Stockpiles of Arms: Libyan Memos' *The Globe and Mail*, 02 September 2011 http://www.theglobeandmail.com/news/world/africa-mideast/china-offered-gadhafi-huge-stockpiles-of-arms-libyan-memos/article2152875/page1/ [Accessed 02 May 2013].

PF uses Chinese resources to support and sustain its rule through the use of violent and repressive means. China is the only international supporter of Mugabe's regime and has 'stepped in where other developing nations have feared to tread'.[48] Mugabe is able to bypass conditions of human rights and good governance conditional on Western support and is instead 'reliant' on Chinese support.[49] Despite this, 'China does not seek to encourage Zimbabwe's political reform or observance to human rights standards'.[50] In fact, they have done quite the opposite. In 2004 China supported Zimbabwe at the UN Commission on Human Rights, and succeeded in blocking resolutions that would have seen both China and Zimbabwe 'condemned for human rights abuses'.[51] The significance of Chinese support for Zimbabwe is well known, as is clear from the example of the An Yue Jiang Chinese arms ship that was destined for Zimbabwe, but 'refused entry by unions in South Africa and neighbouring countries'.[52] These Sino-Zimbabwean arms sales directly defy a request by the South African Foreign Affairs Minister for China to cease selling arms in Africa.[53]

Taylor suggests that this support for Mugabe is motivated by China's self-interest.[54] If ZANU-PF were to lose power Sino-Zimbabwean relations would suffer. A new ruling party would be aware of the strong Chinese relations with ZANU-PF and the human rights atrocities made possible through this support, and may turn elsewhere for support, trade and assistance. However, China refutes these accusations, claiming that it is only the Western model of human rights that 'China is frequently accused of violating' and due to a historical background of collectivism and Marxist influence, China has a 'markedly different conception of the subject'.[55] Tian Dan, Executive Director for the China Society for Human Rights Studies, states that an 'individual's interests are upheld via the realisation of collective interests'.[56] Economic development is an important precondition and constitutes 'the basis for all other rights' as human rights are 'only valid if people's socio-economic conditions are satisfied'.[57] Dan emphasises this point metaphorically:

> For a starving man, which should he choose, bread or ballot, if he is supposed to choose only one? The ballot is of course important, but he must feed himself with the bread before he can cast a ballot.[58]

Mombouli, the ambassador of Congo-Brazzaville expressed similar sentiments when discussing Sino-African relations stating that 'people do not eat democracy'.[59] Moreover, Dan states that the Chinese model of human rights must be considered as not only different to the Western discourse, but superior. 'Collective human rights are neglected'

48 Eisenman, p. 11; Owen and Melville, paragraph 5.
49 Brautigam, p. 285; Eisenman, p. 11.
50 Eisenman, p. 10.
51 Eisenman, p. 10.
52 Brautigam, p. 189.
53 Eisenman, p. 10.
54 Taylor, 'Sino-African Relations and the Problem of Human Rights', p. 75.
55 Weatherley, p. 13; Ibid, p. 5; Ibid, p. 2.
56 Dan, paragraph 6.
57 Wang Feng, 'Study on China's Human Rights Construction Path Selection from the Vision of 'Universal Value', *Journal of Beijing University of Technology* (Social Sciences Edition), 13(3) (2013), pp. 50-55; Dan, paragraph 5; Kweku Ampiah and Sanusha Naidu. *Crouching Tiger, Hidden Dragon? Africa and China* (Scottsville: University of KwaZulu-Natal Press, 2008), p. 333.
58 Dan, paragraph 5.
59 Brautigam, p. 287.

in the West due to an overemphasis of individualistic rights.[60] According to this argument, China has a positive influence on African human rights, as Chinese 'no-strings-attached' support means that countries are able to bypass conditions on Western aid, aimed at enforcing the Western interpretation of human rights. Furthermore, many Chinese and African leaders have claimed that, 'seeking to encourage universal human rights in Africa is itself an abuse of human rights'.[61] Despite China's current contentious claims of sovereignty over Taiwan, it advocates adherence to the 'Five Principles of Mutual Co-existence', which promote non-intervention and respect for national sovereignty.[62] Dan[63] declares sovereignty to be a 'pre-condition' of human rights, and describes interference as 'bullying'. Consequentially, Beijing places strong importance on policies of non-interference, and 'separates business from politics'.[64] It is important to note however, that whilst China does not impose Western style governance related conditions, recipient nations must acknowledge China's right to sovereignty in Taiwan and adhere to various business related conditions such as low tax rates and the employment of a Chinese workforce.[65]

This claim of absolute adherence to non-intervention is central to an important contradiction concerning an understanding of Sino-African relations and the Chinese model of human rights. Also fundamental to the understanding of this contradiction is a basic comprehension of the neopatrimonial political system, which Lindberg states is the 'primary institutional heritage in Africa'.[66] Neopatrimonialism is a political system based on patronage, whereby the 'big man' has little empirical sovereignty over the population, yet full juridical sovereignty due to international recognition, accompanied by access to aid and loans, military support, and control of national resources.[67] This imbalance of sovereignty creates a 'gatekeeper state' or 'letterbox sovereignty'.[68] 'Big men' are skilled in 'tactics of extroversion', receiving copious resources from international institutions and supporters.[69] This ease of access to resources makes the power of the 'gate' a 'zero-sum' game,[70] so 'big men' use strategies of patronage to maintain power. National resources are used for the leader's personal gain; they are dispensed in return for political support through patronage links, primarily with his 'close relatives, friends and clients'.[71] In turn, each of these creates their own 'patronage empires',[72] dispensing resources conditionally on support. Bayart refers to this as 'the politics of the belly', with everyone rushing to eat

60 Dan, paragraph 6.
61 Taylor, 'Sino-African Relations and the Problem of Human Rights', p. 82.
62 Taylor, 'Sino-African Relations and the Problem of Human Rights', p. 82.; Mitchell, p. 109.
63 Dan, paragraph 13.
64 Vines, p. 215.
65 Mitchell, p. 111; Brautigam, p. 4; Mitchell, p. 121.
66 Staffan Lindberg, 'It's Our Time to Chop': Do Elections in Africa Feed Neo-Patrimonialism Rather Than Counter-Act It?' *Democratization*, 10(2) (2003), pp. 121-140, (p. 123).
67 Bruce Berman, 'Ethnicity, Patronage and the African State: The Politics of Uncivil Nationalism, *African Affairs*, 97 (1998), pp. 305-341, (p. 305); Robert Jackson and Carl Rosberg, *Personal Rule in Black Africa: Prince, Autocrat, Prophet, Tyrant* (London: University of California Press Ltd, 1982), p. 23.
68 Frederick Cooper, *Africa Since 1940: The Past of The Present* (Cambridge: Cambridge University Press, 2002) p. 156; Christopher Clapham, *Africa and the International System: The Politics of State Survival* (Cambridge: Cambridge University Press, 1996), p. 20.
69 Jean- Francois Bayart, *The Illusion of Cultural Identity*, (London: C. Hurst & Co, 2005) p. 72.
70 Staffan Lindberg, p. 123.
71 Alex Thompson, *An Introduction to African Politics* (Abingdon: Routledge, 2000) p. 116.
72 Thompson, p. 119.

their slice of the national cake.[73]

This 'rush' tends to have a negative effect on the development of a nation.[74] In neopatrimonial systems, state resources are 'monopolised'[75] by 'big men', who siphon funds for personal enrichment and the sustenance of patronage networks. Due to deeply engrained patron-client structures in societies, the population's expectations are not of long-term projects but immediate patronage.[76] There is little incentive for the 'big man' to support the long-term socio-economic development of the population as a whole. Moreover neopatrimonialism relies on the population's dependence on patronage, thus it could be argued that the stagnation of socio-economic development is in the 'big man's' own self-interest. Reno provides clear evidence of the detrimental nature of neopatrimonialism on development within the context of the DRC, another African nation with high Chinese involvement.[77] Reno's table highlights that in 1992 95% of government expenditure was on the President, 4% on agriculture, and 0% on social services.[78] In light of the above, it is no surprise that China's no-strings-attached support and emphasis on non-intervention are appealing to neopatrimonial 'big men', as they can continue to use resources to ensure support, and avoid pressure to direct them into long-term development.

With this basis of understanding of neopatrimonial politics, an important contradiction in Chinese human rights discourse becomes apparent. It is true that China has been a major investor in infrastructure and various countries with heavy Chinese involvement such as Angola and Nigeria have experienced significant economic growth.[79] However, the existence of neopatrimonial political structures predetermines that despite economic growth, resources will not necessarily be used to promote the long-term collective socio-economic rights of the population and instead will be dispensed through the patronage networks of the 'big man'.[80] Non-interference in sovereign rule is essential to the Chinese model of human rights yet, due to neopatrimonialism, this respect for sovereignty has a detrimental impact on the collectivist human rights that China places such an emphasis upon. To put it simply, according to Chinese discourse, non-interference is fundamental to human rights, as are a population's collective socio-economic rights. However, collective socio-economic rights may not be protected or may be actively undermined by the sovereign power. This can clearly be seen in the case of China's main oil producer and largest trading partner in Africa, Angola.[81]

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73 Jean-Francois Bayart, The State in Africa: *The Politics of the Belly* (Cambridge: Polity Press, 2009)
74 Thompson, p. 121.
75 Lindberg, p. 123.
76 Patrick Chabal and Jean-Pascal Daloz, *Africa Works: Disorder as a Political Instrument* (Oxford: James Curry, 1999)
77 William Reno. *Warlord Politics and Africa States* (London: Lynne Rienner Published Inc, 1997) p. 154; Ampiah and Naidu, p. 335.
78 Reno, p. 154
79 Brautigam, p. 276; World Bank, '*Data: GDP Growth (Annual %)*' (2012), <http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG> [Accessed 03 May 2013].
80 Taylor, 'Sino-African Relations and the Problem of Human Rights', p. 85.
81 Lucy Corkin, 'All's Fair in Loans and War: The Development of China-Angola Relations', in *Crouching Tiger, Hidden Dragon? Africa and China*, ed. by Kweku Ampiah and Sanusha Naidu (Scottsville: University of KwaZulu-Natal Press, 2008), pp. 108- 124 (pp. 112-3)

Angola was named the fastest growing African economy of 2005-2009 by the IMF.[82] It received US$2billion from China in 2004-2005, US$2billion in 2006, and an additional US$500million in 2007.[83] Following the collapse of infrastructure during the Angolan Civil War and continued hesitancy within the international donor community due to a history of corruption and bad governance,[84] Chinese investment has provided an important opportunity for Angola. It has enabled increased access to 'packages of aid, debt cancellation and technical cooperation', and the establishment of new 'trade and economic zones'.[85] For the most part, investments have been used to fund large-scale infrastructure projects, such as the rehabilitation of the Benguela railroad (linking Port Lobito with the DRC and Zambia) and a new airport.[86] Human Rights Watch highlights a growth in GDP of over 400% during this period of heightened Sino-Angolan interaction (2004-2010).[87]

According to Chinese human rights discourse, this economic boom should have been accompanied by a significant increase in socio-economic rights of the population. However, this has not been the case. The UN Human Development Report of 2011 stated that 54.8% of the population live in 'severe poverty' and rates the Human Development Index at 0.486, only marginally above the Sub-Saharan African average of 0.463.[88] Arvind Ganesan, the director of the HRW's Business and Human Rights Programme, describes Angola as a 'nation with a wealth of resources while its people live in poverty'.[89] Similarly, Kampfner refers to Angola as the 'world's richest poor country'.[90] The 'trickle down' strategy appears to be flawed; rather than experiencing an improvement in terms of socio-economic rights, the poor 'are often criminalised and regarded as obstacles to development'.[91] Exposed to a volatile 'sea of disconnection and segregation', access to 'infrastructures of energy, housing and transport' become increasingly unequal'.[92] Aguilar and Goldstein[93] claim that the Chinese funded construction projects have failed to 'generate employment and reduce poverty' as the work forces used are predominantly Chinese or sourced from a limited number of elite, well-connected Angolan companies. Instead of an increase in rights, the population have been exposed to further 'exclusion, neglect and dispossession.[94]

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82 International Monetary Fund. Regional Economic Outlook: Sub-Saharan Africa; Recovery and New Risks (Washington DC: International Monetary Fund Publication Services, 2011), p. 52.
83 Corkin, p. 109.
84 John Rocha, 'The Costs of the Conflict in Angola', *South African Journal of International Affairs*, 9(2) (2002), pp. 1-16; Aguilar and Goldstein, p. 1546.
85 Power, p. 994.
86 Aguilar and Goldstein, p. 1555.
87 Human Rights Watch. Angola: *Oil Wealth Eludes Nation's Poor* (2012) <http://www.hrw.org/news/2010/04/12/angola-oil-wealth-eludes-nation-s-poor> [Accessed 01 May 2013], paragraph 1.
88 United Nations Development Programe. *Human Development Report 2011: Sustainability and Equity: A Better Future For All- Angola* <http://hdrstats.undp.org/images/explanations/AGO.pdf> [Accessed 01 May 2013], pp. 2-4.
89 Human Rights Watch. *Angola: Oil Wealth Eludes Nation's Poor*, paragraph 3.
90 John Kampfner, 'Welcome to the World's Richest Poor Country', GQ, (1 July 2008), p. 198.
91 Power, p. 999.
92 James Ferguson, *Global Shadows: Africa in the Neoliberal World Order* (Durham: Duke University Press, 2006), p. 207; Power, p. 1005.
93 Aguilar and Goldstein, p. 1555.
94 Power, p. 1010.

HRW hold the Angolan government accountable for the 'abysmal' human development indicators during a time of such rapid growth, and claim corruption is worsening. Angola is a clear example of a neopatrimonial state with power concentrated in a group of the president's advisors known as the *futungo*.[95] The *futungo* is a 'nebulous group of unelected officials and businessmen',[96] who have tight control over Chinese investments and use it to support their personal patronage networks. Ultimately, although China has invested billions of dollars in Angola, the 'overriding power regarding where the money is allocated' resides with this neopatrimonial elite,[97] and consequently has not led to the improvement of socio-economic rights for the population. This clearly contradicts the Chinese model of human rights. Moreover, the Chinese emphasis on the importance of non-intervention as an extension of human rights means that little can be done to redirect these resources.

To conclude, it is clear that the recent increase in Chinese involvement on the African continent has had a negative impact on the human rights of African citizens, whether they are defined according to Western or Chinese discourse. China's 'no-strings-attached' manner of involvement supports leaders with no interest in human rights, and provides little incentive for change. The Chinese response that economic growth must take place first in order to implement collectivist basic socio-economic and subsistence rights, which will later be followed by individual human rights, is fundamentally flawed in the context of Chinese involvement in Africa. The absence of governance related conditions appeals to the 'big men' of neopatrimonial systems, and the very nature of these systems means that economic growth does not lead to a rise in the long-term socio-economic rights of the population. China's emphasis on non-intervention results in little possibility for change. This is particularly significant as many countries accepting Chinese support have little assistance from other countries, due to bad governance and human rights records. However, despite these problems, the potential benefits of Chinese involvement in Africa must be acknowledged. Persistent over-sensationalism and criminalization of China in the Western media is neither productive nor helpful. With a history of exploitation of African resources and detrimental 'one-size fits all' neoliberal conditions attached to aid, Western intervention in Africa has also been problematic to say the least, and the support of an emerging new economy may be a positive alternative.[98] If China can begin to emphasise the wellbeing of African populations and place higher importance on their human rights, Sino-African relations may yet have considerable positive potential.

95 David Harvey, *The New Imperialism* (Oxford, Oxford University Press, 2003), Anthony Hodges, *Angola: Anatomy of an Oil State* (Oxford: James Currey, 2004), p. 52; Hodges, p. 52.
96 Power, p. 1010.
97 Corkin, p. 111.
98 Walter Rodney, *How Europe Underdeveloped Africa* (London: Bogle-L'Ouverture Publications, 1972); Taiwo Makinde, 'Globalization as a Constraint to Development in Africa: The Nigerian Experience', *Public Administration Research*, 2(2), (2013) pp. 191-200.

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A critical discussion of the limitations of legislation as a tool to combat ethnic and racial discrimination in the workplace

By Edel Davies

This essay examines racial and ethnic discrimination in the workplace. Despite legislation specifically aimed at combatting inequalities within areas such as pay, recruitment and promotion, ethnic minorities continue to be less likely to have the same career opportunities as their white counterparts. This essay argues that current legislation is effective in maintaining awareness and focus on the issue, ensuring that equality features within the business agenda, but that alone it is essentially unable to alter public attitudes that shape subtle yet powerful manifestations of discrimination.

Whilst 'race' refers to observable physical differences and 'ethnicity' to cultural difference, both terms are used interchangeably to draw boundaries between different groups. As defined by Schaefer in 1996, racism is 'a doctrine of racial supremacy, that one race is superior' and continues to exist in the workplace despite the creation and implementation of legislation aimed to prevent it.[1] The Equality and Human Rights Commission regards Britain as a largely 'tolerant and open-minded society', however, certain ethnic minority groups still remain largely discriminated against and progress towards overcoming ethnic and racial disadvantage has been inconsistent.[2] There are three theories of discrimination: Intentional, Structural and Institutional.

Within the labour market, discrimination resides in the attitudes, behaviours, and practices of many organisations and some have even argued that prejudice against ethnic minorities has remained at a constant level over the past 40 years.[3] Nevertheless, whilst overt, intentional discrimination found 40 years ago is still likely to exist, it now manifests itself through more subtle and underground forms. These manifestations may be found in the very structures of our society or industries that are to some extent out of the control of legislation. In the report looking into the death of Stephen Lawrence, William Macpherson concluded that the police force was 'institutionally racist' and defined this as 'the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin'.[4] The inquiry catapulted the issue of institutional racism into the public domain and led to some important changes in the British justice system such as the abolition of the double jeopardy rule. However, despite raising awareness of racism within the workplace and initiating apparent progress in the fight against institutional racism, 'there are still policies and practices that raise serious

1 Cited in Bonilla-Silvia, Eduardo, 'Racism' and 'New Racism': The contours of racial dynamics in contemporary America', in *Critical Pedagogy and Race,* ed. by Zeus Leonardo (Malden: Blackwell Publication, 2005), p.2.

2 Randeep Ramesh, '"How Fair Is Britain?" report shows that for UK, race is still the issue', Guardian, 11th October 2010, <http://www.theguardian.com/society/2010/oct/11/equality-report-race-britain-launch> [Accessed 1st November 2013].

3 Yaojun Li and Anthony Heath, 'Struggling onto the ladder, puffing up the rungs: employment status and class position by minority ethnic groups in Britain (1972- 2005)', in Population, Employment, Health and Well-being, eds. Stillwell, J., P. Norman, C. Thomas, & P. Surridge, eds. (New York: Springer, 2010), pp. 117-138.

4 Home Office, *The Stephen Lawrence Enquiry: Report of an inquiry by Sir William Macpherson* (London: Her Majesty's Stationery Office, 1999).

concerns about their impact on ethnic minority people'.[5] Legislation may help make some headway towards greater race equality, but we must not assume that it can single-handedly alleviate ethnic and racial disadvantage. The ongoing problem of institutional racism highlights the deeply engrained nature of discrimination and its resistance to pressures, such as legislation, for change.

This essay will firstly look at the range of social and cultural factors that explain, but do not justify, why ethnic and racial discrimination continues to exist despite legislation. It then examines the efficacy of existing measures, pointing to the need for cautious implementation. Finally, the essay looks at a complementary framework of promotion, measurement and support to be used in conjunction with legislation. Overall, it will posit that legislation alone cannot guarantee a more level playing field because racism arises 'through social and cultural practices' that can be deeply interwoven into the very norms and practices of an organisation.[6]

Ethnic minority groups face a wide range of barriers throughout various stages of the labour market. Studies indicate that they are less likely to be invited for interviews, selected after the interview process, earn less than their white colleagues, experience higher rates of unemployment and are less likely to attain a managerial position or get promoted.[7] Even the 'better faring' Chinese and Indian minority groups earn less than their white counterpart; 11% and 13% less respectively according to the European Fundamental Rights Agency.[8] As Young pointed out: 'you cannot forget your minority status because others remind you of it'.[9]

Despite having a clear disadvantage in the labour market, not all ethnic groups suffer an equal degree of discrimination. Pakistanis, Bangladeshis and Black Caribbeans generally fare worse, whilst Indians and Chinese are equal or lagging only very slightly behind their white counterparts. Moreover, intersectionality among class, gender, race and ethnicity further complicates the situation. A black Muslim woman may face obstacles within the workforce due to discrimination against her sex, religion, or skin colour, individually or in combination. This highlights the issue of complex and mutually constituted identities with overlapping categories that obscure discrimination and subsequently anti-discriminative legislation.[10] Crenshaw argues that intersectional sensibility should be central and a political objective of anti-racism,[11] as it 'provides a better guide to policy formation'.[12] However, Healy suggests that this kind of politics is complicated and dangerous, as

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5 Jason Bennetto, 'Police and Racism: What has been achieved 10 years after the Stephen Lawrence Inquiry', *Equality and Human Rights Commission* <http://www.equalityhumanrights.com/uploaded_files/raceinbritain/policeandracism.pdf> [Accessed 7 March 2014].

6 Bhikhu Parekh, *The future of multi-ethnic Britain, Employment* (London: Profile, 2000) p.71.

7 Franklin Oikelome, 'Relevance of US and UK national histories in the understanding of racism and inequality in work and career', in *Equality, inequalities and diversity : contemporary challenges and strategies*, eds. G. Healy , G. Kirton and M. Noon (Basingstoke: Palgrave Macmillan, 2011), p. 104.

8 Trevor Phillips, 'Equality Indicators-what are they and why are they so important?', *European Fundamental Rights Agency*, 12th May 2011, <http://www.equalityhumanrights.com/key-projects/how-fair-is-britain/speech-equality-indicators-what-are-they-and-why-are-they-so-important/> [Accessed 5th November 2013].

9 Gill Kirton, 'Career Plans and Aspirations of Recent Black and Minority Ethnic Business Graduates', *Work, employment and society*. 23.1 (2009), 12-29 (p.16)

10 Healy, Kirton, Noon, p. 2

11 Quoted in Healy, Kirton, Noon, p. 6.

12 Healy, Kirton, Noon., p.9.

whenever one intersection is deployed, another is lost. Therefore, there is potentially also the issue of subjectivity in what we choose to study.[13] The multi-faceted workforce therefore poses some challenges to the effectiveness of anti-discrimination legislation.

The history of a country can equally undermine legislation, as structural inequality is often a 'response to a country's historical, political, demographic and social conditions'.[14] The UK's history is founded on oppression and discrimination through colonisation and engagement in the slave trade. In 1949, the establishment of the Commonwealth of Nations saw 53 member states, mainly ex-British colonies, declared 'free and equal', united by objectives such as the pursuit of equality and opposition to racism. Despite this, Britain's strict immigration policies continue to 'cast its long postcolonial shadow',[15] communicating the idea that the 'other' is not welcome and raising the question of whether we can truly undo the memory of colonial past which underpins many people's discriminatory attitudes. Negative media attention alongside negative stereotypes of immigrants reinforce resentment about how much 'we' are giving 'them' and can easily influence people's everyday attitudes. According to Pilkington, this 'language of disease and contamination' is dangerous,[16] ensuring that the 'historical roots of racism … [and] their legacies continue to manifest in contemporary practice'.[17] This highlights a fundamental limitation of legislation, as it can to some extent force people to behave in certain ways but there is a 'limit to laws' capacity to police and alter public attitudes' and the media can reinforce ideas that fuelled our dark colonial history.[18]

Efficiency of legislation is further compromised by the inherent complexities created by its techno-legal jargon and vagueness. Ambiguity can result in misinterpretation and henceforth the functions of the legislation itself are ignored, diluting its potential. For example Healy criticises drafts of clause 152 of the Equality Bill on positive action for being both expansive and vague about proportionate positive action and consequently giving wide discretion to organisations to determine its use for themselves.[19] Legislation should facilitate and inform organisations in making effective decisions, not further complicate the situation or add to 'the risk of organisational energy and effort being dissipated and frustrated'.[20] Furthermore, this opaqueness causes problems within judicial policy where legislative ambiguity can lead to varied interpretation from judicial assessors who are often ill-equipped (or unwilling) to adopt ethnic-pluralist approaches.[21] An 'undeclared judicial policy' can result in judges interpreting legislation incorrectly; decisions may align more with personal attitudes as opposed to any formal legislation.[22] It is worrying that the very people whose job it is to enforce legislation can often undermine it. Moreover, the complexity inherent in the language of legislation can also be discouraging to victims of discrimination who wish to file a legal complaint. Then, even if a case is successfully

13 Healy, Kirton, Noon., p.5.
14 Oikelome in Healy, Kirton, Noon, p. 195.
15 Healy, Kirton, Noon., p. 102.
16 Andrew Pilkington, Racial disadvantage and ethnic diversity in Britain. '*Institutional racism and the underclass thesis: minority ethnic groups in the labour market*', (Basingstoke: Palgrave Macmillan. 2003), p. 93.
17 Oikelome in Healy, Kirton, Noon, p.196.
18 Prakash Shah, 'Ethnic and religious diversity in Britain: where are we going?', in *Equalities, Inequalities and Diversity*, Healy, G., G. Kirton and M. Noon (Basingstoke: Palgrave Macmillan, 2011), p. 82.
19 Healy, p. 71.
20 Healy, p. 73.
21 Healy, Kirton, Noon, p. 13.
22 Shah, p.90.

resolved, and immediate resolution does not necessarily lead to concrete, long-term solutions. Legislation is therefore a piecemeal approach to changing the attitudes within the workplace.

The Equality Act 2010 claims to have brought all existing equality laws, including the Equal Pay Act 1970 and the Race Relations Act 1976, together into a harmonious 'single legal framework with clear, streamlined law' in order 'to more effectively tackle disadvantage and discrimination'.[23] The Act makes it unlawful for employers to discriminate against 'protected groups' because of their race, colour, nationality, ethnic or national origin in the arrangements they make for recruitment and selection, and in the terms and conditions on which they offer employment, training or promotion.[24]

Whilst in theory the single act should make the previously complicated minefield of diverse legislation more navigable for employers, there are still a number of problems that have engendered criticism from both employers and equality campaigners. Business-owners have complained that the legislation creates more 'red tape' and represents only another burden during which many are still trying to recover from the recession.[25] William has scrutinised its economic advantages, arguing that the supposed financial benefits of an annual £62m that a more equal society would generate will be rendered pointless because the law itself will 'harm growth' by dissuading small businesses from recruiting because of the 'weight of regulations' and the 'threat of an employment tribunal'.[26] This leads him to draw the conclusion that the 'value [of the law] is ideological, nothing more'.[27]

Equality campaigners, on the other hand, are concerned that the grouping of legislation under one umbrella dilutes the focus and leads to problems in decision-making as to which strand needs more attention and therefore resources.[28] Moreover, they argue that it is a missed opportunity to take greater steps to protect employees as the legislation does not seem to have made any ground-breaking new suggestions.[29] The Equality Act may have rendered existing legislation clearer and kept the issue of equality and human rights in the workplace on political and business agendas, but fundamentally it has not made any significant changes to existing laws, nor resolved the underlying social problems that uphold the current disadvantageous status quo.

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23 Equality and Human Rights Commission, *Equality Act 2010* <http://www.equalityhumanrights.com/legal-and-policy/equality-act/> [Accessed 7 March 2014]

24 Equality and Human Rights Commission, *Pay and Ethnicity* <http://www.equalityhumanrights.com/advice-and-guidance/tools-equal-pay/checklists-equal-pay-in-practice/17-pay-and-ethnicity/> [Accessed 7 March 2014].

25 BBC News Business, *New equality rights in workplace come into force* (2010) < http://www.bbc.co.uk/news/business-1144665> [Accessed 7 March 2014].

26 Nigel Williams, Assessing the Damage: Assessing the Equality Act, Impact Assessment, *Civitas* (2011) <http://www.civitas.org.uk/pdf/equalityactimpact.pdf > [Accessed 8 March 2014] (p.1.)

27 Williams quoted in Martin Beckford, 'Financial benefits of equality laws are imaginary, says think-tank', *The Telegraph*, 23 December 2011,< http://www.telegraph.co.uk/news/politics/8973348/Financial-benefits-of-equality-laws-are-imaginary-says-think-tank.html> [Accessed 5 March 2014].

28 Healy, Kirton, Noon, p.7.

29 Darren Clayton, 'The practical implications of the Equality Act', *HR Magazine*, 5th October 2010, <http://www.hrmagazine.co.uk/hro/news/1018514/the-practical-implications-equality-act> [Accessed 3 November 2013].

According to the theory of human capital, the unfavourable status quo for ethnic minorities in the labour market is the result of a lack of relevant human capital: educational level, educational attainment and labour market experience.[30] In terms of education, this presumption is not necessarily true of all groups. Attainment differences among different ethnic groups at GCSE level are narrowing, except for the top end where the two highest performing groups are students of Chinese and Indian origin.[31] This suggests that all ethnic minorities are closing the educational gap and that Chinese and Indian students are even surpassing other groups, coming close to or overtaking white students. On average, Pakistanis, Bangladeshis and Black Caribbean's have the least human capital. Only 18% of black students go on to study at elite Russell Group universities compared with 24% of white students.[32] This may be a contributing factor to black workers' lack of representation in the workplace for, as Connor noted, employees focus their marketing on certain pre-1992 universities with relatively low densities of ethnic minority students.[33] Despite diversity between different ethnic groups in terms of education, 'however well qualified people are, they still meet substantial discrimination in the workplace' with the top 10% of jobs denied to them by various glass ceilings.[34] In general, ethnic minorities get significantly lower returns on their human capital than white people.[35]

Even armed with a good education, ethnic minorities still face insurmountable obstacles to attaining higher-paid, professional employment due to the fact that advancement is largely determined by 'who you know', such is the basis of social capital theory. In a survey this year, two thirds of Britons agreed that social connections are still more important than 'what you know' in determining how people advance in life.[36] This is supported by a survey on the professional network site LinkedIn that indicated that 44% of workers had been hired through networking compared to only 16% through recruiters.[37] The problem is that many ethnic minorities lack this professional network. This could be due to various factors: moving to the UK later in life, having limited English language or not socialising outside of their own socio-cultural group. Wilson's underclass structural theory partly extends this idea, claiming that ethnic minorities form an underclass defined

30 Idunn Brekke, 'Ethnic background and the transition from vocational education to work: a multi-level analysis of the differences in labour market outcomes', *Journal of Education and Work*, 20. 3 (2007) <http://www.tandfonline.com/doi/pdf/10.1080/13639080701464517> [Accessed 3 November 2013] (p. 6).

31 Randeep Ramesh , '"How Fair Is Britain?" report shows that for UK, race is still the issue', *Guardian*, 11th October 2010, <http://www.theguardian.com/society/2010/oct/11/equality-report-race-britain-launch> [Accessed 1st November 2013].

32 'Race for Equality: A report on the experiences of Black students in further and higher education', *National Union of Students*, <http://www.nus.org.uk/PageFiles/12350/NUS_Race_for_Equality_web.pdf> [Accessed 4th November 2013].

33 Helen Connor and others, *"Why the Difference? A Closer Look at Higher Education Minority Ethnic Students and Graduates"* Research Report No. 552, Department for Education and Skills, (2004) <http://www.employment-studies.co.uk/pubs/summary.php?id=rr552> [Accessed 5th November 2013].

34 Parekh report, p.193.

35 Richard Berthoud, 'Ethnicity employment penalties in Britain', *Journal of Ethnic and Migration Studies*, 26. 3 (2000), 389-416 (p.412).

36 John Birmingham, 'It's still "who you know not what you know that matters", say two thirds of Britons', *Telegraph*, 24th June 2013, <http://www.telegraph.co.uk/news/politics/10137928/Its-still-who-you-know-not-what-you-know-that-matters-say-two-thirds-of-Britons.html> [Accessed 5th November 2013].

37 Lou Alder, 'Source of Hire and the Importance of Networking', *LinkedIn*, 1st April 2013, <http://www.linkedin.com/today/post/article/20130401172726-15454-the-importance-of-networking-the-hidden-job-market-and-recruiter-relevancy> [Accessed 8th November 2013].

by social isolation and the absence of support.[38] He argues that persistent poverty derives from their isolation from social contact with middle class persons.[39] Instead of 'identifying with working class culture, community and politics, they formed their own organisations and became effectively a separate underprivileged class'.[40] Wilson's theory suggests a pervasive cycle in which ethnic minorities are perpetually excluded from broadening their network base and are therefore unable to advance up the employment ladder.[41] There are, however, inherent faults in this theory. Marxist theory, for example, dictates that migrants are more a 'fraction' of the underclass, as not all ethnic minorities are concentrated in low skilled and low paid jobs.[42] For example, in the health sector 31% of the doctors and 13% of the nurses working in the UK were born abroad showing that it is an exaggeration to claim that ethnic minorities embody the underclass.[43] Nevertheless, Wilson's theory is important in understanding how deeply embedded structural norms have allowed discrimination to persist, but in such a subtle manifestations that legislation is incapable of effectively challenging it.

With limited social networks serving as a glass ceiling to the career progression of ethnic minorities, it is no surprise that there is a lack of role models for ethnic minorities at middle or senior management positions. A survey of Britain's 100 biggest companies by the Runnymede Trust suggested that just 1% of senior management posts were held by ethnic minorities, despite the fact that they make up 7% of population as a whole.[44] With no one to identify with at 'the top', ethnic minorities can be discouraged from even attempting to apply for jobs, thus maintaining the dominance of particular social groups. It is interesting here to look at Jenkin's sociological framework that defines identity working in everyday life through three distinct 'orders': the individual, interaction and institutional.[45] As identified earlier, ethnic minorities may lack 'interaction' with social groups and face 'institutional' barriers. These external career constraints simultaneously interact with internalised identity affiliations, or 'the individual'. The individual's career choice could be largely shaped by the influence that their ethnic identity has on their 'self-efficacy' beliefs. With a lack of role models at higher levels, Thomas and Alderfer note the power of 'anticipated discrimination', where an individual may even opt out of a certain career because it is perceived discriminatory.[46] This suggests that assumed discrimination could be just as powerful in disadvantaging ethnic minorities as experienced discrimination.

Whilst social policy in Europe is increasingly directed towards finding ways of combating social exclusion it is clear that additional measures are needed to combat discrimination against ethnic minorities.[47] One such measure that has been promoted in the 2010 Equality Act is the policy of Positive Action. This entails the use of special measures to

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38 Jane Holgate, Race and ethnicity, *Gender and Equality at work*, 31st October 2013, University of Leeds, slide 15.
39 Oikelome, p. 107.
40 John Rex, *Colonial Immigrants in a British City: a class analysis*, (London : Routledge & Kegan Paul, 1979), lecture slide 17.
41 Pilkington, p. 95.
42 Pilkington, p. 63.
43 Tikki Pang, Mary Ann Lansang and Andy Haines, 'Brain Drain and Health Professionals', *British Medical Journal*, 324 (2002), 499-500, p. 499.
44 Steve Schifferes, 'Race UK, in business', *BBC News*, <http://news.bbc.co.uk/hi/english/static/in_depth/uk/2002/race/in_business.stm > [Accessed 3rd November 2013].
45 Kirton, p.12.
46 Thomas and Alderfer quoted in Kirton, p.14.
47 Hugh Collins, 'Discrimination, Equality and Social Inclusion', *Modern Law Review*, 66 (2003), 16-43.

assist members of disadvantaged groups in overcoming the obstacles and discrimination they face in contemporary society,[48] through 'encouragement and training' and 'recruitment and selection'.[49] For example, the Equality Act implementation guidelines suggest that in order to encourage people from under-represented groups to apply for a job, an organisation could offer bursaries to the targeted group to obtain the qualifications they need to enter the profession.[50] Whilst this could be seen as an effective tool to target deeply entrenched discriminatory biases, others have argued that it inadvertently disadvantages non- minority groups. The 2010 Equality and Human Rights Commission found that in 'some areas of life, working-class white men struggle compared with second-generation immigrants.' [51]This suggests the need for positive action measures to be implemented with caution. It may not always be the expected groups that are disadvantaged and therefore an organisation must first carefully analyse the diversity of their workforce. As Barmes points out, 'positive action is liable to be indirect discrimination if there is a systematic negative impact on holders of symmetrical anti-discrimination rights and practice where this impact cannot be objectively justified'.[52] Therefore whilst Positive Action could be seen as an effective way to counter disadvantage, it equally needs to be treated with caution.

Britain's leading race equality think tank Runnymeade set up a Commission on the Future of Multi-Ethnic Britain in 1998 with the aim of promoting ways of combating inequalities in the workplace. In a report led by the political theorist Bikhu Parekh, a threefold framework was outlined consisting of promotion, measurement and support.[53] In terms of promotion, it is suggested that the government should lead by example. There has been a promising increase in representation of ethnic minorities in politics, with the number of minority ethnic MPs standing at 27 after the 2010 General Election, which is 12 more than in the previous Parliament.[54] Labour leader Ed Miliband has recently mapped out his vision for Britain's future as 'One Nation', 'where our Party always looks like the diverse country we seek to serve… So a new politics involves a diversity of candidates, from all backgrounds, selected in a fair way'.[55] Promotion from influential figures is an efficient way of supporting existing legislation and maintaining the focus on discrimination, but words needs to be translated into tangible, measurable actions, with an 'emphasis on evidence; on

48 Colm O'Cinneide, 'Positive Action and the Limits of Law', *Maastricht Journal of European and Comparative Law*, 13 (2006), 351-365, (p. 378).
49 Equality and Human Rights Commission, 'Positive Action', *Creating a fairer Britain: Equality Advisory support service*, < http://www.equalityhumanrights.com/advice-and-guidance/your-rights/religion-and-belief/when-does-the-law-allow-religious-discrimination/positive-action/> [Accessed 6th November 2013].
50 Equality and Human Rights Commission, 'Positive Action', *Creating a fairer Britain: Equality Advisory support service*, < http://www.equalityhumanrights.com/advice-and-guidance/your-rights/religion-and-belief/when-does-the-law-allow-religious-discrimination/positive-action/> [Accessed 6th November 2013].
51 Tim Ross, 'Indians and Chinese get better jobs than white British men', *Telegraph*, 11th October 2010, <http://www.telegraph.co.uk/news/uknews/8054436/Indians-and-Chinese-get-better-jobs-than-white-British-men.html> [Accessed 3rd November 2013].
52 Lizzie Barmes , 'Navigating multi-layered uncertainty, EU member state and organisational perspectives on positive action' , in *Equality, inequalities and diversity : contemporary challenges and strategies*, eds. G. Healy , G. Kirton and M. Noon (Basingstoke: Palgrave Macmillan, 2011), p. 58.
53 Parekh, pp.193-201.
54 Richard Cracknel, 'Ethnic Minorities in Politics, Government and Public Life', 5th January 2012, <www.parliament.uk/briefing-papers/sn01156.pdf> [Accessed 10th November 2013].
55 Ed Milliband, 'One Nation Politics', *Labour*, 9th July 2013, <http://www.labour.org.uk/one-nation-politics-speech> [Accessed 2nd November 2013].

progress, rather than process; and on change for the better rather than good intentions'.[56] Furthermore, support should be offered to employers trying to understand what is legally required of them in order to facilitate real, quantifiable, constructive progress. Just as Jenkins recognises that identity is not static,[57] racism, too, is not a static concept but a shifting, historically situated ideology, against a backdrop of a business market in flux.

This essay has illustrated that legislation alone cannot guarantee a more level playing field because discriminatory ideas are woven into the very norms and practices of society. Trevor Phillips, former chair of the Equality and Human Rights Commission, claimed that Britain was 'sleep walking towards segregation'.[58] Whilst this may seem exaggerated, the existing evidence suggests that discrimination still exists in the British workplace. Legislation raises awareness and plays an important educative role but its potential has been undermined by Britain's colonial past, the complexity of ethnic diversity and the lack of social and human capital. It is a step in the right direction, but needs to coincide with other measures such as promotion from above, quantifiable targets and implementation support in order to be more efficient. Policy makers must also be wary of the multi-faceted challenge of protecting an ethnically diverse workforce, which involves upholding the concept of equality legislation whilst simultaneously preventing the dilution of diversity. The government's paramount concern should be, however, to target the discriminatory attitudes, behaviours and practices that are deeply embedded in the very structures of society and the workplace. Henceforth, a socio-political shift is required in the attitudes of the nation if Britain is to awaken from its 'sleep walk'.

56 Parekh, p. 201.
57 Korton, p. 15.
58 Dominic Casciani, 'Analysis: Segregated Britain?', *BBC News*, 22 September 2005, <http://news.bbc.co.uk/1/hi/uk/4270010.stm> [Accessed 9 November 2013].

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Blue Birds

by Laura Sedgwick

This poem is based on my experience studying in Mississippi in America. The binary of black and white is still a noticeable preoccupation and a category of difference among many people in the South. It is not malevolent in most cases; racial difference is simply a constructed cultural norm. This was most obvious to me socially as a young woman since it is considered out of the ordinary for a white female to date a black male. This was a marked difference to attitudes in the United Kingdom, where interracial couples are not something that is considered as extraordinary. This poem seeks to highlight this socialised attitude towards interracial couples in Mississippi and the fact that 'race', as a concept for some southerners, is still a potent and divisive factor in shaping social interactions.

Do you think I go with the colour blue?
No, you say, doesn't look right to you.
I think it looks normal and see nothing wrong
And then you tell me a little song

'Blue birds with blue birds, red with red
And there are no purple birds', is what you said.
It is not an act of hate or to leave a scar,
I understand that to you this is how things are.

I can't help but in reply
Say, don't all these little birds fly?
A colour is made and is abstract,
But feathers and hearts we can feel that.

Do you see the green, the yellow and red?
Or do you just see the blue instead?
I see the construct created as one line
But back where I am from it isn't so defined.

There are so many colours yet you only see two
Even when the birds fly around you
Eyes positioned to see only one way
There is the night and there is the day.

Do you think I go with the colour blue?
No, you say, doesn't look right to you.
I think it looks normal and see nothing wrong
But then I grew up to a different song.

Resisting genocide: what factors facilitate acts of resistance during genocide? Can these insights be generalised?

By Ruby Maguire

Acts of genocide have continuously violated the human rights of groups throughout history. This paper discusses the idea of resistance during genocide, with consideration of two cases: Le Chambon, during the Jewish Holocaust, and the resistance of specific Rwandan communes throughout the genocide that occurred in 1994. By understanding and comparing these cases, the combination of factors that facilitate each act of resistance can be determined. This essay highlights the significant influence of powerful leaders with the networks and ability to mobilise collective resistance, as well as highlighting the pre-existing social ties between actors in genocide that may facilitate acts of resistance. This essay will also highlight the importance of an absence of witnesses to enable actors to resist, and it will also examine the influence of geographical context. The paper concludes that through consideration and comparison of the social, political, contextual and geographical factors that facilitate certain acts of resistance, insights can be generalised. Therefore, this provides a greater understanding of the circumstances that facilitate resistance.

Genocide is an ancient concept and the deliberate destruction of collective groups has been witnessed and documented over the past centuries.[1] Left behind from these events are the accounts of perpetrators, victims, bystanders and the courageous rescuers who have acted collectively or individually to resist genocide. The study and analysis of rescuers and 'resistors' within these events remains somewhat limited but the scale of the Holocaust and the Rwandan genocide have led each to be subjected to extensive research and policy discussion, and consequently there is an array of literature written on both.[2] Indeed, many of the most prominent cases of rescuers are from the Jewish Holocaust, due to the well documented nature of the Nazi regime. Lee Ann Fujii argued, however, that classifying actors in genocide is problematic; in reality the categories are fluid, and often actors involved in resistance blur the presumed distinctions between perpetrators, victims, bystanders and rescuers.[3] Therefore, this paper will take into account 'acts of resistance', rather than actors themselves. The acts of resistance can be categorised into two types. Firstly, there is the indirect or hidden form, usually through the provision of shelter or assistance to victims, which reveals how 'rescuing' targeted victims is a form

1 Leo Kuper, cited in Adam Jones, *Genocide: A Comprehensive Introduction*, (Oxford: Routledge, 2011) p. 3.

2 Claire Andrieu, 'Conclusion: Rescue, a Notion Revisited', in *Resisting Genocide: The Multiple Forms of Rescue*, ed. by Jacques Semelin, Claire Andrieu and Sarah Gensburger (New York: Columbia University Press, 2011), pp. 495-506 (p. 495); Bob Moore, 'The Rescue of Jews from Nazi Persecution: a Western European Perspective', *Journal of Genocide Research*, 5.2 (2003), 293-308 (p. 294); Alex De Waal, Jens Meierhenrich and Bridget Conley-Zilkic, 'How Mass Atrocities End: An Evidence-Based Counter-Narrative', *The Fletcher Forum of World Affairs*, 36.1 (2012), 15-32 (p. 16.).

3 Lee Ann Fujii, 'Rescuers and Killer-Rescuers during the Rwanda Genocide: Rethinking Standard Categories of Analysis', in *Resisting Genocide: The Multiple Forms of Rescue*, ed. by Jacques Semelin, Claire Andrieu and Sarah Gensburger (New York: Columbia University Press, 2011), pp. 145-157 (pp. 145-146); Ashley Lyn Greene, 'Book Review: Resisting Genocide: The Multiple Forms of Rescue', *Journal of Genocide Research*, 14.1 (2012), 105-109 (p. 106).

of resistance itself because it usually involves the actors putting themselves at great risk. The term 'rescue' includes a wide range of disparate activities with altruistic intentions, but this paper will focus upon the hiding of victims and providing of assistance.[4] The second type of resistance that this paper will consider is open resistance against perpetrators in an attempt to prevent violence from unfolding, with particular consideration of the use of power and authority. Both of these types will be discussed with reference to specific cases of resistance during the Jewish Holocaust from 1933 to 1945 and the Rwandan genocide in 1994. To gauge the potential for generalisation of factors, comparison between cases is necessary.[5] Therefore, this paper will consider which contexts and circumstances facilitated each case and, by comparing the acts of resistance, determine whether the insights from these cases can be generalised.

During the Jewish Holocaust, six million Jews were killed in a 'systematic, bureaucratic, state-sponsored persecution'.[6] One remarkable example of resistance occurred in an isolated village in the mountains of the South of France, Le Chambon-sur-Lignon, where thousands of Jews were hidden for the four years of the Nazi occupation of France and up to 5,000 Jewish refugees survived due to the villagers' actions.[7] Prior to the resistance of Le Chambon, the village Pastor, André Trocmé, met with Quakers from the Religious Society of Friends to express concern for the many Jewish children whose parents had been deported. It was determined that Le Chambon would become a refuge primarily for children during the seemingly endless period of the Nazi occupation. In 1941 the operation, named 'Disappearance of the Jews' and led by Trocmé, put the village in danger as they resisted a power far greater than their own by hiding Jews in their farms, houses and the thick surrounding woods, whilst also guiding many to safety to the border of Switzerland.[8] Moreover, residents of Le Chambon produced false identity and ration cards for the Jewish refugees so that they could survive in France under the reign of the Vichy government.[9]

The genocide of the Rwandan Tutsis that began in April 1994 overwhelmed the entire country for a period of three months, claiming the lives of between 500,000 and 1 million civilians, although the exact total is not known and widely debated.[10] The deaths did not only include the Tutsi population, but also their perceived Hutu sympathisers. During this period, acts of open resistance were carried out by individuals and groups within three Rwandan communes: Giti, Musambira and Taba. Further individual hidden acts of resistance also occurred throughout the country.

As Jones contemplates, what distinguishes individuals who place themselves in danger by assisting others at mortal risk of genocide, whilst many others are not willing to do so?[11] The actions of rescuers must be placed into wider social, political and geographical contexts to understand the motivational factors that led to resistance, and the circumstances that

4 Moore, p. 293.
5 Yahuda Bauer, cited in René Lemarchand, 'Disconnecting the Threads: Rwanda and the Holocaust Reconsidered', *Journal of Genocide Research*, 4.4 (2002), 499-518 (p. 499).
6 United States Holocaust Memorial Museum, *What Was The Holocaust?* (1993), <http://www.ushmm.org/learn/introduction-to-the-holocaust> [accessed 23 February 2014].
7 Jones, p. 405.
8 Philip Hallie, *Lest Innocent Blood Be Shed,* (London: Joseph, 1979) p. 108.
9 Hallie., p. 125.
10 Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice Without Lawyers,* (Cambridge: Cambridge University Press, 2010), p. 1.
11 Jones, p. 404.

enabled it.[12] Shaw believed that it is the moral and physical resources available to victims or other actors in genocide, in addition to the varying threats they face, which provide the explanation for cases of resistance.[13] Many scholars acknowledge the difficulty of attributing single factors as the reason for collective or individual opposition to genocide. For example, Moore contends that strong religious belief is often cited as a motivation for resistance and the religious affiliation of the Pastor of Le Chambon indicates religion could be one possible facilitator for the acts of resistance.[14] However, Kuper highlights the commonality of religion as an aggravating factor in genocide, demonstrating the complexity of attributing and generalising precise motivations.[15] Indeed, not all of the Chambonnais had religious beliefs, and therefore it cannot explain what motivated resistance for all of the actors.[16] Moreover, the case exhibited other, and perhaps more crucial, factors prompting the rescue.

In particular, the political and social contexts of resistance are of great importance. The leadership and influential role of Trocmé enabled him to mobilise the actions of Le Chambon; his influence meant that the rescue activity was a collective effort by the village. Moore suggested that a leader must consider the unreliability of certain individuals and therefore make decisions as to whom to involve in the acts of resistance and whom not to involve within their networks, and Trocmé was able to utilise his position of power and his social networks to ensure this.[17]

This dynamic was also identified in Rwanda, where the burgomasters, or mayors, used their local power and influence to lead resistance against the genocide. There were many cases throughout where local officials, local elites and ordinary citizens sought to prevent the violence.[18] The Hutu burgomasters were the most powerful local officials in each commune and therefore had the ability to organise resistance due to their power and influence. However, many chose to claim powerlessness and remained passive as the violence began. In these communes, without an ethical leader, the genocidaires faced little opposition. Yet there were three significant cases where the commune leaders of Giti, Musambira and Taba did challenge the extremist Hutu militia known as the Interahamwe.[19] The aforementioned communes, led by their burgomasters, took steps to prevent the onset of violence and protect the Tutsi populations by arresting perpetrators, dispersing groups of activists and repulsing attacks from neighbouring regions, though the sustainability of resistance varied in each commune.[20]

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12 Moore, p. 295.
13 Martin Shaw, *War and Genocide: Organised Killing in Modern Society,* (Cambridge: Polity Press, 2003), p. 195.
14 Moore, p. 299.
15 Leo Kuper (1990) cited in David Patterson, *Genocide in Jewish Thought,* (Cambridge: Cambridge University Press, 2012), p.198; Moore, p. 299.
16 Jones, pp. 405-406.
17 Moore, p. 301.
18 Scott Straus, 'From 'Rescue' to Violence: Overcoming Local Opposition to Genocide in Rwanda', in *Resisting Genocide: The Multiple Forms of Rescue*, ed. by Jacques Semelin, Claire Andrieu and Sarah Gensburger, (New York: Columbia University Press, 2011), pp. 331-344.
19 Jean Hatzfeld, *Into the Quick of Life: The Rwandan Genocide: The Survivors Speak*, (London: Serpent's Tail, 2008), p. 174.
20 Stefan Klusemann, 'Massacres as a Process: A Micro-Sociological Theory of Internal Patterns of Mass Atrocities', *European Journal of Criminology*. 9.5 (2012), 468-480 (p.473); Lyn Greene, pp. 107-108.

The actions of the burgomasters are examples of open resistance because actors directly opposed the onset of genocide, facilitated by the leaders' power and networks, demonstrating the influence of powerful actors in resistance. Giti was the single commune under government control in which genocidal violence did not occur due to the arrival of the Rwandan Patriotic Front (RPF) in a neighbouring commune.[21] Yet, before the RPF changed the dynamics in the area, the risk of genocide was imminent and Edouard Sebushumba, the burgomaster, led a resistance against the genocidaires enabled by his ability to order arrests, distribute firearms and organise patrols.[22] Additionally, the burgomaster of Musambira used his authority to lead a separate resistance, posting police to prevent incursions and rallying the community to oppose the outbreaks of genocidal violence.[23]

These examples of open resistance led by the burgomasters, combined with the case of André Trocmé and Le Chambon, demonstrate the significant value of an ethical and influential leader, who is opposed to the genocidal violence, and possesses the resources to facilitate collective resistance. Without the influence of an authority figure with the power or social networks to mobilise groups or individuals, any feelings of empathy towards the victimised group are less likely to result in resistance or rescue.[24]

However, there are rarely single, isolated factors that facilitate resistance and there were undoubtedly many individual cases of resistance in Rwanda that occurred without the assistance of a powerful or influential leader.[25] Hatzfeld interviewed survivors of the Rwandan genocide and their personal accounts allow for an understanding of the factors that facilitated their survival.[26] The evidence indicated a further social factor that influenced the actions of individuals in the Rwandan genocide, which was the importance of prior ties. Hatzfeld interviewed Marie Louise Kagoyire, a Tutsi resident in Nyamata, Southern Rwanda, who was found hiding from attackers after an onset of violence by a Hutu neighbour and was secretly offered assistance until she reached safety. Kagoyire was told by her neighbour, Monsieur Florient, that he "was not going to kill [his] wife's friend", yet he participated in other acts of violence, suggesting that the prior ties between the actors motivated his resistance in this case.[27] Similarly, other stories from survivors attest to the importance of prior ties in leading active killers to save Tutsi friends, whilst murdering other Tutsi.[28] Interview evidence gathered by Fujii supports this further. Michel, a confessed killer in the Rwandan genocide, attempted to hide four of his Tutsi neighbours and in his words he did everything possible to save them, whilst in many other instances with strangers he did not resist, and often actively participated in the violence.[29] Furthermore, an unnamed Tutsi survivor, interviewed by Fujii, believed that he was spared by the perpetrators due to their long-term friendship.[30] These accounts demonstrate the importance of prior ties in leading killers to resist.

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21 Scott Straus, *The Order of Genocide: Race, Power and War in Rwanda,* (Ithaca: Cornell University Press, 2006) p. 65.
22 Straus, 2011, p. 334.
23 Straus., p. 337.
24 Moore., p. 301.
25 Moore., p. 299.
26 Hatzfeld, *Into the Quick of Life: The Rwandan Genocide: The Survivors Speak*, p. vii-ix.
27 Hatzfeld, p. 90.
28 Lee Ann Fujii, *Killing Neighbours: Webs of Violence in Rwanda,* (Ithaca: Cornell University Press, 2009), p. 139.
29 Fujii, 2011, pp. 153-155.
30 Fujii., p. 151.

However, although these cases highlight the restraining effect of social ties, in a number of localities the militias ordered the Hutu population to kill their Tutsi neighbours, or risk death themselves.[31] Therefore, a large extent of the Hutu population exterminated their neighbours and looted their houses throughout the genocide in contrast to the cases of resistance, contesting the significance of prior ties as a facilitator for resistance. Moreover, in the case of Le Chambon, the villagers could not have had prior social ties with the thousands of refugees that were rescued, and therefore social ties were not a facilitator for resistance in this case. This highlights the complexity of factors that facilitate resistance of genocide. Fujii concluded that rescuers 'helped those they knew when circumstances permitted', suggesting that the acts were not only reliant on social factors, but also contextual factors.[32] Therefore, it can be concluded that whilst prior ties motivated acts of resistance in Rwanda to a degree, it is often not sufficient as an isolated motivating factor and the context must therefore also be considered.

The context that each act of resistance occurs in is important and impacts upon the form that each act takes. Without the sufficient power for open resistance as in the case of the burgomasters in Rwanda, cases of resistance are much more likely to be clandestine. In contrast to the open resistance of Giti, Musambira and Taba, the actions of Le Chambon began and ended in the privacy of the actors' homes, conducted in secrecy due to the lack of power of the villagers comparable to the Nazis.[33] Additionally, concealed acts of resistance occurred in the Rwandan communes where leaders did not resist. The power of the Interahamwe, as well as the grave dangers of resisting violence for Hutus led to more 'hidden' resistance than 'open' to reduce the risk involved. In contrast to the Jewish Holocaust, the Interahamwe killed Hutus who protested to the violence against the Tutsis. Hatzfeld highlighted several hidden acts of resistance in his research on Rwanda.[34] Often, acts of resistance in the Rwandan genocide originated from genocidaires themselves, occurring in secrecy, and this is highlighted in the survival account by Kagoyire. The 'rescuer', Monsieur Florient, was the Head of Military Intelligence in Bugesera who has since been prosecuted for his involvement in the murder of many other Tutsi civilians.[35] This suggests that his resistance was not only determined by the prior social ties with Kagoyire, but that it was also context dependent and made possible by the absence of witnesses at the time. This is also reflected in Le Chambon, where many of the Vichy police were converting to help the Chambonnais by privately resisting orders when they were not under supervision.[36] Fujii also supports the idea of resistance being enabled by a lack of witnesses in her interview with Olivier, a confessed killer in the Rwandan genocide.[37] The genocidaire explained that "when you ran into someone when you were in a big group, it was hard to save someone".[38] Acts of resistance were highly dependent on context; the Hutu population were ordered to kill every Tutsi without exception and

31 René Lemarchand, 'The Rwanda Genocide', in *Century of Genocide: Critical Essays and Eyewitness Accounts,* (2nd edn.), ed. by Samuel Totten, William S. Parsons and Israel W. Charny (London: Routledge, 2004), pp. 395-412 (p.401).
32 Fujii, 2011, p. 154.
33 Hallie, p. 8.
34 Hatzfeld, *Into the Quick of Life: The Rwandan Genocide: The Survivors Speak*, pp. 5,65-66,90-91.
35 Hatzfeld., pp. 90-92.
36 Hallie, p. 114.
37 Fujii (2011) pp. 155-156.
38 Fujii (2011) p. 156.

therefore it was only when perpetrators were out of sight of leaders or other killers that they were able to resist.[39]

The geographical context can also be a factor that can enable acts of resistance in genocide. Le Chambon had an enhanced capacity to resist owing to the physical landscape; the secluded village offered relative freedom for refugees in a secure space, and its isolation between dense woodland and the mountains of Eastern France provided even greater security.[40] This landscape created an opportunity for rescue in Le Chambon that was not equal to the opportunity of other areas. In the Nazi occupied zone of Northern France, cities such as Paris did not have the advantage of geographical isolation to facilitate hiding their Jewish populations and in July 1942 the French police arrested 28,000 Jews in Paris under German orders.[41] In contrast, every single refugee sheltered by the Chambonnais survived.[42] Additionally, Hatzfeld interviewed a Tutsi survivor in Nyamata, who was found by a Hutu civilian and hidden under the umunzenze, giant trees which provided a hiding place in the surrounding area and therefore facilitated the hidden act of resistance.[43] Understanding the context of each case highlights the potential for isolation or concealment to aid resistance, although the isolation of an area cannot motivate acts of resistance alone and therefore, as argued above, an array of factors must be taken in to consideration.

Through studying and comparing cases of resistance, combinations of factors that facilitate the latter become apparent. Identifying commonalities in each case ideally allows for the enabling circumstances to be generalised and applied to other cases of genocide. Yet the potential for more than one factor to motivate resistance increases the difficulty of generalising insights from each case as the instrumental factors become harder to identify. Hallie determined that the resistance of Le Chambon was shaped by many elements, as were the acts demonstrated during the Rwandan genocide, and therefore theories of what facilitates opposition to genocide will continue to be a debated topic.[44] However, despite the difficulty in identifying factors that facilitate resistance, the comparison of each case allows for certain conclusions to be drawn. The cases of Le Chambon and the Rwandan communes suggest the possibility of resistance, and the form it takes, are shaped by political, social, contextual and geographical factors. Straus concluded that open acts of resistance during the Rwandan genocide were facilitated by a leader with the networks and power to motivate collective action.[45] Indeed, the role of André Trocmé in Le Chambon highlights the importance of motivated actors with the contacts to mobilise collective resistance.[46] The local leadership in Giti, Musambira and Taba, and the influential position of Trocmé both proved to be important facilitators for resistance, and therefore these insights demonstrate the significance of an influential, ethical and powerful leader when considering acts of resistance to genocide.

Hidden and individual acts of resistance during the Rwandan genocide appear to have been enabled by pre-existing social ties between actors. However, as a single factor it is

39 Jean Hatzfeld, *A Time for Machetes: The Rwandan Genocide, The Killers Speak*, (London: Serpent's Tail, 2008) p. 9; Fujii, 2009, p. 128.
40 Hallie, p. 135.
41 Hallie., p. 105.
42 Jones, p. 406.
43 Hatzfeld, *Into the Quick of Life: The Rwandan Genocide: The Survivors Speak*, p.5
44 Hallie, p. 283.
45 Straus, 2011, p. 343.
46 Moore, p. 300.

clear that this circumstance is often inadequate, as many Hutus engaged in the killing of their neighbours, friends and family. Furthermore, in the case of Le Chambon, the Jewish refugees were strangers to the village and this did not discourage the acts of rescue. This suggests that the influence of social ties in genocide is somewhat limited and dependent upon the individual and their immediate context. It also demonstrates that acts of resistance are enabled in certain circumstances, for example the absence of witnesses, which reduced the risk involved for the actors in the Rwandan communes, facilitating their resistance.[47] This demonstrates that the immediate context was more important than prior ties to facilitate resistance in both cases.[48] Finally, the geographical landscape in cases of genocide provides another dynamic that has the potential to facilitate resistance, as shown in the comparison between Le Chambon and Paris. However, geographical context cannot facilitate action alone and therefore other, more crucial, facilitating factors must also be considered. Thus it can be seen that whilst acts of resistance have their own specific contexts that shape the potential for actors to resist or provide rescue for victims, drawing comparison between them can provide greater insight into the conditions and circumstances that make resistance possible.

47 Fujii, 2011, p. 157.
48 Fujii, p. 156.

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TASC Madagascar

by Olli Stewart

I was walking along the beach one day. I saw a man bending over picking up starfish on the shore and was throwing them back into the sea.

I asked him, "Why are you throwing those starfish back into the sea?" He replied, "The tide is going out, the sun is hot, and if I don't, they will die here." I asked him why he was doing this; the few he threw back wouldn't make any difference.

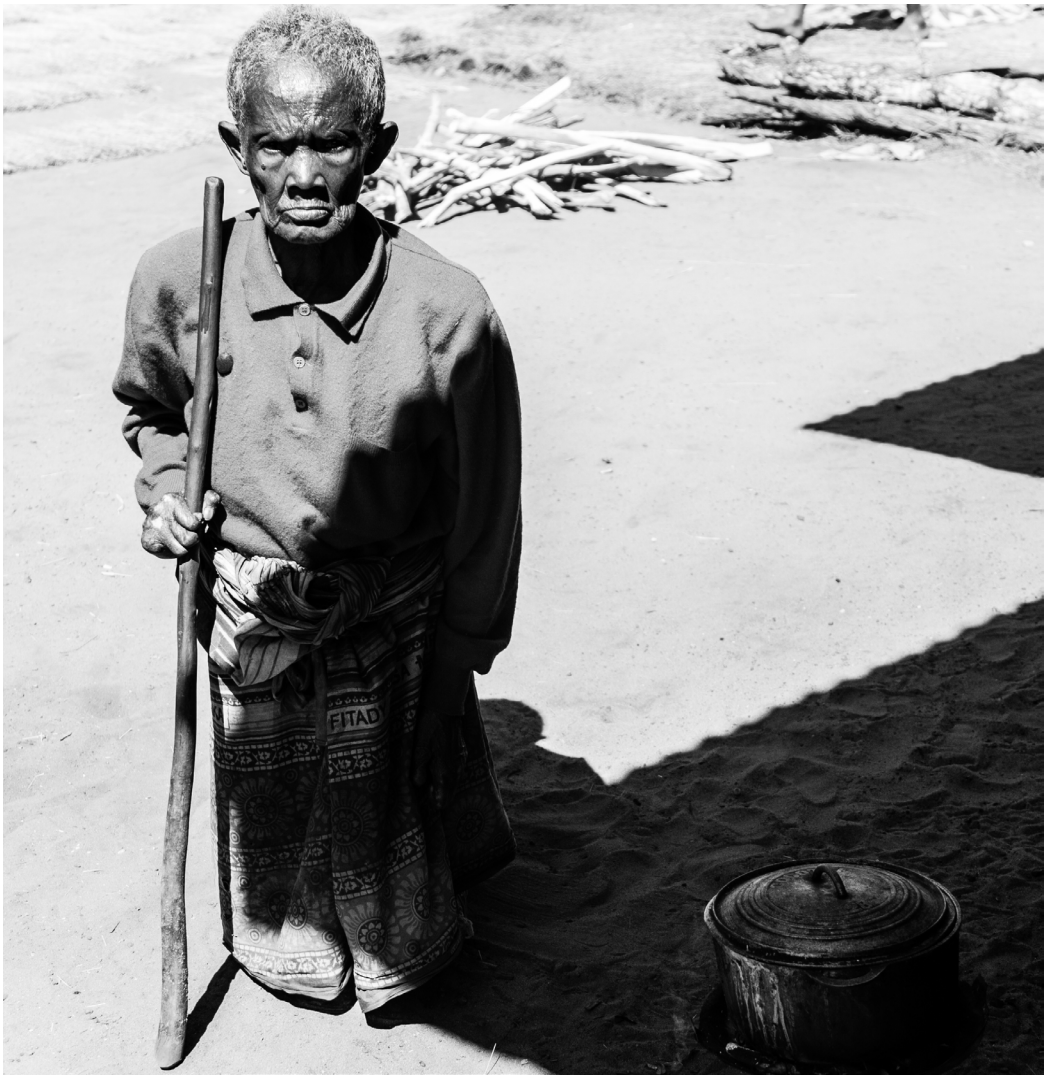
The man paused with a starfish in his hand. He looked at it, and then he tossed the starfish out to sea and said, "I have made a difference to that one." (Unknown)

Toss A Starfish Charity (TASC) Madagascar is a small charity that exists to make a significant difference to those in desperate need of support. I travelled to Southeast Madagascar in September to join the TASC team on its annual evaluation of the beneficiaries it encompasses. The aim of the excursion was to assess where resources could be best allocated for the most positive impact and as part of this we visited leprosy sufferers in the Vohipeno region and a 'mental hospital' in Manakara. The quality of life for the people trapped in these two sites was extremely poor. The leper colony was walled off from the rest of the neighborhood in order to isolate its debilitated inhabitants. One elderly woman at a later stage of leprosy was left malnourished and alone on a concrete floor. She was in a delirious state of what seemed to me like agony. In the psychiatric unit I found a man locked in a tiny cell that reeked of urine. In patchy French he told me he had been there for two weeks but did not know why he was there. The hospital did not have the money or the resources to treat him and so locking him up was the only remaining option. The psychiatric doctor that accompanied us on the trip subsequently made a full report of these findings with suggestions of how the situation can be improved and trustees of the charity will return to both sites every year until they feel their funding has made a substantial enough difference to the conditions there.

To find out more about the work of the charity, please go to http://www.tascmadagascar.org

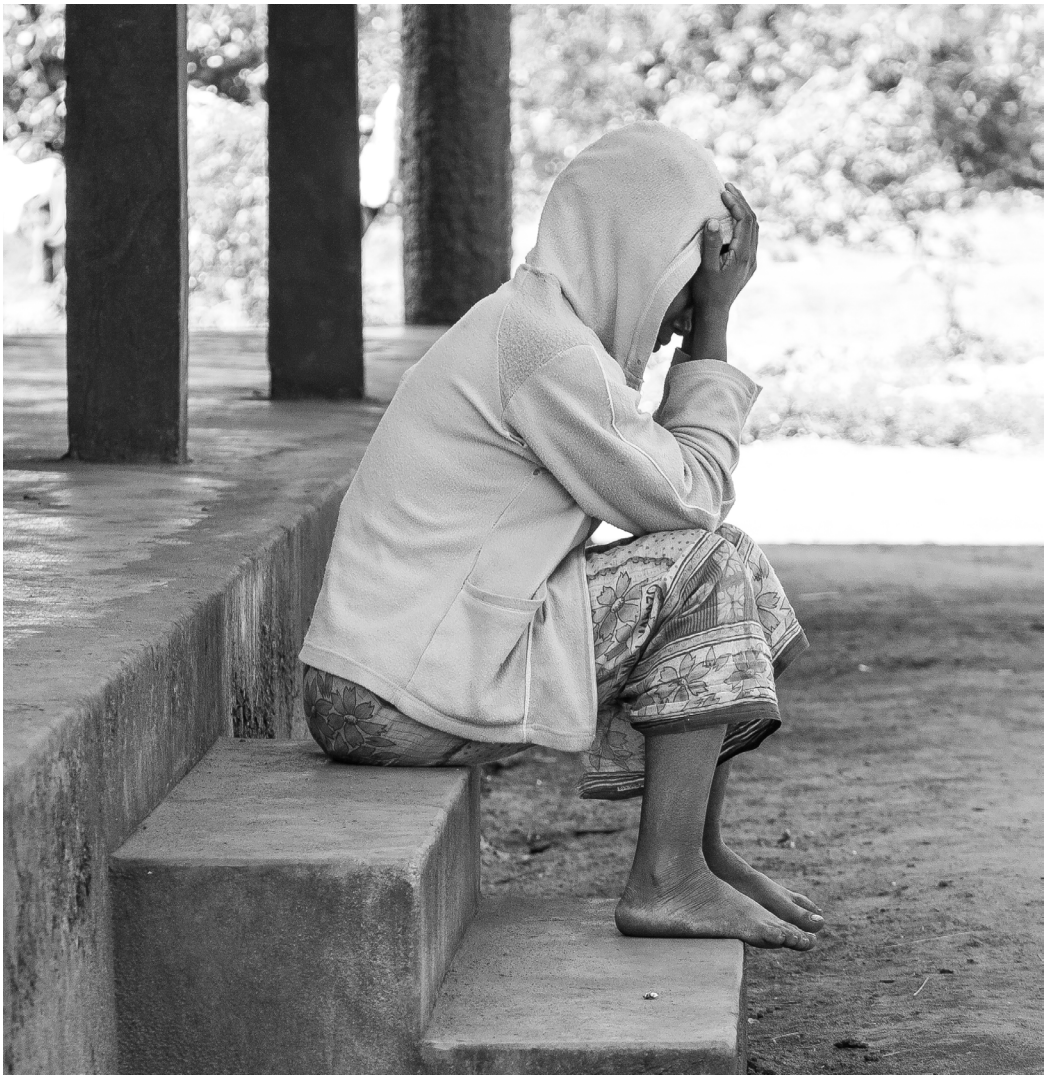
The contrasting hands of an Irishman and a Malagasy woman suffering from leprosy. Leprosy is a chronic infectious disease of the skin and nerves. If it is left untreated it can lead to loss of feeling in the hands and feet, which results in an inability to feel pain. Sufferers quickly sustain injuries and infections in their hands and feet that result in crippling consequences. Photograph taken outside Farafangana, Madagascar.

A man sitting on the steps of his house within the walled-off leper community located outside Farafangana, Madagascar.



This woman is unable to stand so she poses on her knees for a photograph outside her house. Photograph taken outside Farafangana, Madagascar.

The happy face of a remarkable woman warmly referred to by the TASC trustees as Annie. Annie sits in her hut waiting to share a song or a smile with anyone who visits her. Photograph taken outside Farafangana, Madagascar.



This girl sits with her head in her hands on the steps of the recently refurbished Ambokala psychiatric hospital in Manakara, Madagascar. The conditions of the hospital have drastically improved since the TASC team first visited it a few years ago, however there is still very limited medical care and TASC reported that some of the drugs that were being provided were not being administered properly. The place seemed to me like a bus stop, but nobody was going anywhere.

I found this man locked in a small cell separated off from the rest of the buildings at Ambokala psychiatric hospital in Manakara. I was surprised that he was able to speak coherently. He explained he had been there for two weeks but wasn't sure why he was there. He also said that he loved rock music. I was told later that he was mentally unstable and that the staff were trying to work out what to do with him.

Volumes of philosophy in the fall of every judge's gavel: an analysis of the constitutional validity of the Quebec Charter of Values

By Richard Jarram

This essay will examine the constitutional validity of the Quebec Charter of Values through the theoretical framework of Ronald Dworkin's interpretive model of adjudication. Although legal texts will be analysed this is not a paper on constitutional law: instead a conceptual analysis of judicial adjudication will be performed in order to delineate the relationship between law and morality. Exploring the implications of Dworkin's assertion that the meaning of a law is a function of interpretation, and that such interpretive axiomatics shift as the moral structures of society do, it will be demonstrated how abstract philosophical speculation does not remain detached from practical politics, but breathes through and directly informs it.

During the 1984 McCorkle Lecture at the University of Virginia's Faculty of Law, Ronald Dworkin made the hyperbolic statement that 'volumes of philosophy speak in the fall of every judge's gavel'.[1] It is the purpose of this paper to test the efficacy of this claim by applying it to a contemporary political controversy, that of the Quebec Charter of Values. By positing a line of reasoning informed by Dworkin's interpretive model of adjudication – such that an imaginary judge in the Supreme Court of Canada might pursue – it will be argued that the Charter is unconstitutional and hence should not be passed. The adjudicative judgment reached will necessitate a revision of the meaning of equality in the Canadian Institution, thereby drawing into question the stability of legal texts and their relation to moral principles. The majority of the argument will be devoted to illustrating the unconstitutionality of the Charter, whilst the final part will elaborate on Dworkin's interpretive method and the insight it gives into the nature of adjudication, which is that by analysing the political-moral principles underlying the law, any changes which judges make when interpreting are not really changes at all, but a truer description of what the law originally intended to express.

The controversy of the ensuing debate is best understood as a clash between majority and minority interests in society. Drafted by the Parti Quebecois (PQ) on 22nd May 2013, the Quebec Charter of Values proposes in the spirit of laïcité to ban the wearing of all 'conspicuous' religious symbols amongst public sector workers such as teachers, academics and civil servants in order to consolidate the separation of church and state in Quebec.[2] The Charter is part of the larger ideological project of the PQ to consolidate the three cardinal Quebecois values of equality between men and women, secularism, and the appreciation of a common historical heritage in order to forge a distinct Quebecois National identity.[3] Hence the motivation underlying the Charter is a direct political

1 Ronald Dworkin, 'Law's Ambition for Itself', in *Law and Morality*, ed. D. Dyzenhaus et. al., 3rd edn. (Toronto: University of Toronto Press, 2007), pp. 108-121 (p. 121).
2 National Assembly of Quebec, *Bill 60 'Charter Affirming the Values of State Secularism and Religious Neutrality and of Equality Between Women and Men, and Providing a Framework of Accommodation Requests'* (Quebec: National Assembly of Quebec, 2013), p.6 <http://www.scribd.com/doc/182347330/Quebec-s-proposed-Charter-of-Values> [accessed 5 December 2013].
3 Bernard Drainville, *The Québec Charter of Values: Five Propositions*. <http://www.nosvaleurs.gouv.qc.ca/en#neutrality> [accessed 5 December 2013].

expression of the majority will, given that the PQ are the majority power in the National Assembly and that the bill has majority support in the most recent polls.[4] Bernard Drainville, Minister of Active Citizenship, argues the Charter is democratic in nature, stating: 'we all have the right to our beliefs – the state has no place interfering in the moral and religious beliefs of Quebecers – the state must be neutral'.[5] Because of this, the state proposes to ban all – not only Christian – iconography amongst public sector workers to avoid differential treatment and discrimination. Controversy, however, arises in the ambiguity of the legislation that states that only 'conspicuous' religious symbols and garments will be banned, for what exactly counts as conspicuous and overtly visible depends on the context – a hijab will be notably less conspicuous in an Arab country than it would at a hospital in Montreal. Not only does the law seem difficult to enforce consistently, it also seems to allow differential treatment between faiths. There arises the possibility that small crucifixes could be worn under shirts whilst at work, whilst other religious garments such as hijabs could not and hence the Charter affects different faith groups to different extents. It is interesting to note only 1.5% of religious practitioners in Quebec identify as Muslim, whilst 85% identify as some denomination of Christianity.[6] Given this, one can see how the Charter disproportionally harms the interests of religious minorities. Thus the debate is centred on the majority's right of self-expression versus that of the minority.

According to the Constitution of Canada, a law is considered unconstitutional if it meets two criteria: firstly, it violates at least one constitutional clause; secondly, the violation cannot be justified under §1 of the constitution, which demands that such a violation be 'demonstrably justifiable in a free and democratic society'.[7] Members of religious minorities, especially those whose faith require to them certain garments such as a hijab or a turban, have pointed out that the bill will place them in a difficult position of choosing either allegiance to their faith or to their state; to either abandon their beliefs, or abandon their jobs. Such a position harms their dignity as citizens. Moreover, by ignoring the differing needs of religious groups, the Charter disproportionately affects the needs of minorities. These two reasons support the claim that the Charter violates §15(1) of the Canadian Constitution. This clause states:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.[8]

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4 Tu Thanh Ha, 'PQ Charter of Values Received by Francophones, Poll Shows' in *The Globe and Mail* (2013) <http://www.theglobeandmail.com/news/politics/pq-charter-of-values-better-received-by-francophones-poll-shows/article14334035/> [accessed 31 December 2013].

5 Bernard Drainville, *A Firm Belief in Our Values* <http://www.nosvaleurs.gouv.qc.ca/en/mot-ministre> [accessed 5 December 2013]. Note: referenced part of speech occurs at (0:25-0:54) of the video.

6 Statistics Canada, *Population by religion, by province and territory (2001 Census) (Quebec, Ontario, Manitoba, Saskatchewan)* (Toronto: Government of Canada, 2005) <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/demo30b-eng.htm> [accessed 7 December 2013].

7 *Canadian Charter of Rights and Freedoms, s 15, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c.11* (2014) <http://laws-lois.justice.gc.ca/eng/const/page-15.html> [accessed 1 December 2013].

8 *Canadian Charter of Rights and Freedoms.*

The Law Test, formulated by Frank Iacobucci in *Law v. Canada*, gives three necessary and sufficient criteria accounting for discrimination under this clause.[9] Firstly, the law must fail to take into account the minority status of the claimant. By failing to take into account the significance of religious dress to different religious groups, the Charter ignores both the minority status of religious groups such as Sikhs or Muslims. Secondly, it must subject the claimant to differential treatment. The Charter purposely avoids differential treatment by treating all religions groups uniformly and banning all religious symbols. Thirdly, this differential treatment must perpetuate a stereotype of that individual or at least reinforce the view that they as an individual or group are less capable or worthy of recognition. Forcing religious minorities into a position of choosing between their faith or their career is a violation of their dignity. Hence the first and third criteria have been met, but the second criterion has not. The Charter purposely avoids differential treatment by treating all religions groups uniformly and banning all religious symbols. This refusal of differential treatment is, however, the grounds for the claim of discrimination. So potentially the enquiry ends here: the Charter is constitutionally valid and an intuitively discriminatory law is enshrined by the Constitution.

A solution to this apparent paradox of unequal equality can be made if the concept of equality itself is analysed. One of the foundations of democratic thought is the dignity of the individual: the essence of John Stuart Mill's *On Liberty* is encapsulated in his proclamation 'Over himself, over his own body and mind, the individual is sovereign'.[10] Dignity consists in the ability to define one's own identity, core values and ultimate goals and ambitions in life within the framework of a state and society that, through a distribution of political rights and freedoms, does not unjustly debar one from realising such personal ideals and ends. In short, equality rights exist to protect the dignity of the individual. There are two ways of conceptualising political equality: a difference-blind conception based on distributing rights evenly amongst all groups and a difference-accommodating conception based on distributing rights depending on particular identities' needs. These two notions have been coined by Charles Taylor, respectively, as the 'politics of dignity' and the 'politics of difference.'[11] Both understandings are mutually incompatible: difference-accommodating equality rights are based on differential treatment; it is the logic of reverse discrimination that justifies giving more support to minorities and the oppressed than to privileged majority groups. However, difference-blind equality rights can function as 'a reflection of one hegemonic culture' that forcibly ignores the needs of minorities by assuming that their needs are identical to the majority group.[12] Taylor's distinction illuminates the controversy of the Charter very well. The logic of the Charter subscribes to a difference-blind notion of equality, and by projecting the Quebecois cardinal values on all groups in society, it overlooks the needs of minority religious groups.

The question now turns to which principle of equality underlies §15(1) of the Canadian Constitution so that the constitutional validity of the Charter can be decided. The first step

9 Judgments of the Supreme Court of Canada, *Law v. Canada (Minister of Employment and immigration) (1999) S.C.R. 497* <http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/item/1691/index.do?r=AAAAAQAPImxhdyB2cyBjYW5hZGEiAAAAAAE> [accessed 7 December 2013].

10 Mill, J.S., 'On Liberty', in *Law and Morality*, ed. David Dyzenhaus et al., 3rd edn. (Toronto: University of Toronto Press, 2007), pp. 306-326 (p. 314).

11 Charles Taylor, 'Multiculturalism and the Politics of Recognition', in *Law and Morality*, pp. 447-453 (p. 447-449).

12 Taylor, C., 'Multiculturalism and the Politics of Recognition,' in *Law and Morality*, ed. David Dyzenhaus et al., 3rd edn. (Toronto: University of Toronto Press, 2007), p. 451.

is to enquire into how the clauses have been applied in past case judgments. In *Halpern v. Canada* the court ruled that the common-law definition of marriage, which stated that only heterosexual couples could marry, violated §15(1) equality rights.[13] This ruling could have been justified through either principle of equality. Under a difference-blind notion, withholding rights from couples based on their sexual preferences constitutes differential treatment and hence discrimination. The same argument could be constructed under a difference-accommodating notion, as although differential treatment constitutes a sufficient condition of discrimination, it is not a necessary condition for it. The function of §15(1) given by Iacobucci in *Law v. Canada* is 'to prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political and social prejudice', where political equality rights exist as a means to an end of preserving human dignity.[14] As has been demonstrated, difference-blind equality rights systematically undermine the dignity of minority religious groups and so it follows that it cannot be espoused by a constitution that aims to protect the dignity of all citizens. The Law Test, which implies a necessary connection between differential treatment and discrimination, must therefore be read as a misreading of the principles underlying the constitution. There is no such necessary connection: differential treatment may not be necessarily present all cases of discrimination and sometimes, counter-intuitively, an absence of differential treatment constitutes discrimination. It would be absurd to uphold a criterion of equality that is itself discriminatory. To do so would be to forget the purpose of equality itself, which is the dignity of the human being and yet this is exactly what the Law Test does. In light of this, it can be safely said that §15(1) expresses a difference-accommodating notion of equality. Because the Charter upholds a difference-blind notion, it violates equality rights as expressed by the Constitution.

Just because the Charter is discriminatory towards minority religious groups does not make it unconstitutional. It must be now shown to be unjustifiable according to §1 of the Constitution which 'guarantees the rights and freedoms… only to such reasonable limits… demonstrably justif[iable] in a free and democratic society'.[15] Chief Justice Brian Dickson in *R. v. Oakes* gives four necessary and sufficient criteria for the justification of a constitutional clause according to §1.[16] First, there must be a pressing need for the realisation of what the law aims for. There is no pressing need for the Charter. Since the Quiet Revolution during the 1960s the influence of the Catholic Church over state policy was officially ousted, and hence the church and state separation offered by the banning of religious iconography can only be symbolic. Second, the rights violations must be rationally connected to the objective of law. This is not so with the Charter as there is no necessary connection between religious belief and dress. This is stated for three reasons: first, both the hijab and the crucifix could be worn as a fashion accessory; second, preventing someone from wearing religious garments will not efface their religious beliefs; and third, the presence of diverse faiths amongst public sector workers is a surer sign of church and state separation and secularism. Dickson's third criterion states that the rights violation must be minimal according to the given circumstances. This is not the case with the Charter. Forcing religious minorities to choose between their career and their faith is a violation of basic human dignity.

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13 'Halpern v. Canada (Attorney general) [2003] OJ No. 2268' in *Law and Morality*, pp. 453-480 (p. 479).

14 *Law v. Canada.*

15 *Canadian Charter of Rights and Freedoms.*

16 *R v. Oakes (1986) 1 S.C.R. 103* < http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/item/117/index.do?r=AAAAAQAMInIgdnMgb2FrZXMiAAAAAAE> [accessed 7 December 2013].

Dickson's fourth and final criterion states that the end of the law must justify its means; the balance of harms must fall on the side of the law. Because the wearing of religious garments is an expression of faith, the banning of religious iconography can be considered akin to restriction on freedom of speech. Following Mill's Harm Principle in which 'the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others', the burden of proof falls on the PQ to demonstrate what harms such a restriction of speech alleviates.[17] Lord Devlin advocated that majority power in society is essential for healthy functioning because it is the majority's moral and political structures upon which society rests; without this 'community of ideas' there would be no society at all, only atomistic individuals and groups.[18] The Charter, and the PQ nationalist ideological agenda, then constitutes a community of ideas which express the majority will. The only conceivable harms that this community faces if such restrictions of speech are not upheld are the expression of beliefs and lifestyles contrary to the alleged democratic nature of the majority. Pauline Marois, Premiere of the PQ, asserted that the hijab expresses a 'form of submission' that contradicts the Quebecois values of equality between men and women and hence should not be tolerated.[19] However, Thomas Michael Scanlon, extending Mill's harm principle, offers a practical mechanism for showing that more harm is caused by restricting a potentially harmful speech act from being spoken than by tolerating it. Scanlon's mechanism defines such harms as 'harms to certain individuals which consist in their coming to have false beliefs' as the result of accepting the truth of someone else's argument.[20] This is because for the state to assume a paternalistic prerogative in restricting the sources of information available to its citizens is to assume that its citizens are incapable of forming their own opinions and beliefs and hence is an affront to their dignity as rational human beings. Implicit in Marois' statement is the fear that the increased presence of hijabs in the workplace is equatable to the Islamification of the culture. However, up until now there has been no restriction on freedom of religious expression in the workplace, and yet no such fear has been realised. Moreover, by refusing the possibility that perhaps the hijab is worn as an expression of autonomous choice, the statement patronises Muslim women and reduces their status as rational agents into hapless victims. Even more, by maintaining that the non-Muslim citizen needs to be protected from the sight of such a garment is to assume that either they are deeply disturbed by the fact of religious diversity, or at least unable to make up their own opinion on the matter. In either case, such a restriction of speech is detrimental to the autonomy of the citizen. So, even if harm would be caused by continuing to let freedom of expression continue unimpeded in the workplace, far more harm would be caused by attempting to limit this expression. The Charter, then, fails to pass all four of Dickson's criteria and therefore is not a justifiable violation of constitutional equality rights. In conclusion, it is constitutionally invalid and should not be passed.

In order to reach the conclusion that the Charter is unconstitutional the law was reinterpreted. The Law Test, as provided by Iacobucci, was dismissed as an inaccurate interpretation of the principle of political equality that underlies the Constitution. However, it is arguable whether judges should be accorded such power. Adjudicative decisions

17 Mill, p. 313.
18 Patrick Devlin, "Morals and the Criminal Law," in *Law and Morality*, pp. 369-392 (p. 377).
19 Nelson Wyatt, 'Marois Blames Multiculturalism for 'Bomb Throwing' in England, Claims Hijab is a 'Form of Submission'' in *National Post*, (2013) <http://news.nationalpost.com/2013/09/06/we-re-established-social-peace-pauline-marois-proud-of-her-tumultuous-first-year-in-power/> [accessed 7 December 2013].
20 Thomas Michael Scanlon, 'A Theory of Freedom of Expression,' in *Law and Morality*, pp. 838-856 (pp. 844-845).

are undemocratic to the extent that they are expressed without majority consent, and moreover the justices of the Supreme Court are not democratically elected.[21] But such powers are effective measures against unjust legal systems. For example, in *Riggs v. Palmer*, the court ruled that a grandson was unable to receive his inheritance from his grandfather because he had poisoned him. Despite the face that the heir remained legally entitled to his inheritance – there was nothing in that law that precluded him from receiving it – the judge felt compelled to prevent him from receiving it on the principle that a citizen should not reward someone for wrongdoing and 'receive property by his crime'.[22] The *Riggs v. Palmer* ruling reinforces the claim that the interrelation between legal and moral structures is a common and rational intuition: the law exists as an instrument for some moral end.

Dworkin's interpretive method of adjudication, predicated on this intuition, solves the legal-moral dilemma concerning judges' law-changing powers. According to Dworkin, such changes are not really changes at all, but rather a more accurate expression of what the law originally intended.[23] The meaning of a law is understood as its moral function. Because the moral structures of society change, legal structures must reflect these changes. For example, the function of political equality rights is the safeguarding of individual dignity. If there are two mutually incompatible concepts of equality, one difference-blind and one difference-accommodating, then it follows that the law must subscribe to the most effective moral norm and only that way can it best uphold its moral function. But previous legislation may have been drafted before our conceptual vocabulary had absorbed these new moral norms. It is probable that the Law Test was formulated in ignorance of contemporary understandings of equality. If the constitution embodies a difference-accommodating understanding of equality whilst the Law Test expresses a difference-blind notion, it follows that the law must be changed and made more consistent with its moral framework and a refusal to change the law would be against proper legal standards. This same reasoning necessitates the refutation of both the Charter of Values and the Law Test. The greatness of Dworkin's method is that it allows the law to accommodate the future consistently with the past; accepting that past laws may come into conflict with contemporary moral structures, it provides a rational method for confirming whether or not the two are consistent with each other. By applying moral norms to past cases, for example *Halpern v. Canada*, it was demonstrated that the logic of difference-accommodating equality also informed this past judicial decision, even if it were made in ignorance of such a concept. The legal system, then, can be understood metaphorically as a 'chain novel'.[24] Like a literary text, the interpretive axiomatic of the critic is a function of its meaning. Interpretations can never be completely accurate; they can only reflect, with integrity, the moral norms of the contemporary moment. Moreover, the consensually accepted interpretive axioms that constitute the basis of a moral community change over time; the 'right' interpretation made in the present moment is not guaranteed to remain effective in the future. So, because the weight of all the past judicial decisions as well as the infinite possibilities of future ones are comprised in each court ruling, 'volumes of philosophy' do indeed speak in 'the fall of every judge's gavel'.[25]

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21 The Canadian Superior Courts Judges Association (CSCJA) <http://www.cscja-acjcs.ca/judges_selected-en.asp?l=5> [accessed 11 January 2014].
22 'Riggs v. Palmer 22 N.E. 188 (1889)' in *Law and Morality*, pp. 140-146 (p. 143).
23 Dworkin, pp. 108-121. This article contains a comprehensive summary of Dworkin's thesis.
24 Ronald Dworkin, 'The Chain of Law', in *Law and Morality*, pp. 122-126 (p. 123).
25 Dworkin, 'Law's Ambition for Itself', p. 121.

The Quebec Charter of Values is constitutionally invalid because it violates equality rights as given in §15(1) of the Constitution, and this violation is not demonstrably justifiable under the criteria given by §1. As has been demonstrated, the positive law had to be reinterpreted in order to reach this judicial decision: a direct application of the Law Test yielded an inadequate situation of unequal distribution of equality rights. After a discussion of difference-blind and difference-accommodating understandings of equality, a decision was taken as to which principle underlay §15(1) of the Constitution. Because the Charter expresses a difference-blind principle of equality, and the Constitution a difference-accommodating one, the Charter was considered discriminatory. Moreover, the Charter failed to pass all four of Dickson's criteria and hence cannot be justified under §1 of the Constitution. The banning of religious iconography in the workplace was considered a restriction of freedom of speech, and so the Charter had the burden of proof in justifying the restriction of speech it advocated. Because more harm is caused when potentially harmful beliefs are regulated by the state than leaving them unregulated, even if allowing religious expression in the workplace would cause some harm, it would be more harmful to ban it. Even more, there is no pressing need for the Charter: First, there is no necessary connection between religious belief and dress; second, secularism is arguably better attained through expressing diversity of belief in the workplace, something expressed by allowing plurality of religious dress in the workplace as opposed to banning it. All of the aforesaid reasoning is what an imagined judge might express when applying Dworkin's interpretive method to a hard case in law. It has been shown that the controversy of the Charter fits into a dialogue of the age-old conflict between law and morality, a conflict that arises from the illusory schism between moral justice and legal justice. The law must accommodate moral principles of equality in order to prevent the majority of the Quebec society from depriving religious minorities of their rights. Dworkin's interpretive model of adjudication offers a satisfactory answer to the danger of unjust legal systems. It is a practice of adjudication that recognizes the inextricable connection between these two normative domains, one that clearly perceives the philosophical analysis inherent in the act of judicial interpretation, and finally one that understands that a change in the letter of the law actually expresses 'law's ambition for itself' – a legal maxim that is vital for the healthy functioning of any democracy.[26]

26 Dworkin., 'Law's Ambition for Itself'

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Seeing Power

by Charlotte Carter, Oil on Canvas, 2013

'Seeing power' depicts a social protest in the heart of Buenos Aires. I was fascinated by the intangible power of this march and the atmosphere that was created. As a bystander, I observed a vibrant crowd, waving flags and letting off flares. Through my choice of colour palette, I sought to replicate the sense of warmth and raw emotion. Furthermore, I intended to illustrate the power of crowds, united by a common cause. It is this powerful nature of nonviolent protest that I believe is relevant to human rights, as it symbolises a collective desire and demand for change. Where human rights abuses and injustices are prevalent, it is within our power, as members of both local and international communities, to call upon those in authority to address them.

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The *University of Leeds Human Rights Journal* is a multidisciplinary publication created by students with the aim of providing a platform for ambitious undergraduates to publish their academic and creative work on the theme of human rights. It is the first journal of its kind in the United Kingdom.

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